



Meander Valley Council
Working Together

MINUTES

ORDINARY COUNCIL MEETING

Tuesday 14 March 2023

Time 3.00pm

Location Meander Valley Council Offices
26 Lyall Street
Westbury, Tasmania

Phone (03) 6393 5300

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Meeting Open - Attendance & Apologies

Meeting opened at 3:03 pm.

Chairperson Deputy Mayor Stephanie Cameron

Councillors present Councillor Lochie Dornauf
Councillor Ben Dudman
Councillor Kevin House
Councillor Anne-Marie Loader
Councillor Rodney Synfield
Councillor John Temple

Apologies Mayor Wayne Johnston
Councillor Michael Kelly (Leave of Absence)

Officers present

John Jordan	General Manager
Geoff Guiver	Business Improvement Officer (Minute-Taker)
Dino De Paoli	Director Infrastructure Services
Jonathan Harmey	Director Corporate Services
Matthew Millwood	Director Works
Natasha Whiteley	Acting Director Development and Regulatory Services
Jared Allen	Team Leader Engineering
Brenton Josey	Town Planner
Anita Devlin	Executive Officer

Acknowledgment of Country

The Chairperson acknowledged the Pallitore and Panninher past peoples and the traditional owners and custodians of the land on which we gather for the Council Meeting, paid respects to elders past and present and extended those respects to all Aboriginal and Torres Strait Islander peoples present.

Confirmation of Minutes

Motion Receive and confirm minutes of the last Ordinary Council Meeting held 14 February 2023.

Moved Councillor Lochie Dornauf

Seconded Councillor Anne-Marie Loader

Votes for Deputy Mayor Stephanie Cameron
Councillor Lochie Dornauf
Councillor Ben Dudman
Councillor Kevin House
Councillor Anne-Marie Loader
Councillor John Temple

Votes against Nil

Did Not Participate Councillor Rodney Synfield

To abstain from voting at a Council Meeting is to vote in the negative: *Local Government (Meeting Procedure) Regulations 2015: s28.*

Motion carried by simple majority

Minute reference: 042/2023

Declarations of Interest

Nil

Minute reference: 043/2023

Council Workshop Report

Topics Discussed – 28 February 2023

Development & Regulatory - Strategic Planning Induction & Update

Presentation - Northern Tasmania Development Corporation (NTDC) Ltd

Presentations & General Discussion - Deloraine Racetrack Precinct

Infrastructure - Waste Management Strategy

Infrastructure - Financial Support for the Disposal of Euthanised Animals

Infrastructure - Repair and Maintenance of the Deloraine Information Bays

Governance - Meander Valley Council Model Code of Conduct

Community Wellbeing - Presentation & Discussion: Westbury Bicentennial Celebrations

Items for Noting

Infrastructure - 2022 Hard Waste Collection Service Summary

Infrastructure - Proposed Sale of Former Bracknell Tip - Louisa Street, Bracknell

Infrastructure - Rural kerbside waste and recycling collection service update

Minute reference: 044/2023

Mayor & Councillor Report

Councillor Official Activities and Engagements Since Last Meeting

15 February 2023

Meeting: Future of Local Government Review, Longford

Attended by:

Mayor Johnston

Councillor House

Councillor Loader

16 February 2023

Meeting: Northern Flood Recovery Group, Riverside/virtual

Attended by:

Mayor Johnston

Meeting: Mole Creek Progress Association, Mole Creek

Attended by:

Deputy Mayor Cameron

Councillor Loader

Meeting: Chudleigh Show Committee, Chudleigh

Attended by:

Deputy Mayor Cameron

18 February 2023

Community Event: Chudleigh Show, Chudleigh

Attended by:

Mayor Johnston

Deputy Mayor Cameron

Councillor Dudman

Councillor Loader

Community Event: Launceston Touch Association 40th Birthday, Prospect Vale

Attended by:

Mayor Johnston

19 February 2023

Community Event: Street Car Show, Deloraine

Attended by:

Mayor Johnston

Councillor Dudman

Councillor Loader

Community Event: Magic Millions Tasmanian Yearling Sales, Carrick

Attended by:

Councillor Dudman

22 February 2023

Meeting: Great Western Tiers Tourism Association, Deloraine

Attended by:

Councillor Loader

23 February 2023

Meeting: Tourism Industry Council Tasmania Breakfast, Hobart

Attended by:

Mayor Johnston

Meeting: Chudleigh Hall Committee, Chudleigh

Attended by:

Deputy Mayor Cameron

25 February 2023

Community Event: Opening of Meander House, Meander

Attended by:

Mayor Johnston

Councillor House

Councillor Loader

Community Event: Westbury Garden Club Summer Flower Show, Westbury

Presented by:

Councillor Loader

27 February 2023

Meeting: Mole Creek Hall Committee, Mole Creek

Attended by:

Councillor Dudman

1 March 2023

Meeting: Blackstone Heights Community News, Blackstone Heights

Attended by:

Councillor House

Councillor Loader

Councillor Synfield

Community Event: Opening of Village Green Playground, Westbury

Attended by:

Deputy Mayor Cameron

Councillor House

4 March 2023

Community Event: Deloraine Amateur Basketball Grand Finals, Deloraine

Attended by:

Mayor Johnston

Councillor Dornauf

5 March 2023

Community Event: Opening of Rupertswood Maze, Hagley

Attended by:

Mayor Johnston

7 March 2023

Meeting: Carrick Hall Committee Meeting, Carrick

Attended by:

Councillor Synfield

Councillor Temple

8 March 2023

Community Event: Launceston City Football Club Season Launch, Prospect Vale

Attended by:

Mayor Johnston

Councillor House

Councillor Loader

10 March 2023

Community Event: 2023 Tasmanian Honour Role of Women Event, Prospect Vale

Attended by:

Councillor Loader

Councillor Announcements & Acknowledgements

Deputy Mayor Cameron and Councillor Dornauf took time to acknowledge the passing of Jesse Youd and to pass on condolences to Jesse's family.

Councillor Dudman acknowledged the continuing contributions of the following community groups:

- Launceston City Football Club
- Mole Creek Hall Committee
- Van Diemen Street Rod Club Inc. (Deloraine Street Car Show)

Minute reference: 045/2023

Petitions

Nil.

Minute reference: 046/2023

Community Representations

Nil requests received.

Formerly referred to as “deputations”, community representations are an opportunity for community members or groups to request up to three minutes to address Council on a topic of particular interest.

Requests received at least fourteen days prior to a Council Meeting will be considered by the Chairperson. For further information, contact the Office of the General Manager on (03) 6393 5317 or email ogm@mvc.tas.gov.au.

Minute reference: 047/2023

Public Question Time

This Month's Public Questions With Notice

Question 1: Joy Kachina, Deloraine

Question without notice at past Council Meeting (February 2023) – taken on notice.

Subsequent to my questions on notice for the February Council meeting regarding the post-flood clean-up of the Deloraine Rotary Park riverfront in December 2022 and the General Manager's response, can Council please clarify if this means that:

a) there has been no testing for pollutants near the work area or,

b) Council has done testing and is in possession of its advice or evidence that the water in the Meander River near the worksite is free of Chemicals, Pollutants and Poisons and is suitable to support our wildlife and the recreational swimming areas for our community?

John Jordan, General Manager advised that his response to Ms. Kachina's previous question as minuted in the February 2023 Ordinary Council Meeting meant there was no evidence to suggest chemicals and poisons had leached into the Meander River due to the deposited flood debris or subsequent work that was undertaken, by extension no testing was warranted or had been undertaken. Equally, Council was not aware of any concern or issue to prompt testing by the Department of Natural Resources and Environment Tasmania, which has primary responsibility for the management of waterways.

Notwithstanding the above and the time-frames since the flood clean-up, in the interests of certainty Council has since taken water samples and is awaiting the results of testing. When these are to hand, Council will consider what, if any, action is needed.

Question 2: Joy Kachina, Deloraine (received via email)

During the flood clean-up in December 2022 was the Environmental Health Officer present at any time to oversee the application and safe use of the poisons used on the forty plus healthy trees that were cut down in and on the banks of the Meander River? If not, Why Not?

Matthew Millwood, Director Works advised there is no requirement for an Environmental Health Officer to oversee the application of herbicide at any site. The person undertaking the herbicide application or use is required to undertake the work in accordance with the relevant standards and practices applicable to the chemicals being applied.

Question 3: *Mark Griffiths, Deloraine (received via email)*

The Deloraine Walkway Bridge has been closed for nearly 5 months since the floods in October 2022 and we would like to know when it will be open for use again? Five months seems ample time to assess and repair.

John Jordan, General Manager advised that Council approved a contractor to undertake the repair of the bridge in the closed session of the February Council Meeting. Suspension bridges are a specialised construction and time was needed to assess options for the repair or rebuilding of the structure. This included assessing the options to raise the height of the bridge to increase its immunity to future floods. Council expects repairs to start in the second half of April 2023.

Question 4: *Joy Kachina, Deloraine (received via email)*

Matthew Millwood informed me during our phone conversation that he had an expert in to advise on the platypus situation at the clean up site in Dec 2022. (A Zoologist I believe he said). Can Council please advise whether the Zoologist/Expert identified any Platypus Burrow Sites along the Riverbank in the Clean Up Worksite and, if so, what measures were taken to protect them?

John Jordan, General Manager advised that a Department of Natural Resources and Environment Tasmania (NRE) zoologist provided advice as part of the pre-approval process for the flood clean-up works at the Meander River, Deloraine. They did not attend the site. The zoologist recommended Council consult local knowledge to identify any 'known' platypus burrows within proximity to the proposed work area. To this end, Council's Director Works conducted an on-site meeting with a local platypus tours operator and no burrows were identified in the proposed work area. NRE was advised of the action and related advice.

Question 5: *Peter Wileman, Westbury (received via email)*

In the last State election, the Government ran a pork barrelling exercise known as the Local Communities Facilities Fund. The Centre for Public Integrity has described this program as "an extreme version of the federal sports rorts saga". On 1 March 2023, the ABC reported that the "Meander Valley Council" sought Tasmanian Government funding for the Bracknell Hall redevelopment in the 2021 State election but was unsuccessful. What other projects did the Council seek Government funding for?

John Jordan, General Manager advised that Council was reliant on both Tasmanian and Australian Government funding for a broad range of programs and projects, to support the functions and activities of Council. Council provides a list of priority

projects to candidates which is also made available on Council's web-site. These were not specifically focused upon seeking funding from the Local Community Facilities Fund.

Question 6: *Peter Wileman, Westbury (received via email / website)*

The ABC reported on 1 March 2023 that Mr Mark Shelton met with the General Manager of the Meander Valley Council in July 2021 after the Bracknell Hall redevelopment had not received funding under the Local Communities Facilities Fund. Did Mr Shelton raise the potential for the General Manager, on behalf of the Council, to write to the Government for funding? If not, what triggered the letter sent by the Meander Valley Council to Mr Shelton seeking the funding?

John Jordan, General Manager advised that the meeting with Minister Shelton and the subsequent letter of 15 July 2021 was initiated by Council for the purpose of formalising a request for funding assistance. Council also liaised with the Australian Government who, along with the Tasmanian Government, provided grant assistance to the project.

Question 7: *Doreen Wileman, Westbury (received via email / website)*

The State Government is currently undertaking a review of Local Government, part of which flags the potential removal or limitation of the role played by Council in planning decisions. What is the Council's position on this?

John Jordan, General Manager advised the Council had yet to determine a position.

Question 8: *Doreen Wileman, Westbury (received via email / website)*

This review is flying under the radar in the community. Does Council intend to publish its submissions on the review on its website or otherwise? And will there be any public consultation on the matter?

John Jordan, General Manager advised that the review was being conducted and promoted independent of councils by the Tasmanian Government. The community has been afforded opportunity to have input into the review as outlined in the December 2022 second Options Paper from the Future of Local Government Review Panel. Acknowledging Council's discretion on the matter, it would seem appropriate that Meander Valley Council's response, if and when made, to the review would be a public document.

Minute reference: 048/2023

This Month's Public Questions Without Notice

Joy Kachina addressed Council with regards to continued correspondence and follow-up activity regarding the post-flood clean-up work undertaken along the Meander River at Rotary Park in Deloraine and then raised the following new questions:

Question 1 & 2: *Joy Kachina, Deloraine*

What consequences will there be for those responsible for misleading the public regarding the engagement of a zoologist before work commenced, and the subsequent failure to identify and protect vulnerable platypus burrows in the worksite area?

When will the Council start the regeneration process along the riverbank and will the Council ensure any future works needed will be done following the Proper Processes and Due Diligence that will ensure the Legal Protection of Platypus Burrows in the Meander Valley?

John Jordan, General Manager advised that Council will meet its obligations both legally and environmentally. It is working with the Department of Natural Resources and the remediation of the site will be undertaken once the Department has indicated what its expectations are and we will work to those expectations and in consultation with the Community. That will be informed by professional opinion.

Minute reference: 049/2023

Councillor Question Time

This Month's Councillor Questions With Notice

Nil received prior to agenda publication.

Minute reference: 050/2023

This Month's Councillor Questions Without Notice

Question 1: *Councillor Anne-Marie Loader*

I'm becoming increasingly more concerned about the participation rate in the Future of Local Government Review. Most people I speak to have no idea about the Review and that the outcome could have ramifications for them as residents and ratepayers of the Meander Valley. I don't believe that the methods for the community to participate were designed in a way that encourages and enables everyone to have a say. Stage 1 of the Review concludes in May this year. Can we as a Council express this concern to the Minister for Local Government? And can we as a Council commit to actively promote future community participation?

John Jordan, General Manager advised that yes, Council can express its views to the government. It requires Council to confirm a consensus view from the Councillors by way of a motion. Council can continue to promote community awareness and it has previously promoted information sessions relating to the reform via social media. The presence of this question suggests that this activity may not be regarded as adequate. With guidance from Councillors advocacy can be undertaken on behalf of the Community.

Question 2: *Councillor Kevin House*

General Manager, I refer to the debate in the Tasmanian Parliament about the approval processes for the rebuild of the Bracknell Hall.

Was Mark Shelton an office holder on the Bracknell Hall Committee? If so, in what capacity?

I understand that the hall committee was inactive, is that correct? Is so, what committee was Council dealing with to progress the replacement of the hall?

John Jordan, General Manager advised that Council records from 2014-15 until now show that:

Mark Shelton was nominated as a member of the Bracknell Hall and Recreation Ground Committee, but was not an office holder (Chair, Secretary or Treasurer) at any point.

Council minutes indicate that annual appointments to the Committee were confirmed by Council each year except for 2016.

In May 2019, Council acted to assess the hall's structural soundness, and this resulted in the hall being condemned and closed.

From 2019-2020, Council records subsequently do not record the holding of AGM or election of members to the Hall Committee.

On 16 November 2021, via email the Hall Committee Secretary, Ms Carol Spencer advised in part that:

"... we are not a functioning committee as such due to the Hall not being used (and not likely to be used in the next five years the way things are going)."

I understand that Council continued to be advised of 'no updates' in respect of office bearers with advice received to this effect on:

- 28 Feb 2020.
- 22 Sept 2021.
- 14 Feb 2022.

The above records are consistent with my experience that the Hall Committee was inactive.

In progressing the rebuilding of the hall, myself, Council Officers, and some Councillors (namely, Cr Nott, Bower and Synfield) routinely met with an informal community group. This did include some members from the inactive Hall Committee, but others as well.

I do not recall Mark Shelton being part of any meetings apart from attendance at a public forum about the hall (though I am not certain of this).

Given Council's commitment to replacing the hall and strong community views on the need for the hall, and time taken to achieve an outcome, when estimates indicated a higher than anticipated cost to build, I did deal with Mark Shelton and representatives from the Australian Government when seeking additional funds to build the hall. This approach was independent of any role he played on the hall committee.

Question 3: *Councillor John Temple*

Is there any update concerning any further activity regarding the proposed prison.

John Jordan, General Manager advised that there was no update.

Question 4: Councillor John Temple

Overnight, there are reports that the Federal Government has entered into an agreement under the AUKUS pact to spend \$369 billion on new submarine fleet.

Pro rata, based on population, the Meander Valley's contribution will be in the vicinity of \$310 million.

The Australian submarine fleet in its 109 year history may have been engaged in clandestine activities in the national interest, however it has never sunk an enemy vessel.

As the new manned vessels are likely to be superseded by emerging technology before they are launched, would Council write to the Federal Government to ascertain the benefit to the Meander Valley in making this purchase?

John Jordan, General Manager advised that it would be appropriate for Councillor Temple to raise a motion to confirm majority support from Councillors for such an undertaking.

Deputy Mayor Stephanie Cameron suggested that since the suggestion was simply to draft a letter of enquiry, Councillors could indicate if there was general support or otherwise, and if so, that Councillor John Temple could work with the General Manager to ensure that the question was appropriately captured for referral. Councillors Dudman and Dornauf spoke to their support for the enquiry with no Councillors speaking against the proposal. The General Manager was subsequently tasked to work with Councillor Temple to draft and submit an enquiry.

Question 5: Councillor Rodney Synfield

Following on from Council's earlier acknowledgement of the passing of Jesse Youd, Councillor Synfield highlighted that Jesse Youd's father served as a Meander Valley Councillor approximately eight years ago and another close family member was also a previous employee of Council. Jesse was an active participant in state-level Squash within Tasmania. Given that Council is currently building a new Squash facility in Deloraine would it be appropriate to consider some community consultation or participation in naming the facility in Jesse's memory?

Deputy Mayor Stephanie Cameron acknowledged that the suggestion was likely to be supported by Councillors and that it could be revisited later in the development process.

Councillor Lochie Dornauf advised that he appreciated the suggestion but that it would be appropriate to consult the family to ascertain their support before undertaking any Council or Community consultation on such a proposal.

Minute reference: 051/2023

Planning Authority Report

41 Parsonage Street Deloraine

Proposal	Multiple Dwellings (3 Units - 2 proposed & 1 existing)
Report Author	Natasha Whiteley Team Leader Town Planning
Authorised by	Krista Palfreyman Director Development & Regulatory Services
Application reference	PA\23\0060
Motion	Council receives the agenda report tabled for PA\23\0060 and resolves to refuse the application. Refer to "Details" below for further specification of Council's decision and any conditions or notes.
Moved	Councillor Ben Dudman
Seconded	Councillor Lochie Dornauf
Votes for	Deputy Mayor Stephanie Cameron Councillor Lochie Dornauf Councillor Ben Dudman Councillor Kevin House Councillor Anne-Marie Loader Councillor Rodney Synfield Councillor John Temple

Votes against Nil

Abstained Nil

To abstain from voting at a Council Meeting is to vote in the negative: *Local Government (Meeting Procedure) Regulations 2015: s28.*

Motion carried by simple majority

Minute reference: 052/2023

Details

Council must take qualified advice before making a decision, and ensure that its reasons for any planning decisions are (a) minuted and (b) based on the Planning Scheme.

See Local Government Act 1993: s65, Local Government (Meeting Procedures) Regulations 2015: s25(2) and Land Use and Approvals Act 1993: ss57-59.

After receiving qualified advice about this planning application and its compliance with the Planning Scheme, Council resolved as follows:

Recommendation

This application by Design To Live for Multiple Dwellings (3 Units, 1 existing, 2 proposed) on land located at 41 Parsonage Street, Deloraine (CT: 47826/2) is recommended for refusal on the following ground:

1. The proposal does not satisfy Clause 8.4.2, Performance Criteria P3 as the siting and scale of Unit 1:
 - a) will cause an unreasonable loss of amenity to adjoining properties; and
 - b) does not provide separation between dwellings on adjoining properties that is consistent with that existing on established properties in the area.

Planning Authority Report

4 Cook Street, Hadspen

Proposal Multiple Dwellings (9 Units - 8 proposed & 1 existing)

Report Author Brenton Josey
Town Planner

Authorised by Krista Palfreyman
Director Development & Regulatory Services

Application reference PA\23\0127

Motion Council receives the agenda report tabled for PA\23\0127 and resolves to approve the application.

Refer to “Details” below for further specification of Council’s decision and any conditions or notes.

Moved Councillor Ben Dudman

Seconded Councillor Anne-Marie Loader

Votes for Deputy Mayor Stephanie Cameron
Councillor Lochie Dornauf
Councillor Ben Dudman
Councillor Kevin House

Votes against Councillor Anne-Marie Loader
Councillor Rodney Synfield
Councillor John Temple

Abstained Nil

To abstain from voting at a Council Meeting is to vote in the negative: *Local Government (Meeting Procedure) Regulations 2015: s28.*

Motion carried by simple majority

Minute reference: 053/2023

Details

Council must take qualified advice before making a decision, and ensure that its reasons for any planning decisions are (a) minuted and (b) based on the Planning Scheme.

See Local Government Act 1993: s65, Local Government (Meeting Procedures) Regulations 2015: s25(2) and Land Use and Approvals Act 1993: ss57-59.

After receiving qualified advice about this planning application and its compliance with the Planning Scheme, Council resolved as follows:

Recommendation

This application by J. Adams for Multiple Dwellings (1 existing, 8 proposed) on land located at 4 Cook Street, Hadspen (CT: 102737/1), is recommended for approval generally in accordance with the Endorsed Plans, and recommended Permit Conditions and Permit Notes.

Endorsed Plan

- a) Plans to Build; Dated: 9 November 2022; New Multi Residential at 4 Cook Street, Hadspen; Project Number: 22033; Sheets: A00-A18; and
- b) Traffic & Civil Services; Dated: 14 November 2022; Traffic Impact Assessment – 4 Cook Street, Hadspen; 51 pages.

Permit Conditions

1. Prior to the commencement of use:
 - a. The new stormwater lot connection must be constructed accordance with Tasmanian Standard Drawing TSD-SW25 to the satisfaction of Council's Director Infrastructure Services. Refer to Note 1.
 - b. The existing northern vehicle crossover must be widened in accordance with Tasmanian Standard Drawing TSD-R09 and TSD-R14 to the satisfaction of Council's Director Infrastructure Services. Refer to Note 1.
 - c. Shared zone signage to be installed in accordance with the recommendation of the endorsed Traffic Impact Assessment prepared by Traffic & Civil Services to the satisfaction of Council's Town Planner.
 - d. The visitor car parking spaces, motorcycle parking space, and external car parking spaces allocated to each dwelling must be clearly delineated, such as line marking or signage, to the satisfaction of Council's Town Planner.

2. The development must be in accordance with the Amended Submission to Planning Authority Notice issued by TasWater (TWDA 2022/01927-MVC attached).

Permit Notes

1. Works must be completed by a suitably qualified contractor. Prior to any construction being undertaken in the road reserve, separate consent is required by the Road Authority. An Application for Works in the Road Reservation form is enclosed. All enquiries should be directed to Council's Infrastructure Services Department on 6393 5312.
2. Stormwater detention is required for this development. Please see attached letter regarding the provision of detention and the requirements of Council acting as Stormwater Authority, per *Urban Drainage Act 2013*.
3. Council's Infrastructure Services Department notes that the plans propose collection of bins from within the boundaries of the property. To facilitate this, a private contractor may be required at the cost of the property owner and/or body corporate. If you would like to discuss this matter further, please contact Council's Project Manager Waste Services on 6393 5329.
4. Any other proposed development or use (including amendments to this proposal) may require separate planning approval. For further information, contact Council.
5. This permit takes effect after:
 - a. The 14-day appeal period expires; or
 - b. Any appeal to the Tasmanian Civil & Administrative Tribunal (TASCAT) is determined or abandoned; or
 - c. Any other required approvals under this or any other Act are granted.
6. Planning appeals can be lodged with TASCAT Registrar within 14 days of Council serving notice of its decision on the applicant. For further information, visit the TASCAT website.
7. This permit is valid for two years only from the date of approval. It will lapse if the development is not substantially commenced. Council has discretion to grant an extension by request.
8. All permits issued by the permit authority are public documents. Members of the public may view this permit (including the endorsed documents) at the Council Office on request.
9. If any Aboriginal relics are uncovered during works:

- a. All works to cease within delineated area, sufficient to protect unearthed or possible relics from destruction;
 - b. Presence of a relic must be reported to Aboriginal Heritage Tasmania; and
 - c. Relevant approval processes for state and federal government agencies will apply.
-

Deputy Mayor Cameron adjourned the meeting for 3 minutes following voting on the second Planning Authority agenda item at 4:14pm to allow time for some members of the public gallery to leave Council Chambers.

The meeting recommenced at 4:17pm.

Councillor Loader highlighted a small error in the Westbury Bicentennial Celebrations agenda item report as follows:

Agenda page 343, reference to the Westbury Play Group should, in fact, be to the Westbury Play Gym.

Deputy Mayor Cameron also highlighted a small error in the Westbury Bicentennial Celebrations agenda item report as follows:

Agenda page 344, initiatives bullet point 4 should read:

" Re-paint, lighting installation and minor refurbishment of restrooms to support use as regular exhibition and event venue and town hall; and "

Community Wellbeing

Westbury Bicentennial Celebrations

Report Author John Jordan
General Manager

Motion That Council:

1. Approves funding of \$23,000 for 2022-23 for the Westbury Bicentenary for the:
 - a) Supply and installation of street banners along Meander Valley Road; and
 - b) Renewal of historic signs including signs on the Westbury Village Green, and the Town Common and approximately 30 historic sites.

Moved Councillor Ben Dudman

Seconded Councillor Kevin House

Votes for Deputy Mayor Stephanie Cameron
Councillor Lochie Dornauf
Councillor Ben Dudman
Councillor Kevin House
Councillor Anne-Marie Loader
Councillor Rodney Synfield
Councillor John Temple

Votes against Nil

Abstained Nil

To abstain from voting at a Council Meeting is to vote in the negative: *Local Government (Meeting Procedure) Regulations 2015: s28.*

Motion carried by absolute majority

Minute reference: 054/2023

Infrastructure Services

Financial Support for the Disposal of Euthanised Animals

Report Author Dino De Paoli
Director Infrastructure Services

Motion That Council:

1. Enters into a funding arrangement with the Meander Valley Veterinary Service to provide financial assistance towards the care, euthanising and disposal of native animals; and
2. Approves a new budget item for the 2022-23 financial year with an allocation of \$5,000 excluding GST.

Moved Councillor Lochie Dornauf

Seconded Councillor Anne-Marie Loader

Votes for Deputy Mayor Stephanie Cameron
Councillor Lochie Dornauf
Councillor Ben Dudman
Councillor Kevin House
Councillor Anne-Marie Loader
Councillor Rodney Synfield

Votes against Councillor John Temple

Abstained Nil

To abstain from voting at a Council Meeting is to vote in the negative: *Local Government (Meeting Procedure) Regulations 2015: s28.*

Motion carried by absolute majority

Minute reference: 055/2023

Governance

Meander Valley Council Model Code of Conduct

Report Author John Jordan
General Manager

Motion It is recommended that that Council:

1. In satisfaction of section 28T(7) of the *Local Government Act 1993* (the Act), reviews the attached Meander Valley Code of Conduct as previously adopted by Council on 11 February 2020.
2. Endorses and confirms continuing adoption Meander Valley Code of Conduct as previously adopted by Council on 11 February 2020 (Minute Reference: 34/2020) in accordance with the requirements of section 28T(1) the Act.

Moved Councillor Kevin House

Seconded Councillor Lochie Dornauf

Votes for Deputy Mayor Stephanie Cameron
Councillor Lochie Dornauf
Councillor Ben Dudman
Councillor Kevin House
Councillor Anne-Marie Loader

Votes against Councillor Rodney Synfield

Abstained Councillor John Temple

To abstain from voting at a Council Meeting is to vote in the negative: *Local Government (Meeting Procedure) Regulations 2015: s28.*

Motion carried by simple majority

Minute reference: 056/2023

Subsequent to the vote, Councillors Temple and Synfield highlighted that it is their understanding that there is no requirement for Council to "continue to adopt" the model code of conduct following an ordinary election as the model code of conduct was already adopted by the previous Council. The requirement under section 28T of the Local Government Act 1993 is to review the code of conduct within 3 months of each ordinary election which has been done.

Governance

Northern Tasmania Development Corporation (NTDC) Ltd Constitutional Changes

Report Author John Jordan
General Manager

Motion That Council endorse the following documents as attached:

1. The draft Northern Tasmanian Development Corporation (NTDC) Members' Letter of Expectations;
2. The revised NTDC Constitution; and
3. The draft NTDC Member Agreement 2023-2026.

Moved Councillor Lochie Dornauf

Seconded Councillor Kevin House

Votes for Deputy Mayor Stephanie Cameron
Councillor Lochie Dornauf
Councillor Ben Dudman
Councillor Kevin House
Councillor Rodney Synfield
Councillor John Temple

Votes against Nil

Abstained Councillor Anne-Marie Loader

To abstain from voting at a Council Meeting is to vote in the negative: *Local Government (Meeting Procedure) Regulations 2015: s28.*

Motion carried by simple majority

Minute reference: 057/2023

CONSTITUTION

NORTHERN TASMANIA DEVELOPMENT CORPORATION LIMITED

Corporations Act 2001

Company Limited by Guarantee

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1. DEFINITIONS AND INTERPRETATION

1.1 Defined Terms

In this Constitution:

- (a) "Act" means the *Corporations Act 2001 (Cth)*;
- (b) "Board" means the Board of the Company;
- (c) "Business Day" means a day on which banks are open for general business in the State other than Saturday or Sunday;
- (d) "Company" means the company to which this constitution relates;
- (e) "Company Secretary" means the person (if any) appointed to perform the duties of a company secretary of the Company;
- (f) "Constituent Documents" means:
 - (i) the Company Constitution of the Company;
 - (ii) any Members Agreement agreed by the Members of the Company;
 - (iii) any Board Charter;
 - (iv) any by-laws created by the Company under the Company Constitution; and
 - (v) any other document deemed to be a Constituent Document by the Company;
- (g) "Directors" means the director or directors of the Company acting as a body and where the Company only has only one director means that director;
- (h) "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;
- (i) "Guarantee" means the obligation of the members to contribute to the assets of the Company on a winding up;
- (j) "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);

15.2.1 NTDC Constitution - 2022 Revision 1.3 (Letter Of Expectation)

- (k) "Initial Member" means all of those persons or entities listed in the Schedule of Initial Members, who are the founding members of the Company;
- (l) "Member" means any person or entity recorded from time to time as a member in the Company's register of members;
- (m) "Member Representatives Group" means each Member's nominated representative from time to time;
- (n) "Related Corporation" means a company that is related to another company as related bodies corporate under the Act;
- (o) "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
 - (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; and
- (p) "State" means the State or Territory in which the Company is incorporated.

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 the Company.
- (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 the Company.
- (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; and
 - (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.
- (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 Limited".

1.4 Type of Company

The Company is a 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 the Company 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 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

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

1.8 Objectives

The primary objectives of the Organisation are to:

- (a) provide pro-active, engaged and strategic regional economic leadership;
- (b) consolidate an agreed vision for the development, sustainability and prosperity of the geographic region that the Organisation's Members encompass;
- (c) 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.

2. MEMBERSHIP

2.1 Members

The Members of the Company are:

- (a) The Members set out in the Schedule of Initial Members, unless such a Member has resigned;
- (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) The Company 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 the Company;
 - 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 the Company;
 - 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) The Company 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 the Company 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 the Company;
- (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 or subscription moneys for membership; and
- (d) is formally approved by the Board as eligible to become a member of the Company.

2.4 Application to Become a Member

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

- (a) wishes to become a Member of the Company; 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 and paying any application money prescribed by the Company from time to time.

2.5 Consideration of Applications

- (a) The Board must consider an application for membership within a reasonable time of the application being received by the Company Secretary.
- (b) If the Board approves the application, the Company Secretary must, as soon as possible:
 - (i) enter the new Members onto the register of members;
 - (ii) notify 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) provide a receipt to the new Member for any application money paid by the new Member.
- (c) If the Board rejects the application, the Company Secretary must inform the applicant accordingly, but the Company 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 new member as 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 the Company when that Member's name is entered onto the register of members.

2.7 When a Member Ceases to be a Member

- (a) An entity immediately ceases to be a Member of the Company if that entity:
 - (i) is wound up or dissolved (whether voluntarily or otherwise);
 - (ii) resigns as a Member;

- (iii) is expelled by the Board 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) For the avoidance of doubt, resignation of membership does not invalidate any fees payable nor any agreement to pay fees by that 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.

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- (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 ("a Referral Notice") and if no referral is made by either party, the dispute is deemed to be resolved.**(f)** If the Board receives 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 Board, 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 the Company 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 the Company;
 - (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 the Board 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 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, the Company into disrepute;
 - (iv) causes, or is likely to cause, injury, loss or damage to the Company; 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. 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 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.

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 Directors 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 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 the Company, 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, 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) is not required to follow 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;
- (vii) expel the member; or
- (vi) refer the matter to appropriate civil or criminal law enforcement agencies.

For the avoidance of doubt, the Board 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 or independent panel, nor the Company itself is liable to any Member or 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. MEMBERSHIP FEES

3.1 Application Fee

The Board is entitled to set, and change from time to time, an application fee for applicants who apply to become Members, provided that:

- (a) the application fee must not be changed more than once in any 12-month period;
- (b) the application fee charged to all applicants within that 12-month period must be the same;
- (c) the application fee amount may be set at nil;
- (d) the current application fee must be published by the Company on any website maintained by the Company and the Company must advise the

amount of the application fee to any person or entity upon reasonable enquiry; and

- (e) an applicant for membership must pay the application fee at the time that an application is made for membership; and
- (f) any application fee charged to and paid by an applicant to become a Member of the Company is non-refundable to the applicant, regardless of the outcome of the application.

3.2 Subscription Fees

The Board is entitled to set, and change from time to time, annual subscription fees to be paid by the Members, provided that:

- (a) the method of calculation of subscription fees for each Member must not be changed more than once in any 12-month period;
- (b) the Board may, in its absolute discretion, prescribe different rates of subscription between Members, taking into account the varying benefits which Members may enjoy by reason of the operations of the Company along with any other matter that the Board considers relevant;
- (c) the Board may, in addition, make any by-law concerning the calculation of subscription fees, which by-law is binding on the Members; and
- (d) the method of calculation of subscription fees may be incorporated within a Members Agreement.

3.3 Due Date for Payment of Subscription Fees

All annual subscriptions fees are due and payable, in advance, on 1 July in each year and are deemed to apply for the period from 1 July of the year in which the fee is paid to 30 June of the following year.

3.4 Application of Income

The Company must apply:

- (a) all application fees;
- (b) all annual subscriptions fees from Members; and
- (c) income earned from all other sources

to accomplishing the objectives of the Company, but also including the expenses of administration and conducting the ordinary business of the Company.

3.5 Consequences of Late Payment

If any annual subscription fee amount (whether in whole or in part) of a Member remains unpaid for a period of one calendar month after it becomes due and payable then the Board may do any one or more of the following:

- (a) suspend or restrict all membership rights of that Member;
- (b) send a notice to the Member requiring immediate payment;
- (c) enter into any reasonable arrangement with that Member to secure payment of the amount required to be paid; or
- (d) terminate the membership of the Member.

4. GENERAL MEETINGS

4.1 Convening Meetings

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

4.2 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 the Company 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);
 - (ii) state the general nature of the meeting's business;
 - (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;
 - (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 the Company;
 - 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 proxy form for a Member to appoint a proxy.

4.3 Place of Meeting

The Company may hold a meeting of Members at two or more venues using any technology that gives the Members, as a whole, a fair and reasonable opportunity to fully participate in the meeting.

4.4 Annual General Meeting

- (a) The Company must call and hold an annual general meeting within five (5) months of the end of each financial year, in accordance with the Act.
- (b) The Members may request that other matters be considered at an annual general meeting and provided appropriate notice has been given, including matters contained in a Members Agreement, the Board must ensure such matters are given proper consideration.

5. PROCEEDINGS AT GENERAL MEETINGS

5.1 Quorum

- (a) The quorum for a meeting of Members is fifty percent (50%) of the Members plus one (1), except where there is only one (1) Member and in those circumstances the quorum will consist of that one (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 meeting;

unless a quorum of Members is present when the meeting proceeds to business.

5.2 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 in their own right 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 multiple individuals attend on behalf of an entity Member, only one of those individuals is counted on behalf of that entity Member.

5.3 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;
- (b) if the time is not specified – the same time; and
- (c) if the place is not specified – the same place.

5.4 Lack of Quorum at Adjourned Meeting

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

- (a) if the meeting was called by the Members, the meeting is dissolved; and
- (b) in all other cases, the Member or Members present are a quorum sufficient for the purposes of conducting that meeting.

5.5 Chair of General Meeting

- (a) The Chair, if any, of the Board will act as Chair at every general meeting of the Company (including the Annual General Meeting).
- (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.

5.6 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 one (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.

5.7 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.

5.8 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.

5.9 Result on Show of Hands

On a show of hands, a declaration by the chair and entry in the minute book of the Company 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.

5.10 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) at least three (3) Members entitled to vote on the motion;
 - (ii) Members with at least five (5) percent of the votes that may be cast on the demanding of a poll; or
 - (iii) 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.

5.11 Votes of Members

At a meeting of Members of the Company, each person present who is a Member or a representative of a Member has:

- (a) only one (1) vote on a show of hands in respect of that Member's membership; and in respect of each other Member for whom that Member holds a valid proxy.
- (b)

5.12 Entitlement to Vote

No Member is entitled to vote at any general meeting unless all annual subscription fees have been paid in full to the Company, except as the Board or as the Members voting unanimously may have previously determined in respect of a poll.

5.13 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.

5.14 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.

6. REPRESENTATION OF MEMBERS

6.1 Appointment of Member Representative Group

Each Member that is itself a body corporate, or otherwise not a natural person, must nominate a natural person as that Member's authorised Member representative for the purposes of conducting and representing the interests of the Member to and with the Company. In this regard, the Member:

- (a) may nominate any person whom the Member chooses subject to the requirement that the Member representative must be approved by the Board, provided that if the Member has not made a nomination approved by the Board that the Member's representative is the Mayor of the Member;
- (b) may change the authorised representative from time to time as the Member may require;
- (c) must comply with any by-law or other directive set by the Company in respect of selecting and nominating representatives; and
- (d) must notify the Company as soon as practicable of the appointment of change of appointment of the authorised Member representative.

6.2 Role of Representative

For the avoidance of doubt, the Member's representative is a member of the Member Representative Group, and that appointment is to be distinguished from

the appointment of a proxy or attorney, in the sense that the duly appointed representative of a Member is a natural person representing the Member whereas a proxy or attorney is only to be used, as a proxy or attorney is ordinarily understood, when the Member or the appointed representative of the Member is not available.

6.3 Authority of Representative

Unless otherwise provided in the notice of appointment of a Member, the appointment is taken to confer authority on behalf of the Member to:

- (a) agree to a meeting being convened by shorter notice than is required by the Act or by this constitution;
- (b) speak on any proposed resolution on which the proxy, attorney or representative may vote;
- (c) demand or join in demanding a poll on any resolution on which the proxy, attorney or representative may vote;
- (d) even though the notice may refer to specific resolutions and may direct the representative how to vote on those resolutions:
 - (i) 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;
 - (ii) to vote on any procedural motion, including any motion to elect the chair, to vacate the chair or to adjourn the meeting;
 - (iii) to act generally at the meeting; and
- (e) even though the notice 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.

6.4 Representation by Proxy or Attorney

- (a) Subject to this Constitution, each Member entitled to vote at a meeting of Members may vote:
 - (i) by proxy; or
 - (ii) by attorney.
- (b) A proxy or attorney may, but need not, be a member of the Company.

- (c) A proxy or attorney may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.

6.5 Instruments Appointing Proxies or Attorneys

- (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. Alternatively, the instrument may not, and is not required to, direct how the proxy or attorney must vote on any motion.
- (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 Member or the Member's Representative appointing the proxy or attorney.
- (c) Subject to **clause 6.5 (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 6.5 (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 prescribed manner; 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.

6.6 Validity of Representative's Votes

- (a) Unless the Company 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 (if a natural person) dies;
 - (ii) the Member (if a natural person) subsequently becomes mentally incapacitated;
 - (iii) the Member revokes the proxy's or attorney's appointment; or
 - (iv) the Member revokes the authority under which the proxy or attorney was appointed by a third party.
- (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.

7. RESOLUTIONS WITHOUT MEETINGS

7.1 Written Resolutions

- (a) The Company 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) A Member may be deemed by the Board to have signed a document in accordance with this clause by e-mail (or other means) if that Member has at any time previously provided the Company 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 this purpose, or any other information that the Company requires, as determined by the Board, to be able to identify the deemed signature as being that of the Member.

- (e) The receipt by the Company of a deemed signature of a Member which complies with the notice given by the Member in accordance with **clause 7.1 (d)** is conclusive evidence that the Member has assented to the relevant resolution.
- (f) The provisions of this clause do not apply to a resolution to remove the auditor.

7.2 Sole Member Resolutions

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

8. DIRECTORS: APPOINTMENT, ETC.

8.1 Initial Directors

The initial Directors appointed are the persons specified with the consent of those Directors, as proposed Directors, in the application for the Company's registration. In accordance with the Act, there must be a minimum of three (3) Directors, including the Chair, who is also a Director of the Company.

8.2 Number of Directors

- (a) Unless otherwise determined by the Company in general meeting, the number of Directors will not be less than three (3) nor more than nine (9).
- (b) At least one (1) of the Directors must be an Australian resident and there must be an Australian resident Director of the Company at all times.
- (c) The Members may direct the Board as to the optimal number of Directors – currently the Members have directed the optimal number of Directors as 7.

8.3 Appointment of Directors

- (a) Subject to **clause 8.2**, the Board has 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.
- (b) Directors and the Chair are appointed for a term:
 - (i) usually matching the term of the Members' Agreement, but in any case;
 - (ii) of not less than two (2) years; and
 - (ii) not more than six (6) years.

- (c) Subject to appointment of Directors pursuant to **clause 8.4**, the Board must not appoint any Director unless a Board Selection Committee recommends appointment of that Director and that Committee includes:
 - (i) at least the Chair of the Company and one other Director appointed by the Board, or if there isn't a Chair of the Company, at least two Directors appointed by the Board; and
 - (ii) one representative of and nominated by the Member Representative Group.
- (d) The Chair of the Company is the Chair of the Board Selection Committee, unless the Board Selection Committee unanimously appoints an alternative Chair.
- (e) Interim Directors may be appointed for a term of less than two (2) years if there is less than two (2) years remaining on a current Members Agreement at the time of appointment.

(f) **Directors may only be appointed for two (2) full terms, except that a Director who has already served two terms may be appointed as the Chair for a further term. 8.4**

Appointment of Directors by Sole Director

- (a) If, for any reason, the Company has only one Director at any given time, then that Director must appoint at least two (2) other Directors as soon as reasonably practicable, another director by recording the appointment and signing the record.
- (b) The Director must not act in any business of the Company except in exceptional or emergency circumstances.
- (c) All actions under this **clause 8.4** must be subsequently ratified by subsequent resolution of the Members in special general meeting.

8.5 Appointment and Removal of Directors by Company

- (a) Subject to **clause 8.2**, the Members of the Company may by resolution remove any Director and may by resolution appoint any person as a Director.
- (b) The Members may limit the term of Directors (including the Chair) on any reasonable condition, and can agree to proscribe criteria on which a Director's term automatically expires.

8.6 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;
- (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;
- (c) resigns by giving written notice to the Company at the Company's registered office;
- (d) has breached the attendance requirement in **clause 12.2 (b)**;
- (e) becomes prohibited from being, or otherwise ceases to be, a director by virtue of the Act; or
- (f) dies.

8.7 Skills-Based Board

- (a) The Company must appoint Directors and ensure that appointments are skills-based, including ensuring some of the Board have local government experience.
- (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 Company, including and especially by reference to implementing the economic action plan based on the Regional Economic Development Strategy industry priorities of the Northern Region Futures Plan (or any document or plan that substantially replaces it).
- (c) Selection of Directors must consider diversity and the regional spread of geographic, social, cultural, thought and experience and moral influences.
- (d) The majority of Directors will ordinarily be highly experienced in the private and / or community sectors and will be independent of Members.
- (e) 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.

8.8 Board Induction

- (a) The Board must ensure that newly appointed Directors are given an induction process that includes summary of the affairs of the Board and the Company.
- (b) Prior to newly appointed Directors attending their first Board meeting, the Board must ensure they receive:
 - (i) a copy of all of the Constituent Documents and other relevant legal governance documentation;
 - (ii) current and recent Board and committee minutes;

- (iii) contact details for other Directors and key staff;
- (iv) the current year's meeting schedule; and
- (v) access to meetings with the Chair, CEO and relevant committee chairs for a governance familiarisation (meetings may be held as a group session or with individuals).

9. DIRECTORS: REMUNERATION, ETC.

9.1 Remuneration of Directors

- (a) Each Director is entitled to be remunerated out of the funds of the Company as determined by the Company by resolution. Levels of remuneration are generally intended to reflect the extent of involvement in ensuring the success of the Company.
- (b) For the purposes of this constitution, the amount fixed by the Company 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 the Company 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 22.2**.
- (c) The remuneration of a Director:
 - (i) may be a stated salary or a fixed sum for attendance at each meeting of Board or both; or
 - (ii) may be a share of a fixed sum determined by the Company 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 9.1(c)(i)** or a share of a fixed sum under **clause 9.1(c)(ii)**, will be taken to accrue from day to day.
- (d) In addition to their remuneration under **clause 9.1(a)**, a Director is entitled to be paid all travelling and other reasonable expenses properly incurred by that Director in connection with undertaking the business and affairs of the Company, 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 the Company, 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 9.1(a)**. For example, it is anticipated that the Chair and Company Secretary will be reimbursed at much higher rates than other Directors due to their extra commitment to the Company.
- (f) Nothing in **clause 9.1(a)** restricts the remuneration to which a Director may be entitled as an officer of the Company 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 9.1(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.
- (h) Unless otherwise resolved by the Company, the CEO will approve ordinary expenses of Directors, and the Chair will approve non-standard expenses (such as interstate travel and professional development). In the case of non-standard expenses of the Chair, the Board will approve any such expense.

10. POWERS AND DUTIES OF DIRECTORS

10.1 Management of the Company

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

10.2 General Powers of the Directors

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

10.3 Formation Costs

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

10.4 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 the Company 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.

10.5 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 the Company.

10.6 Minutes

- (a) The Directors will cause minute books to be kept in which the Company records within one (1) 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) The Company Secretary will ensure minutes are recorded in accordance with legal obligations and with good practice for an organisation of the type and size of the Company.
- (c) Any powers of attorney granted under **clause 10.4** and any delegation of powers made under **clauses 12.6 and 12.9** must be recorded in the Company's minute book.

- (d) 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.
- (e) If the Company only has one (1) Director, that Director must sign the minutes of the making of any declaration or resolution by that Director within a reasonable time, not exceeding one (1) month, after the declaration is made.

10.7 Registers

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

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

10.8 Learning and Development

- (a) Directors must engage in 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, or through or by any other means that the Board reasonably thinks fit.
- (b) Directors may request specific training interventions, and any such requests need to be approved by the Chair in accordance with training budget and training needs.
- (c) In the case of the Chair requesting training interventions, they need to be approved by the Board in accordance with training budget and training needs.
- (d) The Company Secretary will maintain a register of Board training.

11. DIRECTORS INTERESTS AND DISCLOSURE

11.1 Holding of Other Offices in the Company

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 Board or the Company in general meeting.

11.2 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 other company or entity in which the Company is a stakeholder or otherwise interested by virtue of being a Director of the Company.

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- (b) A Director may contract with the Company 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 the Company 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 11.2(e)**, a Director who is in any way interested in any contract, agreement or arrangement or proposed contract, agreement or arrangement may **not**:
 - (i) 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
 - (ii) sign any document relating to that contract, agreement or arrangement or proposed contract, agreement or arrangement the Company may execute.
- (e) Subject to **clause 11.2(f)**, a Director who is in any way interested in any contract, agreement or arrangement or proposed contract, agreement or arrangement may, despite that interest 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.
- (f) **Clause 11.2(e)** does not apply if, and to the extent that, it would be contrary to the Act.

11.3 Disclosure of Conflict 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 the Company at the meeting of the Board 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 Board held after the Director acquires the interest.

- (c) For the avoidance of doubt, the Director's obligation in this clause is ongoing and relates to potential conflicts in addition to existing and actual conflicts.

11.4 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 11.3** 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.

11.5 Recording Disclosures

The Company Secretary is obliged to record in the minutes any declaration made or any general notice given by a director under **clause 11.3 and 11.4**.

12. DIRECTORS MEETINGS

12.1 Holding of Board Meetings

- (a) The Board 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 Board meeting 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 Board meeting if the Director has given written notice to the Company of an address for the giving of notices of meetings.

12.2 Frequency and Attendance

- (a) The Board must meet at least six (6) times per year, and can meet more often.
- (b) Directors are permitted to miss no more than 30% of scheduled meetings in any financial year without the prior consent of the Board.

12.3 Manner of Holding Meetings

- (a) A Board 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 12.3** within a reasonable period before the meeting.

12.4 Quorum

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

12.5 Chair of Board Meetings

- (a) If the Company has a duly appointed independent Chair, that Chair is the deemed to be the Chair of all Board meetings.
- (b) If the Chair is not present, or is not willing or able to chair any Board meeting, the Directors may elect a Director to chair that Board meeting.
- (c) The Directors must elect a Director present at the meeting to chair a meeting, or part of it, if:
 - (i) the Chair is not present at the meeting; and
 - (ii) a Director has not already been elected to chair the meeting; and
 - (iii) a previously elected Chair is not available within 15 minutes after the time appointed for holding the meeting or declines to act for the meeting or the part of the meeting.

12.6 Delegation to Committees

- (a) The Board may establish advisory committees that regularly report to the Board and make recommendations for consideration where appropriate.
- (b) Each committee of the Board must have an approved documented charter which defines its objectives and responsibilities and reporting requirements.
- (c) Committees may co-opt skilled members from the private, community and local government sectors to assist with the work of the committee.
- (d) The appointment of a committee of the Board may be a standing committee or an ad hoc committee.
- (e) A committee must:

- (i) conform to any regulations that may be imposed on it by the Board in exercising the powers delegated by the Board; and
- (ii) exercise the powers delegated to it in accordance with any directions of the Board.

(f) The Board, with the approval of a majority of Members, may delegate any of the Directors' powers to committees consisting of some, but not all, of the Directors as the Board thinks fit and any delegation to a committee must be recorded in the minutes.

(g) The effect of a committee exercising a power consistently with this clause is the same as if the Board exercised the power.

(h) The Committee must regularly report to the Board.

12.7 Conduct of Committee Meetings

(a) The Board may appoint a chair of any committee at any time.

(b) A committee, subject to the Board's power to appoint in **clause 12.7(a)**, 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.

(c) A committee may meet and adjourn as that committee thinks proper or necessary.

12.8 Votes at Directors and Committee Meetings

A resolution of the Board 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.

12.9 Delegation to Individual Directors

(a) The Board may delegate any of its 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 Board.

(c) Acceptance of a delegation in this form may, if the Board so resolves, be treated as an extra service or special exertion performed by the delegate for the purposes of **clause 9.1(e)**.

12.10 Validity of Directors' Acts

An act done by a person acting as a Director or by a Board meeting or a committee of the Board attended by a person acting as a Director is not invalidated by reason only of:

- (a) a defect in the appointment of the person as a Director;
- (b) the person being disqualified to be a Director or having vacated office; or
- (c) the person not being entitled to vote

if that circumstance was not known by the person or the Board or committee (as the case may be) when the act was done.

12.11 Written and Circular Resolutions – Multiple Directors

- (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 themselves from considering the act, matter, thing or resolution in question on the grounds that they are not entitled at law to do so or has a conflict of interest; and
 - C. any Director who the Board reasonably believes 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 Board meeting 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 Board meeting.

- (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) A Director may be deemed by the Board to have signed a document in accordance with this clause by e-mail (or other means) if that Director has at any time previously provided the Company with notice that they may use e-mail (or other means) to sign Company documents, and that notice contains the e-mail addresses and / or electronic signatures (if any) that the Member will use for this purpose, or any other information that the Company requires, as determined by the Board, to be able to identify the deemed signature as being that of the Member.
- (d) The resolution is passed on that date on which the last Director signs.

12.12 Sole Director Resolutions

Subject always to **clause 8.4** if the Company has only one (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.

12.13 Alternate Directors

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

- (a) if the appointing Director requests the Company to give the alternate Director notice of Board meetings, the Company must do so;
- (b) when an alternate Director exercises the Director's powers, the exercise of the power is as effective as if the powers were exercised by the Director;
- (c) the Company will not be required to pay the alternate Director any remuneration but the alternate Director must be reimbursed for expenses incurred as for other Directors under **clause 9**;
- (d) the appointing Director may terminate the alternate Director's appointment at any time; and
- (e) an appointment or its termination must be in writing, with a copy given to the Company.

12.14 Associate Directors - Appointment, Removal and Powers

- (a) The Board may appoint any person to be an Associate Director and may at any time cancel appointment of an Associate Director.

- (b) The Board may fix, determine and vary the powers, duties and remuneration of any Associate Director.
- (c) An Associate Director has no voting rights at any Board meeting except by the invitation and with the consent of the Directors.

13 INDEPENDENT CHAIR

13.1 Independent Chair

- (a) The Board must appoint an independent Chair, who, when appointed, is to be one of the Directors of the Company ("the Chair").
- (b) The Chair must hold no other position of profit:
 - (i) in or for NTDC Limited (apart from as Chair); or
 - (ii) in or for any of the Members.
- (c) The Board, when considering appointing a Chair, will form a Chair Selection Committee consisting of:
 - (i) not less than two (2) members of the Board; and
 - (ii) two (2) representatives who are members of, and nominated by, the Member Representative Group.
- (d) The Chair Selection Committee must:
 - (i) interview candidates for the position of Chair and make recommendations to the Member Representative Group, giving that Group reasonable time to consider those recommendations; and
 - (ii) consider the prompt responses of the Member Representative Group then make recommendations to the Board.
- (e) The Board must not appoint a Chair without considering the recommendations of the Chair Selection Committee.

13.2 Independent Interim Chair

A director can be appointed as Interim Chair to undertake the role of Chair in a temporary capacity as required, by a majority vote of Directors.

13.3 Independent Chair Reviews

- (a) The Chair is responsible for facilitating the following reviews annually:
 - (i) Performance of the CEO;

- (ii) Performance of Committees;
 - (iii) Performance of the Board; and
 - (iv) Performance of Directors.
- (b) The performance of the Chair shall be reviewed by the Member Representative Group and facilitated by the Company Secretary, on the time schedule as determined by the Board, subject only to the right of Members to request a review of the Chair's performance annually.

13.4 Retirement of Chair

- (a) Upon the retirement (regardless of cause) of the Chair, the Board must advertise for a replacement independent Chair and the following provisions expressly apply.
- (b) The independent Chair may, subject to **clause 13.4 (d)**, serve for an additional term if agreed by the Members, otherwise the role will be re-advertised near to the end of the current term.
- (c) 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 any deliberations or voting in relation to the appointment of a new Chair
- (d) No person may serve as Chair for more than two (2) terms and no person may serve as Director and/or Chair for more than three (3) terms.
- (e) Notwithstanding the preceding provisions, an incumbent Chair is subject to removal by the Members under **clause 8.5** of the Constitution in the same way as all other Directors.

14. CEO

14.1 CEO, Appointment, Removal and Evaluation

The Board is responsible for appointing and removing the CEO, determining the remuneration and terms and conditions of appointment, and for monitoring and managing the CEO's ongoing performance.

14.2 CEO and Chair Working Relationship

On behalf of the Board, the Chair maintains a working relationship with the CEO in terms of day-to-day operations as needed and ensuring the Board's strategies, plans and decisions are implemented.

14.3 Appointment, Removal and Powers

The Board may revoke, withdraw, alter or vary:

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

14.4 Company Secretary to support CEO / Chair relationship

- (a) If the CEO has any concern or grievance with the Chair or the Chair's relationship with the CEO, the CEO may directly contact the Company Secretary with detail of same.
- (b) Upon receipt of a concern or grievance in accordance with 14.4 (a), the Company Secretary shall report it to the Member Representative group and take any reasonable steps to resolve the matter, including confirming the concern or grievance in writing, acting as a mediator or facilitator, or providing access to same.
- (c) The Company Secretary may, in their sole discretion, take advice from and/or engage the services of any relevant professional in an attempt to resolve the concern or grievance, at the expense of the Company.
- (d) The Company Secretary may request the support of Members and the Member Representative Group in acting in accordance with this clause.

In the event that the concern or grievance is not satisfactorily resolved in the opinion of the Company Secretary, the CEO or the Chair, the Company Secretary may make any reasonable recommendation to the Board and the Member Representative Group.

15. COMPANY SECRETARY

15.1 Appointment and Removal

- (a) The Directors may, and if required by the Act must, appoint (one) 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 Board may be removed by the Board. 15.2 Learning and Development**

The Company Secretary will ensure that the Board is provided with necessary training (including on-going governance training and development of Board skills).

15.3 Company Seal

The Company Secretary will ensure the safekeeping of the common seal and maintain a register of documents executed under seal.

15.4 Facilitate Members' Meeting

The Company Secretary will facilitate Members if they call a meeting in accordance with **clause 4.1(b)**.

15.5 Secretariat for Member Representative Group

The Company Secretary will act as a Secretariat to the Member Representative Group to facilitate meetings and record minutes of meetings.

15.6 CEO / Chair Liaison

The Company Secretary will act as a mediator and facilitator in circumstances where there is a relationship issue between the Chair and CEO in accordance with **clause 14.4**.

16. EXECUTION OF DOCUMENTS

16.1 Common Seal

The Company 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 must provide for the safe custody of the common seal; and
- (c) the seal may only be used by the authority of the Board or of a committee of the Board authorised by the Board in that respect.

16.2 Execution under Common Seal

If the Company 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) two (2) Directors of the Company;
- (b) a Director and a Company Secretary;
- (c) a Director nominated for that purpose by the Board; or
- (d) if, for any reason, the Company has a sole Director who is also the sole Company Secretary or a sole Director and no secretary – that Director.

16.3 Execution without Common Seal

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

- (a) two (2) Directors of the Company;
- (b) a Director and a Company Secretary;

- (c) a Director nominated for that purpose by the Board; or
- (d) if, for any reason, the Company has a sole Director who is also the sole Company Secretary or a sole Director and no Secretary – that Director.

16.4 Directors' Interests

A Director may sign a document to which the seal of the Company is affixed even if the Director is interested in the contract, agreement or arrangement to which the document relates.

17. ACCOUNTS, RECORDS & ADVICE

17.1 Accounting Records

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

17.2 Access to Records

- (a) The Directors must 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 the Company or any of them will be open to the inspection of Members of the Company.
- (b) No Member (other than a Director) has any right to inspect any accounting or other records of the Company except as conferred by statute or as authorised by the Board or by a resolution passed at a general meeting.
- (c) Directors (present and past) can request access to Board papers through the Chair or Company Secretary.

17.3 Financial Delegation to CEO

The Board must specify, in writing, the limits of financial authority delegated to the CEO, and 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.

17.4 Independent Advice

- (a) The Board may access any information it reasonably requires to meet its duties, responsibilities and functions. In this regard, the Board has access to management for information and advice, as well as internal and external auditors as necessary.
- (b) The Board as a whole may access independent, expert advice at the Company's expense as it agrees is necessary.

- (c) Individual Directors may request independent advice at the Company's expense. Such a request should be made at a Board meeting, however if this is not convenient or timely, requests may be approved by the Chair. Advice requested by an individual Director will be provided to all the Board and, on request to all Members.

18. NOT-FOR-PROFIT

18.1 Determination of Income

The Company 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.

18.2 No Dividends

The Company must not distribute any income directly or indirectly to members, whether as dividends or otherwise, but nothing in this **clause 18** 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.

18.3 No Capital Distributions

The Company must not distribute any capital directly or indirectly to Members, whether as cash or by *in specie* distribution.

18.4 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 18** is void and of no effect.

19. CAPITALISATION OF PROFITS

19.1 Capitalisation of Reserves

Subject to **clause 18** 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.

19.2 Powers of Directors

Whenever a resolution under **clause 19.1** 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.

20. NOTICES

20.1 Giving of Notices

The Company may give notice to any Director or Member:

- (a) personally;
- (b) by sending it by post to the address of the Director as notified to the Company 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 (2) 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.

20.2 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 the Company 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 the Company;
- (d) the Company Secretary or secretaries; and
- (e) the auditor for the time being of the Company.

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

21. BY-LAWS

21.1 Power to Pass By Laws

Subject to **clause 21.2**, the Board 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.

22.1 Special Resolution for Member Limitation

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.

22. INDEMNITY AND INSURANCE – DIRECTOR AND OFFICER PROTECTION

22.1 Extent of Indemnity

The Company 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 the Company 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.

22.2 Insurance

The Company 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:

- (a) incurred by the person in their capacity as an officer of the Company 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
- (b) for the costs and expenses incurred by that person in defending proceedings, whatever their outcome.

22.3 Insurance – Longtail Directors and Officers Policy

In addition, the Company must:

- (a) arrange and maintain Directors and Officers insurance policy each year for current directors and for up to seven (7) years after a directorship ceases. To the extent permitted by law, this insurance will cover the costs of litigation and provide financial protection for Directors and officers of the Company against whom legal claims are made.
- (b) The Company will do all things reasonably prudent and necessary to limit the liability of Directors and other officers of the Company, but the Company does not make any representation, promise or warranty to any Director or officer about the adequacy or sufficiency of these measures.

23. AUDIT

23.1 Audit

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

23.2 Compliance

In all other respects, the Company 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.

24. WINDING UP

24.1 No Distribution of Surplus Assets to Members

If the Company 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.

24.2 Winding Up Reserves

The Board must cause not less than three (3) months of operating funds as reasonably determined by the Board to be maintained in reserves to ensure that such funds are available if a decision is made to wind up the Company.

24.3 Distribution of Surplus Assets

- (a) After all of the liabilities (including employee entitlements) and expenses of winding up have been paid and settled, subject to:
 - (i) the Act;
 - (ii) any other act or legislation that may apply; and
 - (iii) the order of any court of competent jurisdiction

the Company may distribute any surplus assets.

- (b) Surplus assets may be distributed to any one or more:
 - (i) organisations with similar purposes and objectives to the Company;
 - (ii) charities registered with the Australian Charities and Not-For-Profits Commission

provided that any recipient of surplus assets from the Company must also have provisions in its constituent documents that prohibits the distribution of income and capital to its members and requires the distribution of surplus assets to be treated in a similar manner as this **clause 24.3**.

24.4 Sunset Review

If Members commit to any cycle of subscription fees, the Board will work actively with Members to ensure that a sunset mechanism is incorporated into any Membership cycle and that a review process is identified and followed in good time to allow the Company to continue or to be wound up in accordance with this **clause 24**.

SCHEDULE 1 - INITIAL MEMBERS

1. Break O'Day Council
2. Flinders Council
3. George Town Council
4. City of Launceston Council
5. Meander Valley Council
6. Northern Midlands Council
7. West Tamar Council

15.2.1 NTDC Constitution - 2022 Revision 1.3 (Letter Of Expectation)

SCHEDULE 2 - AGREEMENT

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

Full name and address of each member	Signature on behalf of the Member
1. Break O'Day Council 32-34 Georges Bay Esplanade, St Helens Tasmania 7216	
2. Flinders Council PO Box 40, Whitemark Tasmania 7255	
3. George Town Council PO Box 161 George Town Tasmania 7253	
4. City of Launceston 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	

15.2.1 NTDC Constitution - 2022 Revision 1.3 (Letter Of Expectation)

Northern Tasmania Development Corporation Limited
Company Constitution

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**Northern Tasmania Development
Corporation**

**MEMBER COUNCILS LETTER
OF EXPECTATIONS**

Adopted by

Version 1 (26 August 2022)

PART 1 – INTRODUCTION

1. Preamble

- 1.1. This Letter is issued by the member Councils of Northern Tasmania Development Corporation . This Letter operates until it is amended or replaced in accordance with the procedures outlined in this document and the Company Constitution.

2. Purpose

- 2.1. This Letter gives the Board of the Corporation guidance in relation to the member Councils' high-level performance expectations and strategic priorities, including (but not limited to) the appointment, setting of terms, remuneration, suspension and dismissal of directors; the establishment of requirements for reporting by the Board to the representatives; reporting to Member Councils and the approval of the guiding documents for the NTDC Board.

3. Interpretation

- 3.1. Subject to Section 3.2, terms used in this Letter are defined in Schedule A.
- 3.2. Except where the context makes it clear that a rule is not intended to apply:
- 3.3. Terms defined in the *Company Constitution of Northern Tasmania Development Corporation Limited and the Members Agreement between member Councils and Northern Tasmania Development Corporation Limited* (as amended from time to time) have the same meaning in this Letter.
- 3.4. Whenever this Letter requires the Corporation to "develop" something, the Corporation shall be taken to have complied with that obligation if it has already developed the item before this Letter commenced.
- 3.5. Where this Letter sets out expectations in relation to the provision of information, the Corporation shall forward such information to the member Councils' Representative, the Mayors (where the member Councils' Representatives are not also the Mayors) and the General Managers (unless otherwise specified in this document).

PART 2 - GENERAL

4. Guiding Principles

- 4.1. The Guiding Principles for the Corporation are that it:
 - Operates within relevant legislative and statutory obligations and has systems and processes to support and report on these obligations
 - Fulfils the principal objectives under the *Company Constitution*
 - Maintains long-term financial sustainability while meeting the other Guiding Principles
 - Is delivering value to the members in accordance with guiding documents which is recognised by the members. It is expected that the Corporation will:
 - Be a single voice for the region (representing collaborations of council)
 - Realise opportunities (financial and social prosperity)
 - Drive success focused on Northern Tasmania
 - Facilitate outcomes that benefit the region
 - Tap into available expertise

PART 3 – GOVERNANCE

5. Shareholders' Letter of Expectations

- 5.1. The member Councils expect that the Board will abide by this Letter unless to do so would create a risk of breaching the *Company Constitution*, the *Corporations Act 2001* (Cth), directors' duties, or any other statutory or regulatory obligation.
- 5.2. The Board will engage with the member Council Representatives Group in relation to the requirements of this Letter
- 5.3. The Board will advise member Councils' Representatives when the provisions of this Letter cannot be met.
- 5.4. The member Councils shall consult with the Board prior to amending or replacing this Letter.
- 5.5. The method of adopting, amending or repealing this Letter is determined in the Constitution.

6. Appointment of Chair and Directors

- 6.1. The member Council's would like to express their position in relation to required characteristics of the independent Chairperson:
 - Northern Tasmania local ideally (but not essential)
 - Someone aligned with NTDC values
 - Someone with profile
 - The skill to chair the Board plus be able to leverage other directors' skills/experience
 - Effective and respectful with the Chief Executive Officer of NTDC
 - Someone who will not play politics
- 6.2. The recruitment process for Chairperson will be as described in the Constitution and must include the member Council Representatives Group through:
 - 6.2.1. Inclusion of two (2) representatives on the Board Selection Committee to undertake the recruitment process.
 - 6.2.2. Provision of a recruitment report and recommendation to the member Council Representatives Group for consideration and a decision.
- 6.3. The recruitment process for Directors as described in the Constitution must include Council representation and the Chairperson on the Board Selection Committee.
- 6.4. The Chairperson must ensure that the appointment of a Director works to the betterment of the Board and member Councils

7. Board Performance

- 7.1. The Corporation will undertake an internal review on the performance of the Board and its committees annually and report to the Board Selection Committee prior to 30 June.
- 7.2. Each year, the Board Chairman shall discuss with the Board Selection Committee Chair any concerns about the contribution of individual directors and/or the need to change the skills mix of the Board.

8. Financial and Resourcing Strategy

- 8.1. The Board, in conjunction with the member Council Representatives Group, will develop a Financial and Resourcing Strategy for the Corporation which reflects the strategic directions and priorities of NTDC.

9. Annual Operational Plan and Budget

- 9.1. The Board shall prepare and adopt prior to 31 July an Operational Plan and Budget annually to guide the activities and program delivery of the Corporation.
- 9.2. Member Councils will be provided with the proposed Operational Plan and Budget prior to adoption by the Board for consideration:
- 9.3. The proposed Operational Plan must be provided to member Councils by 1 July of the financial year to

which it relates.

- 9.4. Member Council's must provide feedback in relation to the proposed Operational Plan and Budget by no later than 15 July of the financial year to which it relates.
- 9.5. The Board will consider the feedback received and may or may not make changes to the proposed Operational Plan.

PART 6 – REPORTING

10.Member Engagement and Reporting Framework

- 10.1. The Board will arrange the following meetings each year, at a minimum:
 - 10.1.1. CEO addressing each council twice annually in person as well as the provision of regular NTDC newsletters
 - 10.1.2. Annual Reporting Meeting – to review the annual financial reports;
 - 10.1.3. Quarterly meetings with Representatives Group unless the Representatives Group decides to hold fewer meetings
- 10.2. The Board will provide a quarterly progress report on progress with delivery of the Annual Operational Plan within 30 days of the completion of each quarter.
- 10.3. Disclosures under the 'no surprises' continuous disclosure regime should be provided in the quarterly meetings unless the Board considers that a more timely disclosure is appropriate.

Northern Tasmania Development Corporation Limited

ACN 616 650 367

Members Agreement 2023-2026

Based on the 2017 Previous Member's Agreement by Levi and Stacey.

Revised for the 2020-2023 Agreement

Revised for the 2023-2026 Agreement (including consolidation with Constitution)

15.2.3 Proposed Members Agreement 2023 - 2026

Northern Tasmania Development Corporation Limited
Members Agreement V3.0 20221110 DRAFT

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15.2.3 Proposed Members Agreement 2023 - 2026

Northern Tasmania Development Corporation Limited
Members Agreement V3.0 20221110 DRAFT

Schedule of Particulars

1. **Date of Agreement** The day of 2023

 2. **The Company** Northern Tasmania Development Corporation
Limited

 also trading as NTDC Limited
 ("the Company")

 3. **Members** As set out in the Schedule of Members in the
 Company Constitution
 ("the Members")

 4. **Registered Office** Level 1, Suite 1, 62 – 65 Cameron Street
 Launceston in Tasmania
- Sunset Period** Three (3) years

End of Schedule of Particulars

15.2.3 Proposed Members Agreement 2023 - 2026

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

Between The Company 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 Company is a properly constituted company limited by guarantee.

- B. Historically, the Company had previously existed as a not-for-profit company but was converted to an incorporated association in 2012¹. However, upon the recommendation of Bill Fox & Associates, the shareholders of the Company in its prior form agreed to adopt a recommendation to convert to a company limited by guarantee in 2017.

- C. As at the date of this Agreement, the Members set out at **Item 2** of the Schedule of Particulars are:
 1. all of the Members of the Company; and
 2. all bound by guarantee to contribute the Guarantee Amount, set out in the Company Constitution, to the Company on a winding up.

- D. The Members have agreed to enter into this Members Agreement (“the Agreement”) to more fully regulate their legal, commercial and business relationships as members of the Company.

- E. The corporate entity of the Company 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 Company’s constituent documents, to conduct the affairs and business of the Company as contemplated by the provisions of this Agreement.

- F. The Members have agreed that the Company needs to source more funds from outside Member Fees.

Agreement

¹ Bill Fox & Associates, 2016, *Review of Regional Bodies in Northern Tasmania* Final Report, p6.

15.2.3 Proposed Members Agreement 2023 - 2026

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 Members 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 Company;
- (c) "Background" means the part of this Agreement that follows the heading of that name, and enumerated by letters rather than numbers;
- (d) "Company" means, in the case of a corporation, the officers, servants, agents, attorneys and permitted assigns of the Company;
 - (i) "Confidential Information" means and includes:
 - (ii) any information concerning the Company, its methods of operation, strategic direction, marketing and other activities;
 - (iii) financial information concerning the Company and its related activities;
 - (iv) specialised or corporate documentation produced by the Company; and

specialised of corporate documentation produced by entities associated with the Company 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 Company;
 - (iii) any by-laws created by the Company under the Company Constitution; and
 - (iv) any other document deemed to be a Constituent Document by the Company;

15.2.3 Proposed Members Agreement 2023 - 2026

- (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 Company's name and all unregistered trading names used by the Company;
 - (ii)** all copyright, moral rights, trademarks (registered and unregistered), designs (registered and unregistered) of the Company;
 - (iii)** all of the documents, forms, processes, know-how, systems, of any description of the Company;
 - (iv)** all domain names, telephone numbers and email addresses used in the Company; and
 - (v)** all hard copy images used in yellow pages and other advertising, if any, of the Company;
- (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;
 - (ii)** (ii) in the case of a corporation or trust entity, the officers, servants, agents, attorneys and permitted assigns of that entity;
 - (iii)** (iii) in the case of any other body, however it is constituted, the officers, servants, agents, attorneys and permitted assigns of that body; and
- (k)** "Part" means a reference to the relevant Part of this Agreement.

If any other term is used in this Agreement, which is not a defined term, but which is a defined term in the Company Constitution, the meaning of that term in the

15.2.3 Proposed Members Agreement 2023 - 2026

Company Constitution must be attributed to that term in this Agreement, as if that term was expressly defined, on the same terms, in 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;

15.2.3 Proposed Members Agreement 2023 - 2026

- (j) words importing the singular include the plural and vice versa;
- (k) words importing the masculine gender include the feminine and 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 business 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;
- (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; and
- (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.

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

15.2.3 Proposed Members Agreement 2023 - 2026

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 express 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 the Company Constitution take priority over all other subordinate Constituent Documents;
- b) the provisions of this Agreement 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.

2.4. The Board, on behalf of the Company, and the Initial Members acknowledge that Dorset Council is entitled to be admitted as an Initial Member of The Company, even though Dorset Council is not recorded in the Schedule of

15.2.3 Proposed Members Agreement 2023 - 2026

Initial Members in the Company Constitution as an Initial Member. If, at any time after the registration of the Company, Dorset Council, resolves to become a Member of The Company, the Board must admit Dorset Council as a Member. Subject to the terms of the Company Constitution, this Agreement, 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.

3. Purpose and Objectives

- 3.1. The parties agree to carry on the Company with the common purpose of achieving the primary objectives set out in **clause 3.2**.
- 3.2. The primary objectives of the The Company are as set out in clause 1.8 of the Company Constitution.
- 3.3. The CompanyThe Members expressly acknowledge that the Company is:
 - (a) a not-for-profit enterprise, with funding coming principally from annual subscription fees paid by the Members;
 - (b) is not, and is not intended to be, a charity, as defined or administered by the Australian Charities and Not-For-Profits Commission; and
 - (c) not a tax-exempt entity for the purposes of the *Income Tax Assessment Acts 1936 and 1997*, but it is contemplated that the Company may seek tax-exempt status in the future if that is considered necessary and prudent at the time.

4. Corporate Governance – Size and Role of Board

- 4.1. The parties agree that the governance structure of NTDC Limited is as follows:

The Company 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;
- 4.2. The following governance principles outline the strategic function of the Board:

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- (a)** Principle 1 – the Board plays a key role in approving the vision, purpose and strategies of The Company. The Board must act in the best interests of the Company and is accountable to the Members as a whole;
- (b)** Principle 2 – the Board sets the cultural and ethical tone for the Company. This includes the ‘how’ of undertaking the work of the Company 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 Company;
- (d)** Principle 4 – the Board should comprise an appropriate number of Directors for the size and scale of the Company, with a relevant and diverse range of skills, expertise, experience and background and who are able to effectively understand the Company’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 Company communicates with Members and other shareholders 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.

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4.3. All other mechanics as to the operation of the Board are outlined in the Company Constitution, and certain Board Policies.

5. Corporate Governance – Member Representative Group

5.1. Each Member must nominate one representative who will represent that Member on the Member Representative Group.

5.2. In relation to each Member, the elected Mayor for the time being, is automatically that Member's nominated representative for all purposes of the Company, but any Member may nominate an alternative representative in accordance with clause 6.1 of the Constitution

5.3. Members of the Member Representative Group must be ready, willing and able do all of the following:

- (a) Attend meetings of the Member Representative Group, being at least Quarterly unless otherwise agreed with the Company;
- (b) Use their influence with their appointing Member to:
 - (i) Promote the activities and success of the Company;
 - (ii) Facilitate reasonable access to Councillors, Mayor and General Manager of the Member, including twice yearly presentations by the Company to the Member's Council; and
 - (iii) Use their best efforts to assist the Company to communicate the Company's Annual Plans, Operational Plans, Budgets and Quarterly reports.
- (c) Be an active member of the Board Selection Committee of the Company if so nominated by the Member Representative Group;
- (d) Be an active member of the Chair Selection Committee if so nominated by the Member Representative Group; and
- (e) Support the Company Secretary as requested in the event of a concern or grievance in accordance with clause 14.4 of the Company Constitution.

5.4. The Chair of the Company is an ex officio member of the Member Representative Group.

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5.5. The Company Secretary will provide rudimentary secretariat services in accordance with clause 15.5 of the Company Constitution.

5.6. Owing to the special nature of the relationship between the Members and the Directors of the Company, as evidenced by this Members Agreement, it is an essential provision that the Board properly consider any issue that the Member Reference Group (by simple majority request) put to the Board for consideration at the earliest possible Board meeting and that the Board provides a fulsome report back to Members in a reasonably prompt time in relation to that issue following the Board meeting at which it is considered.

6. Accountability

6.1. The Board of Directors is accountable to the Members of The Company at all times. It is important that all Directors foster a relationship of trust and confidence with the Members, in order to properly and appropriately represent the Members' interests at all times.

6.2. In addition to the material that must be considered at the AGM under the Corporations Law, the Board must supply to the Members for consideration at the AGM the following additional material, and be prepared to speak to and/or account for:

(a) an annual report on the performance of the Company over the past relevant period as it relates to the KPIs 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).

6.3. Any disputes will be dealt with through the dispute resolution procedures provided in **clause 2.8** of the Company Constitution.

6.4. Consistent with the nature, purpose and function of the Company, the Company will report formally to Members on a semi-annual (twice yearly) basis, based on agreed KPIs and other information of interest. The process for reporting will include:

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- (a) a strategic progress update by the Board;
- (b) an operational progress update by the CEO;
- (c) an offer of a formal presentation to Members if requested; and
- (d) one of the semi-annual meetings (twice yearly) with Members will be in the lead up to the Company's annual planning process to ensure Member's feedback is considered in advance of this process.

6.5. In accordance with the Corporations Law and **clause 4.4** of the Company Constitution, the Company must hold an annual general meeting once every calendar year, within five (5) months after the end of each financial year.

6.6. A majority of Members of the Company may call a Special Meeting of the Company in accordance with clause 4.1(b) of the Company Constitution.

6.7. A majority of Members of the Company are entitled to appoint or remove Directors in accordance with clause 8.5(a) of the Company Constitution.

7. Remuneration

7.1. 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 agree to set the remuneration of the Chair at the rate of \$33,114.19 per annum. That rate will be reviewed to CPI (All groups, Hobart, or an equivalent index) at the end of each financial year.

7.2. The Company Secretary is entitled to be remunerated for the work done and responsibilities undertaken by the Company Secretary in that role. On and from the date of this Agreement, the Members agree to set the remuneration of the Company Secretary at the rate of \$22,076.12 per annum. That rate will be reviewed to CPI (All groups, Hobart, or an equivalent index) at the end of each financial year.

7.3. Directors who are not the Chair nor the Company Secretary 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.

7.4. All employees of the Company, including the CEO, are entitled to be paid in accordance with the entitlements arising under the FairWork legislation and by reference to prevailing market rates for persons acting in similar positions of employment in similar organisations.

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7.5. All reasonable expenses of the Chair, the Company Secretary and the Directors will be met by the Company whilst travelling or undertaking approved business on behalf of the Company.

8. Funding – Subscription Fees from Members

8.1. The Company relies on its Members to fund the Company to partly 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 Company.

8.2. The Members expressly agree to each pay an annual subscription fee to the Company to be set by the Board in each financial year of operation of the Company, which subscription fee is intended to be paid:

- (a) evenly by reference to the methodology for calculation of the subscription fee amounts for all Members; and
- (b) unevenly, by reference to the actual dollar value amount payable by individual Members, as produced by those calculations.

8.3. The Members agree that the annual subscription fee that each Member is required to contribute to the Company is to be calculated in accordance with the following formula:

$$SF = FC + VC$$

Where:

- (a) SF = the total amount of the Member's Subscription Fee for that year;
- (b) FC = the fixed component (based on the 2019-20 financial year) calculated by application of the following bands calculated based on the population of the municipal area of each Member (figures for 2021/22) :

(i)	Population of 0 – 5,000 people	\$5,03.6.00
(ii)	Population of 5,001 – 10,000 people	\$10,072.00
(iii)	Population of 10,001+ people	\$20,144.00

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

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(c) VC = the variable component calculated at a contribution rate of approximately \$2.79 per head of population (figure for 2021/22) in the municipal area of each Member multiplied by the actual municipal population.

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

For example, a Council with 32,000 population would calculate its fees as follows:

$$\begin{aligned} SF &= \$10,072 + (32,000 \times \$2.79) \\ &= \$10,072 + \$89,280 \\ &= \$99,352 \end{aligned}$$

- 8.4. The Company will calculate the contribution amounts for the following financial year, to be approved by the Board and must notify the Members of the annual subscription fee amount for the following year not less than three (3) months prior to the end of each financial year.
- 8.5. The Members expressly agree that to remain as a member of The Company each Member must commit to pay the annual subscription fee amount each year for number of consecutive years detailed in this agreement from the date that the membership commences. At the end of each funding / membership cycle a review will be undertaken in accordance with **clause 14**.
- 8.6. Subject to the approval of the Board, and any conditions or restrictions set by the Board, there is no value limit to the amount of the subscription fee payable in any one year by any one Member, as determined by the calculations set out in this **clause 8**.
- 8.7. The Board may accept applications from other persons or entities to become Members of The Company in accordance with the Company Constitution. The Board may charge an application fee to new members if the Board elects to do so.
- 8.8. If the Board accepts the application of 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 Member
- (a) expressly agrees to be bound by the Constituent Documents of the Company; and

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(b) enters into an agreement on substantially similar terms and conditions as this agreement.

8.9. All of the parties agree that the Company will not obtain, or seek to obtain, any debt funding for any purpose without a unanimous resolution of the Members to that effect.

8.10. If any debt funding is obtained by unanimous resolution, each Member agrees to be liable for and guarantee the repayment by the Company of that debt funding in accordance with the proportionate amount of the annual subscription fee paid by that Member as against all of the subscription fees paid by all Members of the Company at the relevant time.

8.11. Subject to the passing of an appropriate unanimous resolution, the Company may accept loans from any of the Members, on whatever terms those parties may agree, and if so accepted, the Company must create a credit ledger for that purpose in the Company's books of account.

8.12. Subject to the unanimous consent of all Members, the Company may grant loans to any of the Members, on whatever terms those parties may agree, and if so granted, the Company must create a debit ledger for that purpose in the Company's books of account.

9. Voting

9.1. The voting rights of the Members, in general meeting, are as set out in **clauses 5.9-5.13** of the Company Constitution. The Members agree to the following determinations.

9.2. Subject always to the Company Constitution, if, for any reason, at any general meeting of the Members, a poll is demanded then each Member and the Board, on behalf of the Company, as the parties to this Agreement expressly acknowledge and agree that each Member will have, and the Board must recognise, one (1) vote per Member for each \$22,076, increment, or part thereof, of subscription fees paid by each Member to the Company in the then current financial year.

9.3. Upon any vote taken by the Company in general meeting, if any Member has not paid that Member's annual subscription fees in full at the time of that meeting, the voting rights of that Member are deemed to be pro-rated, based on the proportion of the subscription fee that has been paid at the relevant

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time, unless all of the other Members unanimously agree that the unpaid, or partially unpaid, Member's voting rights are not so affected.

10. Member Expectations

10.1. 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.

10.2. In particular, all parties to this Agreement must:

- (a) by completely honest in all communications to, with or on behalf of the Company and each other;
- (b) provide full disclosure about all material matters that arise from or may affect the Company 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 Company environment and when representing the Company externally; and
- (d) not make, publish or support any disparaging, defamatory or offensive remark, comment or communication about the Company, the Members, the Directors or officers of the Company, any employee of the Company or any other shareholder on any fact, matter or concern that is within the knowledge or opinion of that party.

10.3. Each party must only make use of Confidential Information for the purpose of carrying out the purpose and objectives of The Company.

10.4. 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 Company or any other party to this Agreement.

10.5. No party to this Agreement is permitted to make any promise, representation or warranty or to give any undertaking to any person, which

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purports to bind The Company, which that party is not authorised to make or give.

11. Financial Reports

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

11.2. The Board must ensure that proper and sufficient records, reports and financial statements of The Company, 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 Company from time to time; or

(c) as the Corporations Law or other statutes may require.

11.3. The Company must comply with the auditing and review procedures of the Corporations Law relevant to the turnover Tier that the Company sits in from time to time, including the requirements of the Tasmanian Audit Office if the Company is required to meet its requirements.

11.4. The Company must provide the following to all Members on a Quarterly basis:

(a) Progress report on delivery of the Annual Operational Plan; and

(b) Progress report on delivery of the Annual Budget.

12. Intellectual and Industrial Property

12.1. 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 Company at all times confidential.

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

(a) all of the technology know-how and research results relevant to the Company that are from time to time in that party's possession or

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knowledge and which that party is not restrained by obligations to others from passing to the Company;

- (b) all of the technology know-how and research results relevant to the Company 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 Company to give those covenants.

13. Restrictive Covenant

13.1. 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.

13.2. The Company must ensure that appropriate restrictive covenants are contained in each and every employment agreement for employees of The Company.

14. Sunset Provisions - Review

14.1. Each party agrees to commit to participation in The Company, 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.

14.2. 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 Company for the purposes of recommending to the Members whether to:

- (a) continue the operation of Company in its then current form;
- (b) change the operation of the Company as the parties may then agree;
- (c) continue with the then current Members;

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- (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 Company; and
- (g) wind up the Company; and/or
- (h) deal with any other relevant matter at that time.

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

14.4. 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.

14.5. 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.

14.6. Every Member that elects to continue as a Member of the Company expressly agrees to commit to the funding cycle for the number of years proposed by the Board, subject to all relevant annual CPI adjustments for the new period, and the Board must record a resolution to that effect.

14.7. The Board may require Members to enter into a Members Agreement as a condition of ongoing membership of the Company.

15. Dispute Resolution

15. The parties agree to adopt and be bound by the dispute resolution procedures set out in **clause 2.8** of the Company Constitution.

16. Default

16.1. If any party breaches that parties obligations under this Agreement, and does not remedy that breach to the satisfaction of the other parties after

15.2.3 Proposed Members Agreement 2023 - 2026

receiving not less than one (1) month's notice to do so, that party is in default of this Agreement.

16.2. 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 Company 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 16.2(a)(iii), (iv) or (v).

16.3. 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.

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17. Disciplinary Proceedings

17.1. The parties agree to adopt and be bound by the disciplinary procedures set out in **clause 2.9** of the Company Constitution.

18. Winding Up

18.1. The parties agree to adopt and be bound by the winding up procedures set out in **clause 24** of the Company Constitution.

18.2. Upon a winding up of the Company, 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 Company 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 Company 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 Company must be distributed in accordance with the winding up provisions of the Company Constitution.

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

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19. Notices

19.1. 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.

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

19.3. 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).

19.4. 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.

19.5. 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.

19.6. For the avoidance of doubt, every Member is entitled to receive separate notice of every general meeting of the Company.

20. Additional Provisions

20.1. 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:

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(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.

20.2. 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.

20.3. 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.

20.4. 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.

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

20.6. 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.

20.7. 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.

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- 20.8. 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.
- 20.9. 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.
- 20.10. 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.
- 20.11. 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.
- 20.12. 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.
- 20.13. 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.
- 20.14. 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.
- 20.15. 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.

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Northern Tasmania Development Corporation Limited
Members Agreement V3.0 20221110 DRAFT

20.16. 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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Northern Tasmania Development Corporation Limited
Members Agreement V3.0 20221110 DRAFT

Execution

Company

Signed for and on behalf of
Northern Tasmania Development Corporation Limited
ACN 616 650 367
by its authorised officers under
S127 of the *Corporations Act 2001*

Director

Director/Secretary

Members

The Common Seal of
Break O'Day Council
was affixed in the presence
Seal here
the authorised officers of the Council

affix

Member

General Manager

The Common Seal of
Flinders Council
was affixed in the presence
Seal here
the authorised officers of the Council

affix

Member

General Manager

The Common Seal of
George Town Council
was affixed in the presence
Seal here
the authorised officers of the Council

affix

Member

General Manager

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Northern Tasmania Development Corporation Limited
Members Agreement V3.0 20221110 DRAFT

The Common Seal of
City of Launceston
was affixed in the presence
Seal here
the authorised officers of the Council

affix

Member

General Manager

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

affix

Member

General Manager

The Common Seal of
Northern Midlands Council
was affixed in the presence
Seal here
the authorised officers of the Council

affix

Member

General Manager

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

affix

Member

General Manager

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Annexures

A. Company Constitution

Motion to Close Meeting

Motion Close the meeting to the public for discussion of matters in the list of agenda items below.

See Local Government (Meeting Procedures) Regulations 2015: s15(1).

Moved Councillor Anne-Marie Loader

Seconded Councillor Lochie Dornauf

Votes for Deputy Mayor Stephanie Cameron
Councillor Lochie Dornauf
Councillor Ben Dudman
Councillor Kevin House
Councillor Anne-Marie Loader
Councillor Rodney Synfield
Councillor John Temple

Votes against Nil

Motion carried by absolute majority

Minute reference: 058/2023

Closed Session Agenda

Confirmation of Closed Minutes

Refer to *Local Government (Meeting Procedures) Regulations 2015: s34(2)*.

Minute reference: 059/2023

Leave of Absence Applications

Refer to *Local Government (Meeting Procedures) Regulations 2015: s15(2)(h)*.

Minute reference: 060/2023

Release of Public Information

Council in Closed Session determined there was no information suitable for release for the public's information.

Minute reference: 061/2023

Meeting End

Meeting closed at 4:37 pm.

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Deputy Mayor Stephanie Cameron
Chairperson