

Corporations Act 2001
A Company Limited by Guarantee

The Constitution

of

***Sydney Western Harbour
Business Improvement District
Limited***

ACN: 647 446 973

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THE CONSTITUTION
of
SYDNEY WESTERN
HARBOUR BUSINESS
IMPROVEMENT DISTRICT
LIMITED
ACN: 647 446 973

Name

1. The name of the company is Sydney Western Harbour Business Improvement District Limited

Replaceable Rules Displaced

2. The provisions of the Act which operate as replaceable rules do not apply to the Company.

Interpretation

3. (a) In this Constitution:

Act means the Corporations Act 2001 (Cth) or any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that provision as so modified, amended or enacted;

Annual General Meeting or **AGM** means the annual general meeting of the Members of the Company;

Appointed Director means a person, whether a Member or not, appointed by the Board to be an Appointed Director under clause 53. An Appointed Director is not an Elected Director;

ATO means the Australian Taxation Office;

ATO Endorsed Entity means an entity which is charitable at law and which is endorsed by the ATO as a deductible gift recipient in accordance with Division 30 of the ITAA 1997;

Auditor means the person appointed for the time being as the auditor of the Company;

BID Strategic Plan means the Business Improvement District strategic plan

developed by the Company for the Precinct;

Board means the Directors and alternate Directors present at a meeting, duly convened as a Board meeting, at which a quorum is present;

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in New South Wales;

Business Improvement District or BID means a business-led initiative to improve an area or precinct pursuant to an agreed vision in conjunction with other agencies.

Business Member means a person who is Member of the Company and has an active business, educational, regulatory or economic interest in the Precinct (including but not limited to landowners, tenants, regulators or Chambers of Commerce). Business Members have the rights set out in clause 14(b) and are not Non-Business Members.

Business Member's Agreement means an Agreement to be entered into between a Business Member and the Company which sets out the terms the basis upon which voluntary payments shall or may be made;

CEO means the chief executive officer of the Company by whatever title;

Chair means the chair of the Board, General Meeting or Committee, or other gathering or meeting pursuant to this Constitution;

Company means Sydney Western Harbour Business Improvement District Limited;

Constitution means the constitution of the Company (including its schedules and annexures) as amended from time to time;

Deductible Contribution means a contribution of money or property as described in item 7 or item 8 of the table in Section 30-15 of the ITAA 1997;

Director means an Elected Director or an Appointed Director (and any person appointed to fill a casual vacancy on the Board pursuant to clause 54(c);

Effective Date means the date of incorporation of the Company;

Elected Director means an individual elected to be a Director under clause 56 or a person identified as an Elected Director in clause 55(a);

Founding Period means that period commencing on the Effective Date and ending at the conclusion of the AGM occurring on or after 30 June 2025;

Founding Board means those persons identified in clause 55(a) acting collectively as the Board during the Founding Period;

General Meeting means a meeting of the Members, and includes AGMs;

Gift means a gift as described in item 1 or item 2 of the table in Section 30- 15 of the ITAA 1997 to the Company;

Independent Director means an Appointed Director who is not a Member nor an employee, owner, director, officer, or nominee of a Business Member;

ITAA 1997 means the Income Tax Assessment Act 1997 (Cth);

Legal Proceedings means any claim, action, suit or demand, enquiry, Royal Commission or other regulatory investigation, whether civil or criminal, which relates to or arises in connection with the Officer being an officer of the Company or the employment of the Officer with the Company;

Member means a member of the Company, being either a Business Member or a Non-Business Member;

Member's Representative means an employee, owner, director, officer, or nominee of a Member, designated in writing by the Member as having the authority to represent the Member in respect of their rights and obligations arising under the Constitution;

Non-Business Member means a person who is a Member of the Company but is not a Business Member. Non-Business Members have the rights set out in clause 14(c);

Objects means the Objects of the Company set out in clause 4, as amended or varied from time to time;

Officer means a Director, an alternate Director, a Secretary, an officer as defined by the Act, and the CEO;

Precinct means that area identified in the Schedule together with those areas which are contiguous to or abutting the identified area in regard to business activity that is functionally similar to or otherwise related to business activities within the identified area;

Regulation means a regulation made by the Board in accordance with this Constitution;

Seal means the common seal (if any) of the Company; and

Secretary means any person appointed to perform the duties of a secretary of the Company and includes an honorary secretary;

Vision means the long term direction, activities and capabilities for the Precinct developed by the Company as part of the Business Improvement District initiative and delivered by it as outlined in the BID Strategic Plan.

- (a) Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (b) A reference to any statute or any provision of any statute is to be read as though the words "or any statutory modification thereof or any statutory provision substituted therefore" were added to that reference.

Objects

4. The Objects for which the Company is established are:
- (a) To develop and implement programs and initiatives to pursue and deliver the Vision for the Precinct, including the preparation and adoption of the BID Strategic Plan;
 - (b) To prioritise, co-ordinate and provide strategic alignment for all relevant stakeholder plans and activities across the Precinct, including those identified by the Pyrmont Peninsula Place Strategy and Economic Development Strategy, and other relevant NSW Government and City of Sydney plans;
 - (c) To provide a clear collaborative voice for the Precinct;
 - (d) To encourage, support and promote business to develop a sustainable economy in the Precinct;
 - (e) To foster and facilitate continuous improvements in the quality and performance of business in the Precinct.
 - (f) To work with all stakeholders to identify, pursue and support strategies for promoting economic and cultural activity in the Precinct;
 - (g) To enhance the public amenity and realm, and deliver public benefit in the Precinct;
 - (h) To encourage and foster the interest and financial support of governments, trusts, grant making bodies, corporations, commerce, industry, benefactors and friends for the benefit and promotion of business in the Precinct;
 - (i) To implement, monitor and evaluate a structured trial of a Business Improvement District initiative, to inform future use of the model in the Precinct and elsewhere;
 - (j) In relation to the governance of the Company, the Members and the Elected Directors must be open to and regularly consider the merits and utility of appointing an Independent Director as Chair from time to time;
 - (k) To achieve those broad objectives the Company should:
 - (i) advocate on behalf of businesses in the Precinct to all levels of Government;
 - (ii) encourage and promote local employment;
 - (iii) encourage economic innovation and diversity within the Precinct;
 - (iv) contribute to the long term strategic planning of the Precinct;
 - (v) provide regional co-ordination of key business issues;

- (vi) encourage and facilitate business networking opportunities in the Precinct;
- (vii) facilitate events that enhance the Precinct's competitive advantage.
- (l) working collaboratively with other organisations within Australia who have similar purposes in order to promote these Objects;
- (m) applying the income of the Company solely to promote those purposes; and
- (n) to do all such acts as are incidental and conducive to the furtherance of the above Objects.

Powers

5. Solely for the purpose of carrying out the aforesaid Objects and not otherwise, the Company has the following powers:
- (a) to make such grants to or in aid of or to make donations or give assistance to or to make contracts with such individuals, trusts, corporations, associations, societies, institutions or other organisations or authorities whether within or outside the Commonwealth of Australia as may be necessary or desirable;
 - (b) to print, publish and distribute any papers, journals and other publications that the Company may think desirable for the promotion of its Objects;
 - (c) as far as the law will permit and subject to the provisions of any relevant statute, rule, Regulation, by-law or any licence issued in pursuance thereof to collect funds and to solicit, receive, enlist and accept financial and other aid, subscriptions, donations and bequests from individuals, trusts, companies, associations, societies, institutions and other organisations or authorities, and from governments and public bodies;
 - (d) to undertake and execute any trusts the undertaking whereof may be necessary or desirable for the carrying out of any of the Objects of the Company;
 - (e) to accept any gift, endowment or bequest made to the Company generally or for the purpose of any specific object and to carry out any trusts attached to any gift, endowment or bequest, provided that the Company must deal with any property which is subject to any trusts only in such manner as is allowed by law having regard to such trusts;
 - (f) to subscribe to, become a Member of, cooperate with or amalgamate with any other association or organisation, whether incorporated or not, whose Objects are similar to those of the Company;
 - (g) to buy, sell and deal in all kinds of apparatus and all kinds of provisions, liquid and solid, required by the Members of the Company or persons frequenting the Company's premises;
 - (h) to purchase, take on lease or in exchange, hire and otherwise acquire any lands, building, easement or property, real and personal, and any rights or privileges which may be requisite for the purposes of, or capable of being conveniently used in connection with, any of the Objects of the Company;

- (i) to enter into any arrangements with any government or authority, supreme, municipal, local or otherwise, that may seem conducive to the Company's Objects or any of them and to obtain from any such government or authority any rights, privileges and concessions which the Company may think it desirable to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
- (j) to appoint, employ, remove or suspend such managers, clerks, secretaries, servants, workmen and other persons as may be necessary or convenient for the purposes of the Company;
- (k) to establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the Company or the dependents or connections of any such persons; and to grant pensions and allowances; and to make payments towards insurance; and to subscribe or guarantee money for charitable or benevolent Objects; or for any public, general or useful object;
- (l) to construct, improve, maintain, develop, work, manage, carry out, alter or control any houses, building, grounds, works or conveniences which may seem calculated directly or indirectly to advance the Company's interests, and to contribute to, subsidise or otherwise assist and take part in the construction, improvement, maintenance, development, working, management, carrying out, alteration or control thereof;
- (m) to insure against fire or otherwise any insurable property of the Company and to pay premiums on insurance or assurance policies which the Company may acquire by any means;
- (n) to invest and deal with the money of the Company not immediately required in such manner as may be permitted by an Act of the Commonwealth, a State Act, or a law of a Territory of the Commonwealth for the investment of trust funds without special authorisation but the Company may hold or retain any property or gift including any stocks funds and shares in the original form in which it was received by the Company without selling or converting the same into money and the powers authorities and discretions in relation to securities conferred upon trustees by the applicable State or Territory Trustee Act as amended apply to any such property or gift;
- (o) to borrow or raise or secure the payment of money in such manner as the Company may think fit and to secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the Company in any way and in particular by the issue of mortgages, charges or debentures, perpetual or otherwise, charged upon all or any of the Company's property (both present and future), and to purchase, redeem or pay off such securities;
- (p) to make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (q) to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company;

- (r) to take or hold mortgages, liens and charges to secure payment of the purchase price or any unpaid balance of the purchase price, of any part of the Company's property of whatsoever kind sold by the Company or any money due to the Company from purchasers and others;
- (s) to take any gift of property whether subject to any special trust or not, for any one or more of the Objects of the Company;
- (t) to hold or arrange competitions and provide or contribute towards the provision of prizes, awards and distinctions in connection therewith;
- (u) to purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate;
- (v) to transfer all or any part of the property, assets, liabilities and engagements of the Company to any one or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate;
- (w) to ensure that the Company complies with the requirements in regard to ethical and other standards for human and animal experimentation imposed from time to time by institutions or organisations which may provide accommodation or premises for use by the Company; and
- (x) to do all such other acts matters and things and to enter into and make such agreements as are incidental or conducive to the attainment of the Objects and the exercise of the powers of the Company.

6. The powers set forth in subsection 124(1) of the Act do not apply to the Company except in so far as they are included in clauses 4 and 5.

Income and Property

7. (a) The income, property and profit of the Company must only be applied solely towards the promotion of the Objects of the Company as set forth in Constitution.

(b) Subject to clause 8, no portion of the income and property of the Company may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever to Members or Directors of the Company while it is operating and/or on winding up.

(c) **Establishment and operation of Gift Fund**

If the Company, at any stage operates a fund, authority or institution that is an ATO Endorsed Entity, the Company must maintain for the purpose of pursuing the Objects and purpose of that fund, authority or institution a fund (*Gift Fund*):

- (i) to which Gifts and Deductible Contributions are to be made;
- (ii) to which any money received by the Company because of those Gifts and Deductible Contributions is to be credited;

- (iii) that does not receive any other money or property; and
- (iv) in respect of which the Company will maintain a separate bank account.

If the Company as a whole is at any stage an ATO Endorsed Entity, the Company need not but may maintain a Gift Fund in accordance with the above.

(d) Winding up of the Gift Fund

At the first occurrence of:

- (i) the winding up of the Gift Fund (including where the Company ceases to operate a fund, authority or institution that is an ATO Endorsed Entity); or
- (ii) the Company ceasing to be an ATO Endorsed Entity,

any surplus assets of the Company or the Gift Fund, remaining after payment of liabilities attributable to it must be transferred to one or more ATO Endorsed Entities (whether or not such ATO Endorsed Entities are Members) that satisfy the requirements of clauses 11(a) to (d) as the Board in its discretion determines.

Payments to Directors and Members

8. (a) The payment of Directors' fees or other remuneration, in whatever form, to Elected Directors is prohibited for services performed in that capacity.
- (b) Despite subclause (a), payments may be made to a Director and/or alternate Directors or a Member:
- (i) for out-of-pocket expenses incurred or to be incurred on behalf of the Company including, in the case of a Director, in connection with attendance at meetings of the Board and committees of the Board, where the payments do not exceed an amount previously approved by the Board;
 - (ii) for any service rendered to the Company in a professional or technical capacity, where the provision of that service has the prior approval of the Board and the amount payable is approved by a resolution of the Board and is on reasonable commercial terms;
 - (iii) of any amount expended on or in connection with the incorporation of the Company;
 - (iv) of consideration for goods supplied in the ordinary and usual course of business;
 - (v) of interest on money lent to the Company at a rate not exceeding the rate of interest charged by the Company's principal bankers from time to time on its overdrawn account or, if the Company's account with its principal bankers is not overdrawn at the relevant time, the rate of interest certified by the Company's principal bankers as the rate which

they would charge the Company if its account were overdrawn at that time;

- (vi) of reasonable and proper rent for premises leased to the Company; or
 - (vii) as an employee of the Company, where the terms of employment have been approved by a resolution of the Board.
- (c) Should the Board elect an Independent Director as Chair, appropriate fees or other remuneration may be paid for services performed in that capacity, provided the amount payable is approved by a resolution of the Board and is on reasonable commercial terms.

Liability of Members limited

9. The liability of the Members is limited to the amount of the guarantee set out in clause 10.

Guarantee by Members

10. Every Member undertakes to contribute to the property of the Company, in the event of it being wound up while the Member is a Member or within one year after the Member ceases to be a Member, for payment of the debts and liabilities of the Company contracted before the Member ceases to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding \$10.00.

Winding Up

11. Upon the winding up of the Company the surplus will not be paid to or distributed amongst Members, but will after compliance with any transfer obligations outstanding under clause 7(d) in respect of the Gift Fund (if any), be given or transferred to another body corporate which, by its constitution, is:

- (a) required to pursue Objects similar to the Objects of the Company;
- (b) required to apply its profits (if any) or other income in promoting its Objects;
- (c) prohibited from making any distribution of its income or property to its Members; and
- (d) if the Company is endorsed as a deductible gift recipient under Subdivision 30- BA of the ITAA 1997 at the time of winding up – an ATO Endorsed Entity,

such body corporate to be determined by the Board at or before the winding up, and in default, by application to the Supreme Court of New South Wales for determination.

Financial Records

12. Financial records must be kept by the Company in accordance with Part 2M.2 of the *Act*.

Membership

13. Rights and obligations of Members generally

- (a) Each Member, not being an individual, must nominate an individual to act as their Member's Representative and must promptly notify the Company in writing of that appointment before its Member's Representatives has the authority to act in respect of the appointing Member. A Member may also remove and replace a Member's Representative at any time and promptly notify the Company of that change in writing, and such change will take effect from the date that the written notification of the relevant Member has been, or is deemed to have been, received by the Company.
- (b) The rights and obligations of a Member are personal and are not transferable.
- (c) Every person who has been accepted as a Member:
 - (i) becomes a Member and will be bound by this Constitution and the Regulations in force from time to time
 - (ii) has all the rights granted to them under this Constitution and the Act; and
 - (iii) has the right to receive Notices of Meeting in regard to all General Meetings, attend those meetings and to be heard in regard to any business conducted at such meetings.
- (b) Every person who has been accepted as Business Member will enter into a Business Member's Agreement as a condition of membership.

14. Classes of Membership

- (a) Subject to the Constitution and the Act, there are two classes of Members and Membership:
 - (i) Business Members; and
 - (ii) Non-Business Members;
- (b) Business Members have the following rights:
 - (iii) to vote on all matters requiring or permitting voting by Members under the Constitution or the Act; and
 - (iv) to nominate persons to be office holders of the Company, including to be Elected Directors;
- (c) Non-Business Members:
 - (v) do not have a general right to vote on any matters requiring or permitting voting by Members under the Constitution of the Act, but may vote on such matters or resolutions as the Business Members agree (such agreement being evidenced by a simple majority of the Business Members);

- (vi) do not have the right to nominate themselves or others to be office holders of the Company; and
- (vii) do not have the right to be an Elected Director.

15. **Application for Membership**

Every applicant for Membership must:

- (d) be nominated by one and seconded by another Business Member to both of whom the applicant is personally known and specify the class of Membership being applied for;
 - (e) sign an application for Membership in such form as may from time to time be prescribed by Regulation or otherwise in such form as prescribed by the Board; and
 - (f) undertake, as a condition of admission, to enter into a Business Member's Agreement (if relevant), and pay to the Company such entrance fee (if any) and annual subscription as may from time to time be payable to the Company in accordance with this Constitution and to pay the Member guarantee amount in clause 10.
16. At the next Board meeting after the receipt of any application for Membership, that application must be considered by the Board, which must thereupon determine upon the admission or rejection of the applicant. In no case is the Board required to give any reason for the rejection of an applicant.
17. (a) When an applicant has been accepted for Membership, the Board must forthwith send to the applicant written notice of their acceptance, if relevant, a Business Member's Agreement, and a request for payment of his or her entrance fee (if any) and first annual subscription.
- (b) Upon entering into the Business Member's Agreement (if relevant), payment of the entrance fee (if any) and first annual subscription, the applicant becomes a Member and the Board must, as soon as practicable, enter the name of the applicant in the register of Members and identify the class of Membership relevant to each Member.
- (c) If the payment is not made within two calendar months after the date of the notice, the Board may in its discretion cancel its acceptance of the application for Membership.
18. (a) The entrance fee (if any) and annual subscriptions payable by Members are as prescribed from time to time by Regulation or otherwise such amount as prescribed by the Board. The Board may differentiate between Membership classes in regard to the setting or varying of annual subscriptions.
- (b) All annual subscriptions become due and payable in advance on 1 July in every year, or at such other time or times as determined by the Board.
- (c) The Board may, if hardship or other sufficient cause is shown, reduce or remit any entrance fee or annual subscription payable by a Member .

Cessation of Membership

19. Cessation of Membership

(a) A natural person ceases to be a Member's Representative:

- i. if the subscription of a Member remains unpaid for a period of two calendar months after it becomes due and notice of the default has been sent to him or her by the Board and the Board resolves to ban the person from all privileges of Membership provided that the Board may reinstate the Member on payment of all arrears if the Board thinks fit to do so;
- ii. if the person resigns as a Member by giving 30 days' notice in writing to the Board;
- iii. If the person dies
- iv. if the person is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Member;
- v. if the person's whereabouts are unknown for more than 12 months and the Board resolves that the person should cease to be a Member;
- vi. if the person becomes bankrupt or insolvent; or
- vii. if the person is expelled as a Member in accordance with this Constitution.

(b) A body corporate ceases to be a Member:

- i. if the subscription of a Member remains unpaid for a period of two calendar months after it becomes due and notice of the default has been sent to him or her by the Board and the Board resolves to ban the person from all privileges of Membership provided that the Board may reinstate the Member on payment of all arrears if the Board thinks fit to do so;
- ii. if the body corporate resigns as a Member by giving 30 days' notice in writing to the Board;
- iii. if the body corporate is expelled as a Member in accordance with this Constitution;
- iv. if the body corporate is placed under external administration or makes any composition or arrangement with its creditors; or
- v. if the body corporate is the subject of an order by a court of competent jurisdiction directing the body corporate to be wound up.

20. A Member who has resigned their or its Membership continues to be liable for any annual subscription and all arrears due and unpaid at the date of resignation and for all other moneys due to the Company and in addition for any sum not exceeding \$10.00 for which he/she or it is liable as a Member under clause 10.

21. Subject to clause 22, if any Member wilfully refuses or neglects to comply with the provisions of this Constitution or is guilty of any conduct which in the opinion of the Board is unbecoming of a Member or prejudicial to the interests of the Company the Board may by resolution censure, fine, suspend or expel the Member from the Company.

22. (a) At least one week before the Board meeting at which a resolution of the kind mentioned in clause 21 is to be considered, the Member concerned must be given written notice of the place, date and time of the meeting and of what is alleged against him/her or it and of the proposed resolution and the grounds thereof, and the Member must at that meeting and before the passing of that resolution be given an opportunity to make such oral or written submissions of

a reasonable length in relation to it. In the case of a corporate Member, a representative of the Member shall be permitted to make submissions on its behalf.

- (b) Any such Member may by notice in writing lodged with the Board at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the Board, elect to have the question dealt with by the Company in general meeting.
- (c) If any such Member elects to have the matter dealt with by the Company in general meeting, a General Meeting must be called for the purpose and, if at the General Meeting such a resolution is passed by two-thirds of those present and voting (such vote to be taken by ballot) the Member concerned will be punished accordingly, and in the case of a resolution for expulsion, the Member will be expelled.

Register of Members

23. (a) The Board must maintain a register of Members setting out:
- (i) the name and address of each Member ;
 - (ii) the date on which each person became a Member;
 - (iii) the class of Membership of each Member;
 - (iv) each Member's Representative; and
 - (v) in respect of each person who has ceased to be a Member , the date on which that person ceased to be a Member.
- (b) The register of Members must be kept at the Company's registered office or the principal place of business. A Member may inspect the register of Members between the hours of 9am and 5pm on any Business Day. No amount may be charged for inspection.

AGMs and General Meetings

24. An AGM must be held in accordance with the provisions of the Act.
25. Section 250R of the Act provides that the business of an AGM may include any of the following, even if not referred to in the notice of meeting:
- (a) the consideration of the annual financial report, Directors' report and Auditor's report;
 - (b) the election of the Directors;
 - (c) the appointment of the Auditor; and
 - (d) determination of Auditor's remuneration.
26. Any two (2) Elected Directors may whenever they think fit convene a General Meeting. General Meetings may also be convened on such requisition or in default may be convened by such requisitionists as provided by sections 249D or 249E of the Act.

27. Subject to the provisions of the Act relating to special resolutions and agreements for shorter notice, 21 days' notice at least (exclusive of the day on which the notice is served or taken to be served, and exclusive of the day for which notice is given) must be given to such persons as are entitled to receive such notices from the Company.
28. A notice of General Meeting must:
- (a) set out the place or places (which may be within or outside Australia), date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (b) in the case of special business, state the general nature of the business to be transacted at the meeting;
 - (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
 - (d) contain a statement that a Business Member has the right to appoint a proxy who must be a Business Member of the Company.

Proceedings at General Meetings

29. (a) No business may be transacted at any General Meeting unless a quorum of Business Members is present at all times during the general meeting.
- (b) No resolution may be passed at any General Meeting unless a quorum of Business Members is present at the time when the resolution is put to the vote of the meeting.
- (c) Save as herein otherwise provided, five (5) Business Members constitute a quorum or if there is less than five (5) Business Members then a majority of those Business Members constitutes a quorum, unless there are only 1 or 2 Business Members in which case that Member or those Members constitutes a quorum for any general meeting.
- (d) If a Member attending a General Meeting is also a proxy for a Member, they are to be counted only once in determining whether a quorum is present.
30. If within half an hour from the time appointed for the General Meeting (or any longer period of time as the chair may allow) a quorum is not present or ceases to be present at any time during the general meeting, the general meeting, if convened upon the requisition of Business Members, is dissolved; in any other case it stands adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Board may determine. If at the adjourned General Meeting a quorum is not present within half an hour from the time appointed for the resumption of the adjourned General Meeting or ceases to be present during the general meeting, the General Meeting is dissolved.
31. (a) The chair for the time being of the Board will serve as Chair at every General Meeting, or if they are not present within 15 minutes after the time appointed for the holding of the General Meeting or is unwilling to act, the Directors present may elect a Director present to chair that General Meeting or if no Director is elected or if all the Directors present decline to take the chair for the whole or any part of that General Meeting, the Business Members present

(whether in person or by proxy) may elect one of their number present (in person) to be Chair of the general meeting. If the Business Members do not so elect a Chair, the General Meeting will be adjourned to be resumed on the same day, at the same time and at the same place (or places) in the following week.

- (b) The Chair of each General Meeting has charge of conduct of that meeting, including the procedures to be adopted and the application of those procedures at that meeting.
32. The Chair may, with the consent of Business Members present (in person or by proxy) at any General Meeting at which a quorum is present (and must if so directed by a majority of the Business Members present (in person or by proxy) at the general meeting), adjourn the General Meeting from time to time and from place to place, but no business may be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place. When a General Meeting is adjourned for 30 days or more, notice of the adjourned General Meeting must be given as in the case of an original general meeting. Save as aforesaid it is not necessary to give any notice of an adjournment or the business to be transacted at an adjourned general meeting.
33. At any General Meeting a resolution put to the vote is to be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
- (a) by the chair; or
 - (b) by at least five Business Members present in person or by proxy; or
 - (c) by Business Members with at least 5% of the votes that may be cast on the resolution on a poll.

Unless a poll is so demanded a declaration by the Chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost or not carried by a particular majority, and an entry to that effect in the minute book of the Company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn by the person or persons who demanded it. A demand for a poll which is withdrawn does not invalidate the result of a show of hands declared before the poll was demanded.

34. If a poll is duly demanded it must be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chair directs, and the result of the poll is the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a Chair or on a question of adjournment must be taken forthwith.
35. 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 is entitled to a second or casting vote.
36. Each Business Member is entitled to 1 vote at a General Meeting, whether on a show of hands or on a poll. A Business Member may vote in person or by proxy.
37. A Business Member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by his or her committee or trustee or by such other person

as properly has the management of his or her estate, and any such committee, trustee or other person may vote by proxy.

38. No Business Member is entitled to vote at any General Meeting if their annual subscription (if any) is more than two months in arrears at the date of the meeting.
39. (a) Within 1 month after each General Meeting, the Directors must record or cause to be recorded in the minute book:
 - (i) the proceedings and resolutions of each General Meeting;
 - (ii) any declarations at each General Meeting; and
 - (iii) all resolutions passed by Business Members without a General Meeting.
- (b) The Chair, or the chair of the next General Meeting, must sign the minutes within 1 month after the general meeting.
- (c) The minute books must be kept at the registered office.
- (d) Business Members may inspect the minute books between the hours of 9:00am and 5:00pm on any Business Day. No amount may be charged for inspection.

Proxy

40. (a) A Business Member who is entitled to attend and to vote at a General Meeting may appoint a person as proxy to attend, speak and vote for that Business Member.
 - (b) An instrument appointing a proxy must be in writing under the hand of the appointor or of his or her attorney duly authorised in writing.
 - (c) A proxy may but need not be a Member.
 - (d) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
 - (e) An instrument appointing a proxy may specify that the proxy is to abstain from voting in respect of a particular resolution and, where an instrument of proxy so provides, the proxy may not vote in respect of the resolution.
 - (f) Unless otherwise instructed, a proxy may vote or abstain from voting as he or she thinks fit.
 - (g) An instrument appointing a proxy is taken to confer authority to demand or join in demanding a poll.
41. An instrument appointing a proxy must be in the following form or in a form that is as similar to the following form as the circumstances allow:

***Sydney Western Harbour Business
Improvement District Limited***

I, _____ of _____, being a Business Member of the Company, hereby appoint _____ of _____ or, failing him/her, _____ of _____ as my proxy to vote for me and on my behalf at the *annual general/*General Meeting of the Company to be held on the _____ day of _____ 20 and at any adjournment of that meeting.

This form is to be used in accordance with the directions below. Unless the proxy is directed, he or she may vote or abstain as he or she thinks fit.

For _____ Against _____ Abstain _____

[Description of resolution]

*Strike out whichever is not desired.

INSTRUCTIONS

- (i) *A proxy may but need not be a Member of the Company.*
 - (ii) *To direct the appointee to cast your vote in respect of an item of business in a particular manner either on a show of hands or on a poll, place a sufficient indication (including, without limitation, a tick or a cross) in the relevant box in respect of that item of business.*
42. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of that power or authority must be deposited at the registered office of the Company, sent to a fax number at the registered office, or at such other place, fax number or electronic address as is specified for that purpose in the notice convening the general meeting, not less than 24 hours before the time for holding the General Meeting or adjourned General Meeting at which the person named in the instrument proposes to vote or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll. In default the instrument of proxy will not be treated as valid.
43. A vote given in accordance with the terms of an instrument of proxy or attorney is valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, if no intimation in writing of such death, unsoundness of mind or revocation as aforesaid has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.
44. Notwithstanding clauses 29 to 43 inclusive, the Company may hold a General Meeting at two or more venues using any technology that gives the Business Members as a whole a reasonable opportunity to participate. Anyone using this technology is taken to be present in person at the meeting.
45. The Company is not responsible for ensuring that any directions provided in the instrument appointing the proxy or the way in which a proxy is to vote on a particular resolution are complied with, and accordingly is not liable if those directions are not complied with.

Member's Representative

46. Appointment of Member's Representative

- (a) A Member must appoint a natural person as its representative to exercise on its behalf any or all of the powers it may exercise:
 - (i) at general meetings;
 - (ii) at meetings of creditors or debenture holders; or
 - (iii) relating to resolutions to be passed without meetings.
- (b) The appointment of a Member's Representative may be a standing one.

47. Authority to act as Member's Representative

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

48. Instrument to be received by Company

- (a) An instrument purporting to appoint the Member's Representative is not valid unless it is received by the Company at least 24 hours before the General Meeting or, in the case of an adjourned general meeting, at least 24 hours before the resumption of an adjourned general meeting.
- (b) An instrument appointing a Member's Representative must be received by the Company at any of the following:
 - (i) the registered office;
 - (ii) a place, or electronic address specified for that purpose in the notice of the general meeting.

49. Revocation and appointment of Member's Representative

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

50. Validity of votes of Member's Representative

A vote cast by a Member's Representative will be valid unless before the start of the General Meeting (or, in the case on an adjourned general meeting, before the resumption of the adjourned general meeting) at which a Member's Representative votes:

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

51. No liability

The Company is not responsible for ensuring that the terms of appointment of a Member's Representative are complied with, and accordingly is not liable if those terms are not complied with.

The Board

52. Size and make-up of the Board

- (a) The Board will consist of not less than five (5) and not more than fifteen (15) Elected Directors of the Company and in addition the Directors may appoint one (1) Appointed Director pursuant to clause 53. Other than in regard to those who Directors specified in clause 55(a), all Elected Directors must be elected pursuant to this Constitution and may occupy one (1) of the following:
 - (i) Chair;
 - (ii) Deputy Chair.
- (b) All Elected Directors must:
 - (i) be an individual who is an employee, owner, director, officer, or nominee of a Business Member ; and
 - (ii) must meet such other qualifications as may be prescribed from time to time by the Board.
- (c) The Board will elect from the Directors the following:
 - (iii) the Chair - if the Chair is an Appointed Director they must also be an Independent Director. The Chair will hold office for three years pursuant to the provisions of this Constitution; and
 - (iv) the Deputy Chair - if the Deputy Chair is an Appointed Director they must also be an Independent Director. They will hold office for 12 months.
- (d) The election of the Chair and Deputy Chair occurs at the Board meeting immediately following the AGM or General Meeting at which Business Members elect (or are deemed to have elected) Elected Directors.

53. Appointment of Appointed Director

The Board may appoint one (1) Appointed Director. Such appointment is to be on a skills basis, with each appointee possessing skills identified as highly advantageous to the Company. An appointee need not be a Member and may be an Independent Director.

54. Tenure of Directors

- (a) Subject to the provisions governing the Founding Board and its Elected Directors in clause 55, the Directors shall be elected or appointed in accordance with this Constitution, and subject to this Constitution, shall hold office:
- (i) Subject to paragraph (iii), in the case of Elected Directors from the conclusion of the AGM or General Meeting at which they were elected until the conclusion of the third following AGM. Directors may be re-elected such that they may hold office for a period of nine (9) continuous years;
 - (ii) In the case of Appointed Directors from the conclusion of the Board meeting at which they were appointed until the conclusion of the Board meeting first occurring after the third anniversary of their appointment (or such shorter term determined by the Board). Appointed Directors may be appointed for a second term not exceeding three (3) years, provided that they may not serve more than nine (9) continuous years; and
 - (iii) the terms for and election of Elected Directors will run on a three (3) year cycle as follows:
 - A. At the first AGM occurring after the Founding Period all remaining members of the Founding Board (including its Chair) will resign and their offices are open for election. Thereafter every 3 years at least two Elected Directors (who have either resigned or whose name is drawn from a hat by a nominee of the Chair) will resign and their offices are open for election;
 - B. At the second AGM occurring after the Founding Period (and then every 3 years thereafter) at least two Elected Directors (who have either resigned or whose name is drawn from a hat by a nominee of the Chair) will resign and their offices are open for election. For the purpose of this clause, the Elected Directors required to resign will not include a person elected at the previous AGM; and
 - C. At the third AGM occurring after the Founding Period (and then every 3 years thereafter) the Chair and at least two Elected Directors (who are the two longest serving Elected Directors) will resign and their offices are open for election.
- (b) The calculation of service as a Director:
- (i) *does not* include service on the Founding Board;
 - (ii) in regard to a person who is an Appointed Director, *does not* include service as an Elected Director;
 - (iii) in regard to a person who is an Elected Director, *does not* include service as an Appointed Director;

- (iv) *does not* include any service as a casual vacancy Director; and
- (c) In the event of a casual vacancy on the Board occurring from time to time, the Board may (subject to clause 52(b)) appoint (by simple majority vote) any person, in the case of a vacant Elected Director position, to fill the casual vacancy until the next AGM at which time any Director appointed to fill a casual vacancy must retire and may then nominate for any vacant Board position (as relevant) in accordance with this Constitution.

55. The Founding Board

- (a) The Founding Board (and their offices) are the following:

Office	Individual
Chair + Appointed Director	Geoff Parmenter (Independent)
Elected Director	Katherine O'Regan (Sydney Business Chamber)
Elected Director	Carol Mills (UTS)
Elected Director	Greg Dyer (Sydney Fish Market)
Elected Director	Greg Hawkins (The Star Entertainment Group)
Elected Director	Geoff Donaghy (ICC Sydney)
Elected Director	Bayfield James Edgerton-Warburton (Mirvac)
Elected Director	James Markham (Markhams)

- (b) If any Director on the Founding Board ceases to be a Director during the Founding Period then their position will be filled by the appointment of a person to fill a casual vacancy by the Board pursuant to clause 54(c).
- (c) All Elected Directors identified in clause 55(a) are deemed to be Elected Directors.
- (d) Notwithstanding the obligations governing the tenure and election of Directors generally set out in this Constitution, the following applies in relation to the tenure of the Founding Board and its Elected Directors:
 - (i) Unless a Director otherwise ceases to hold office, at the AGM

occurring at end of the Founding Period, one half of the Elected Directors (other than the Chair) who have either resigned or whose name is drawn from a hat by a nominee of the Chair will resign and their offices are open for election. Those resigning Directors may submit themselves for re-election, and if re-elected they are deemed to no longer be members of the Founding Board and their future tenure is governed by clause 54(a); and

- (ii) At the first AGM occurring after the end of the Founding Period the Chair and all remaining Founding Period Elected Directors resign in accordance with clause 54(a)(iii)A. Those resigning Directors and the Chair may submit themselves for election at any subsequent election and if re-elected they are deemed to no longer be members of the Founding Board and their future tenure is governed by clause 54(a).
- (e) Any individual Elected Director of the Founding Board who has been appointed to replace an individual identified in clause 55(a) will not be subject to the replacement process set out in clause 55(d)(i) above.

56. Election of Directors generally

Other than in regard to the Elected Directors identified in clause 55(a) the election of Elected Directors must take place in the following manner:

- (a) Any two Business Members may nominate any other Business Member to serve as a Director;
- (b) The nomination, which must be in writing and signed by the Business Member and their proposer and seconder, must be lodged with the Secretary at least 14 days before the AGM at which the election is to take place;
- (c) Balloting lists must be prepared (if necessary) containing the names of the candidates only in alphabetical order. Each Business Member present at the AGM is entitled to vote for any number of such candidates not exceeding the number of vacancies; and
- (d) If there is not a sufficient number of candidates nominated the Board may fill up the remaining vacancy or vacancies pursuant to clause 54(c).

57. Ceasing to be a Director

The office of a Director becomes vacant if the Director:

- (a) if an Elected Director either
 - (iii) they cease to be an employee, owner, director, officer, employee or nominee of a Business Member; or
 - (iv) the person who was the Director's employer or nominator, or for whom they acted as director or officer ceases to be a Business Member;
- (b) becomes an insolvent under administration or makes any arrangement or composition with his or her creditors generally;
- (c) becomes prohibited from being a director of a company by reason of any order made under the Act;
- (d) 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;

- (e) resigns his or her office by notice in writing to the Company;
- (f) for more than 12 months is absent without permission of the Board from meetings of the Board held during that period;
- (g) holds any office of profit under the Company otherwise than as provided by clause 8;
- (h) dies;
- (i) otherwise ceases to be a Member; or
- (j) is suspended from Membership of the Company by virtue of clause 21 or clause 22.

Powers and duties of the Board

58. (a) Subject to the Act and to any other provision of this Constitution, the business and affairs of the Company are to be managed by the Board, which may exercise all such powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Company in General Meeting.
- (b) Without limiting the generality of subclause (a), the Board may exercise all the powers of the Company:
- (i) to borrow and raise money;
 - (ii) to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person;
 - (iii) to determine who is entitled on behalf of the Company to sign, draw, accept, endorse or otherwise execute cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, receipts, acceptances, endorsements, releases, contracts and documents;
 - (iv) to pay the costs, charges and expenses incidental to the promotion, management and regulation of the Company; and
 - (v) to make, amend and repeal Regulations, not being inconsistent with the Act or this Constitution, in relation to the affairs of the Company. This power includes the ability to create, vary or remove weighted voting rights for Business Members pursuant to a Regulation, where such weighting is reflective of Business Members being recognised as being part of designated sub-categories of Business Membership (and those sub-categories carrying annual subscriptions or other periodic contributions determined by the Board greater than or in addition to those of ordinary Business Members).
59. Any Regulation for the time being in force is binding on the Members as if it were included in this Constitution.
60. Within 1 month after each Board meeting, the Secretary must cause minutes to be made:

- (a) of all appointments of officers and servants;
- (b) of the names of the Directors present at all general meetings and Board meetings; and
- (c) of all proceedings at all general meetings and Board meetings.

Such minutes must be signed by the Chair of the meeting at which the proceedings were held or by the Chair of the next succeeding meeting.

CEO

- 61. (a) Subject to this Constitution the Board may appoint the CEO on such terms and for such period as the Board determines, and may authorise persons to speak on behalf of the Company.
- (b) The terms governing the appointment, duties and termination of the CEO will be set out in a written agreement entered into between the Company and the CEO.

Alternate Directors

- 62. (a) Appointment and terms of appointment
 - (i) If a Director wishes to appoint a person as an alternate Director, that Director must give notice to the Company detailing:
 - (A) the name, experience and qualifications of the person;
 - (B) the terms upon which the Director intends to appoint the person as an alternate Director, including whether the person is to exercise some or all of the powers of the Director; and
 - (C) whether or not the alternate is to receive notice of each meeting the Director is entitled to attend.
 - (ii) The Board may ask for further information in relation to the alternate Director's qualifications and experience.
 - (iii) If the alternate Director is an existing Director, the appointment will take effect immediately.
 - (iv) If the alternate Director is not an existing Director, at the first Board meeting after the notice of the proposed appointment has been received by the Secretary, the Board must consider the proposed appointment and either accept or reject the appointment. If the Board accepts the appointment of the alternate Director, the Director may appoint the person on the terms of appointment.
 - (v) Where the alternate Director is not a Director, an appointment of a person as an alternate Director is not effective until a signed consent to the appointment is provided by that person to the Company. Accordingly, such an appointment will take effect on the later of the date of appointment and the date on which the Company received the signed

consent.

(vi) An alternate Director is not an agent of the Director appointing the alternate.

(b) No liability

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

(c) Remuneration of alternate Director

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

(d) Notice and attendance at Board meetings

If the notice appointing the alternate Director provides that the alternate Director is to receive notice of Board meetings, the Company must provide each alternate Director with notice. By notice to the Company, the Director who appointed an alternate Director may at any time require that the notice cease to be given to the alternate Director.

(e) Voting of alternate

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

(f) Termination of appointment of alternate Director

(i) A Director who appointed an alternate Director may terminate the appointment of the alternate Director at any time by notice to the alternate Director, the Directors and the Company.

(ii) An alternate Director may terminate the alternate Director's appointment at any time by notice to the Directors and the Company.

(iii) A termination of appointment does not take effect until the Company has received notice of termination.

(g) Cessation of appointment of alternate Director

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

Proceedings of the Board

63. (a) The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. The Board must on the requisition of any two (2) Elected Directors convene a Board meeting.

(b) Reasonable notice of each Board meeting must be given to the Directors and each alternate Director entitled to receive notice (if any). Each notice must

state:

- (i) the date, time and place (or places) of the Board meeting;
 - (ii) the general nature of the business to be conducted at the Board meeting; and
 - (iii) any proposed resolutions.
- (c) No resolution passed at or proceedings at any Board meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:
- (i) that Board meeting;
 - (ii) any change of place (or places) of that Board meeting;
 - (iii) postponement of that Board meeting; or
 - (iv) resumption of that adjourned Board meeting.
64. Subject to this Constitution questions arising at any Board meeting are to be decided by a majority of votes and a determination by a majority of the Directors present is for all purposes taken to be a determination of the Directors. Each Director present in person or by alternate Director is entitled to vote and has 1 vote. In case of an equality of votes the Chair of the Board meeting has a second or casting vote.
65. The quorum necessary for the transaction of the business of the Board is three (3) Elected Directors not counting alternate Directors (if any) or such greater number as may be fixed by the Directors. The quorum must be present at all times during the Board meeting.
66. The continuing Directors may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the number fixed by clause 65 as the necessary quorum of the Board, the continuing Director or Directors may act for the purpose of increasing the number of Directors to that number or of convening a General Meeting of the Company, but for no other purpose.
67. (a) Subject to clause 52(c) the Directors must from time to time elect one of their number as chair of their meetings.
- (b) If the chair is not present within 10 minutes after the time appointed for a Board meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that Board meeting, the Directors present may elect a Director present to chair that Board meeting.
68. (a) Any Director who has a material personal interest in a contract or proposed contract of the Company, holds any office or owns any property such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as a Director, must give the Board notice of the interest at a Board meeting. A notice of a material personal interest must set out:
- (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company.

The notice must be provided to the Board at a Board meeting as soon as practicable.

- (b) A Director who has a material personal interest in a matter that is being considered at a Board meeting:
 - (i) may not vote in respect of any contract or proposed contract with the Company in which he or she is interested, and if the Director does so vote his or her vote is not to be counted; and
 - (ii) may not be present while the matter is being considered at the meeting, and accordingly will not count for the purposes of determining whether there is a quorum.

- 69. All acts done by any Board meeting or of a committee or by any Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Board, committee or Director, or that the Directors or any of them were disqualified, as valid as if every such person had been duly appointed and was qualified to be a Director or committee member.

- 70. (a) If all of the Directors have signed a document containing a statement that they are in favour of a resolution of the Board in terms set out in the document, a resolution in those terms is taken to have been passed at a Board meeting held on the day on which the document was signed and at the time at which the document was last signed by a Director or, if the Directors signed the document on different days, on the day on which, and at time at which, the document was last signed by a Director.

- (b) For the purpose of subclause (a), two or more separate documents containing statements in identical terms each of which is signed by one or more Directors are together taken to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

- (c) A reference in subclause (a) to all of the Directors does not include a reference to a Director who, at a Board meeting, would not be entitled to vote on the resolution.

- 71. (a) If all of the Directors consent, the Directors may participate in a Board meeting by means of any technology allowing all persons participating in the meeting to hear each other at the same time. Any Director participating in such a meeting is for the purposes of this Constitution taken to be personally present at the meeting.

- (b) The consent of a Director to the use of technology may be a standing one.

- (c) Any consent of a Director to the use of technology may be withdrawn only within a reasonable period prior to a meeting at which the technology is to be used.

Committees and delegation of authority

- 72. (a) The Board may by resolution or by instrument in writing delegate any of its powers to committees consisting of Directors and/or any other person or persons as the Board thinks fit. Any Committee formed or person or persons

appointed to the committee must, in the exercise of the powers delegated, conform to any Regulations that may from time to time be imposed by the Board.

- (b) Subject to this Constitution, committees may be standing or ad hoc. Standing committees are ongoing and ad hoc committees are created for specific tasks or issues.
- (c) A delegate of the Board may be authorised to sub-delegate any of the powers for the time being vested in the delegate, create or establish or appoint from among its own members or from other selected personnel as occasion may require, special committees, sub-committees, boards or individual officers and consultants to carry out such duties and functions and with such powers as the Board determines.
- (d) The Board may delegate such functions as are specified in the resolution or instrument, other than:
 - i. this power of delegation; and
 - ii. a function imposed on the Board or the CEO by the Act, or any other law, or this Constitution or by resolution of the Business Members in General Meeting.
- (e) A function, the exercise of which has been delegated under this provision, must whilst the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.
- (f) A delegation under this provision may be made subject to such conditions or limitations as to the exercise of any function or at the time or circumstances as may be specified in the delegation.
- (g) The Board may by instrument in writing, vary, revoke wholly or in part any delegation made under this provision.

73. Subject to the terms of the Regulations and any delegation or direction by the Board, every committee may meet and adjourn as it thinks proper, and determine the rules governing its proceedings. Questions arising at any committee meeting are to be determined by a majority of votes of the members present, and in the case of an equality of votes the Chair has a second or casting vote.

Standing Committees

74. The standing committees of the Company will be constituted in accordance with clause 72 by the Board and include:
- (a) Business Improvement District (BID) Steering Committee; and
 - (b) such other Committee or Committees determined by the Board from time to time.
75. All standing committees will be appointed and hold office in accordance with the Constitution and the Regulations.
76. Subject to their duties arising under this Constitution and/or by virtue of being a Director, each of the chairs of the Standing Committees and of any other committee may liaise with the Members as they see fit, provided that all such interactions are respectful, professional and for the purposes of advancing the interests of the relevant committee and the Company.

Secretary

77. The Board may in accordance with section 204D of the Act appoint a Secretary for such term, and upon such conditions as it thinks fit, and any Secretary so appointed may be removed by it.

Seal

78. (a) If the Company has a Seal, the Board must provide for its safe custody (and any duplicate of it).
- (b) The Seal (and any duplicate of it) may be used only by the authority of the Board or of a committee of the Board authorised by the Board to authorise the use of the Seal, and every instrument to which the Seal is affixed must be signed by a Director and be countersigned by another Director or by a Secretary.

Inspection of Books

79. (a) The Directors may determine whether and to what extent, and at what time and places and under what conditions, the books of the Company or any of them will be open to the inspection of Business Members other than Directors, and a Member other than a Director has no right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in General Meeting.
- (b) Any Director may at any time access and inspect any financial and any other record of the Company.
- (c) The Board may determine that any person who is to cease or has ceased to be a Director may continue to have access to and inspect any financial record and any other record of the Company relating to the time during which the person was a Director.

Financial Report

80. The Board must distribute copies of every:
- (a) annual financial report;
 - (b) report of the Directors for the year; and
 - (c) report of the Auditor or Auditors on the financial report, as required by the Act.
81. The Board must lay before each AGM:
- (a) the financial report;
 - (b) the report of the Directors; and
 - (c) the report of the Auditor or Auditors,
- for the last financial year ended before the annual general meeting.

Auditor

82. (a) Appointment

A properly qualified auditor or auditors must be appointed and his or their duties regulated in accordance with Part 2M.4 of the Act.

(b) Removal

- (i) The Company may remove an Auditor by resolution at a general meeting.
- (ii) At least 2 months' notice must be given to the Company of the intention to move a resolution to remove an Auditor at a general meeting.
- (iii) If notice of an intention to move a resolution to remove the Auditor at a General Meeting is received by the Company, the Auditor must be given a copy of the notice as soon as practicable.
- (iv) The notice of an intention must also inform the Auditor that the Auditor:
 - (A) may submit written representations to the Company within 7 days after receiving the notice and that the Auditor may request

the Company to send a copy of the written representations to the Business Members before the resolution is put to a vote; and

- (B) may speak at the General Meeting or request that the written representations be read at the General Meeting at which the resolution is voted upon.

NOTICE

83. (a) A notice may be given by the Company to any Member by:
- (i) serving it on the Member personally; or
 - (ii) leaving it at the Member's registered address or the address if any has been supplied by the Member to the Company for the giving of notices to the Member as recorded in the register of Members; or
 - (iii) sending it by post to the Member at their registered address or the address if any supplied by the Member to the Company for the giving of notices to the Member as recorded in the register of Members; or
 - (iv) sending it by email to the Member's current email address for notices.
- (b) Where a notice is sent by post, service of the notice is taken to be effected by properly addressing, pre-paying and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, on the third day after the date of its posting, and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (c) A communication is given if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient.
- (d) For the purposes of this clause, "**business hours**" means from 9:00 am to 5:00 pm on a Business Day.
- (e) If a communication is given after 5:00pm in the place of receipt or on a day which is not a Business Day in the place of receipt, it is taken as having been given at 9:00am on the next day which is a Business Day in that place.
84. (a) Notice of every General Meeting must be given in the manner authorised by clause 83 to:
- (i) every Member except those Members for whom the Company has no registered address or other address for the giving of notices to him or her;
 - (ii) each Director; and
 - (iii) the Auditor or Auditors for the time being of the Company.

- (b) No other person is entitled to receive notices of general meetings.

Indemnity

85. Except to the extent that it is prohibited from doing so by the Act, the Company:
- (a) will indemnify every Officer and past Officer (with the exception of any Auditor) of the Company to the fullest extent permitted by law against a liability incurred by that person as an Officer of the Company or a subsidiary of the Company, including without limitation legal costs and expenses incurred in participating or being involved in or in defending Legal Proceedings;
 - (b) may pay or agree to pay a premium in respect of a contract insuring any such person against any such liability; and
 - (c) will indemnify every employee who is not an Officer out of the property of the Company against a liability:
 - (i) incurred by the employee acting in that capacity; and
 - (ii) for the costs and expenses incurred by an employee:
 - (A) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the employee or in which the person is acquitted; or
 - (B) in connection with an application, in relation to such proceedings, in which the court grants relief to the employee under the Act.

Modification or repeal of this Constitution

86. (a) This Constitution may be modified or repealed only by a special resolution of the Company in a General Meeting.
- (b) Any modification or repeal of this Constitution takes effect on the date the special resolution is passed or any later date specified, or provided for, in the resolution.

Schedule

The Precinct

