

**Constitution of  
DESTINATION GIPPSLAND LTD  
A.C.N. 131 138 184**

14 May 2020

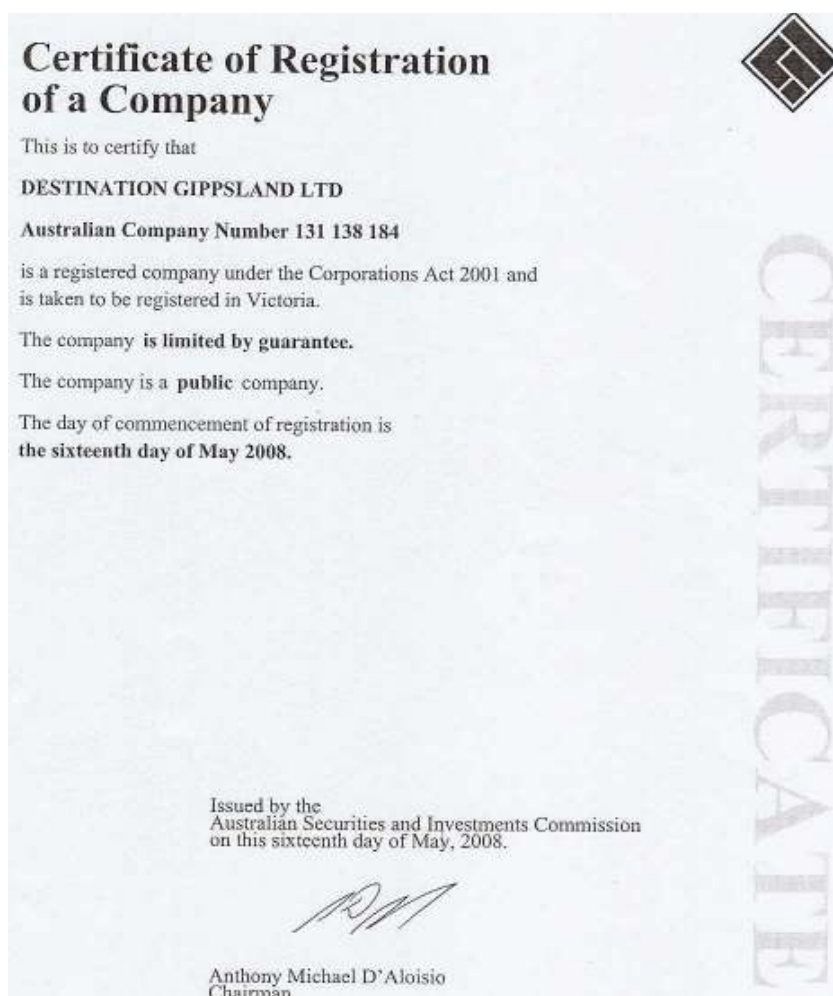
**Amendments – May 2020**

- Clause 1.5 – add definition of CEO
- Clause 1.5 – add definition of LGA
- Clause 1.5 – amend definition of “member” to mean Local Government Authority
- Clause 2.1 – amend the number of Directors to be the CEO’s of member LGAs plus not less than 6 non-member Directors
- Clause 2.7 – add sub-clause e) to note that a Director who is appointed as a consequence of being the CEO of a member LGA will cease to be Director when they cease to hold the CEO’s office with that LGA
- Clause 2.8 – amend to allow for the appointment of alternates for LGA CEO’s for any period
- Clause 2.13 – the expenses of LGA CEO Directors, and Observers, are to be met by their LGA or employer
- Clause 2.17 – Appointment of Directors shall be made by a process determined by the Board
- Clause 2.21 – remove the imperative for at least two Directors to retire each year (*this will be managed through the terms of Directors*)
- Clause 3.2 – add the power of delegation to the CEO
- Clause 5.4 – amend quorum to be 50% of Directors

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*Copy of ASIC Certificate of Registration as a Company*



## DESTINATION GIPPSLAND LTD

A.C.N. 131 138 184

## CONSTITUTION

**1. Preliminary**

1.1. The Company is a public company limited by guarantee. Each Member undertakes to contribute \$10.00 (Ten Dollars) to the property of the Company if the Company is wound up at a time when that person is a Member, or within one year of the time that the person ceased to be a Member, for payment of the debts and liabilities of the Company contracted before that person ceased to be a Member, payment of costs charges and expenses of winding up the Company, and adjustment of the rights of contributories among themselves.

1.2. The objects of the Company are: *to provide leadership and to work in partnership with the tourism industry in Gippsland to drive the development of tourism infrastructure, tourism product, and marketing.*

1.3. The Company must not make any distribution to any Members, whether by way of dividend, surplus on winding up or otherwise. This Clause does not prevent the payment in good faith by the Company of reasonable remuneration to any Member for goods or services supplied by that Member to the Company in the ordinary course of business, the payment of interest at a reasonable rate on money borrowed by the Company from any Member, the payment of reasonable rent for premises leased to the Company by any Member, or the payment of any other reasonable amount of a similar character to those described in this Clause.

1.4. The replaceable rules in the Corporations Act do not apply to the Company.

1.5. In this Constitution:

**"Alternate Director"** means a person for the time being holding office as an alternate director of the Company under Clause 2.9.

**"Business Day"** means a day except a Saturday, Sunday, or public holiday in the jurisdiction under the Corporations Act which the Company is taken to be registered.

**"Cessation Event"** means:

- (a) if a Member is an individual, death, or bankruptcy of that Member, or that Member becoming of unsound mind or becoming a person whose property is liable to be dealt with under a law about mental health; or
- (b) if a Member is a body corporate, the deregistration of that Member.

**"CEO"** means the Chief Executive Officer

Commented [HR1]: Definition added

**"Corporations Act"** means the Corporations Act, 2001 (Commonwealth), as modified or re-enacted from time to time, and where appropriate, includes any regulations issued under it.

**"Directors"** means the directors of the Company for the time being.

**"Expulsion Event"** means, in respect of a Member:

- (a) the Member has wilfully refused or neglected to comply with the provisions of this Constitution.
- (b) the conduct of the Member, in the opinion of the Directors, is unbecoming of the Member or prejudicial to the interests or reputation of the Company; or
- (c) the Member is, or any step is taken for the Member to become, an externally administered body corporate (whether or not the Member is a body corporate).

**"Legal Costs"** of a person means legal costs incurred by that person in defending an action for a Liability of that person.

**"LGA" means Local Government Authority**

**Commented [HR2]:** Definition added

**"Liability"** of a person means any liability incurred by that person as an officer of the Company or a subsidiary of the Company.

**"Member"** means a Local Government Authority that is a member of the Company.

**Commented [HR3]:** Amended from a person to Local Government Authority as these are the members of the company

**"Personal Representative"** means the legal personal representative, executor, or administrator of the estate of a deceased person.

**"Register"** means the register of Members kept under the Corporations Act and, where appropriate, includes any branch register.

**"Relevant Officer"** means a person who is, or has been, an officer of the Company (including a Director or Secretary) or an officer of a subsidiary of the Company.

**"Secretary"** means a company secretary of the Company for the time being.

**1.6.** In this Constitution:

- (a) a reference to a meeting of Members includes a meeting of any class of Members.
- (b) a Member is taken to be present at a meeting of Members if the Member is present in person or by proxy, attorney or representative; and
- (c) a reference to a notice or document in writing includes a notice or document given by fax or another form of written communication.

**1.7.** In this Constitution, unless the context indicates a contrary intention, words importing the singular include the plural (and vice versa), words indicating a gender include every other gender, and the word **"person"** includes a corporation.

**1.8.** Unless the context indicates a contrary intention, an expression in a provision of this Constitution that deals with a matter dealt with by a provision of the Corporations Act has the same meaning as in that provision of the Corporations Act and an expression in a provision of this Constitution that is defined in section 9 of the Corporations Act has the same meaning as in that section.

## **2. Directors**

**2.1.** The Company must have not less than 6 Directors excluding the CEOs of LGA members. ~~The Company in general meeting may by ordinary resolution alter the maximum or minimum number of Directors provided that the minimum is not less than 6 in addition to the LGA CEOs.~~

**Commented [HR4]:** Further amended 14 May at the request of members: Was not less than 7. Amended to be the LGA CEOs + 6 non-member Directors (sometimes known as Skills-based Directors)

**2.2.** If the number of Directors is below the minimum fixed by this Constitution, the Directors must not act except:

- (a) in emergencies.
- (b) for appointing one or more directors in order to make up a quorum for a meeting of Directors; or
- (c) to call and arrange to hold a meeting of Members.

**2.3.** The Company in general meeting may by ordinary resolution appoint any person as a Director, in accordance with the provisions of this Constitution.

**2.4.** A Director need not be a Member.

**2.5.** A Director may resign from office by giving the Company notice in writing.

**2.6.** Subject to the Corporations Act, the Company in general meeting may by ordinary resolution remove any Director, and if thought fit, appoint another person in place of that Director.

- 2.7. A Director ceases to be a Director if:
- (a) the Director becomes of unsound mind or a person whose property is liable to be dealt with under a law about mental health.
  - (b) the Director resigns or is removed under this Constitution.
  - (c) the Director becomes an insolvent under administration; or
  - (d) the Corporations Act so provides.
  - (e) In the case of a Director who is appointed as a consequence of being the CEO of a member LGA, ceases to hold that office with that LGA

**Commented [HR5]:** Sub-clause e) added to account for CEO's leaving their position with a member LGA

2.8. Appointment of Alternate Directors:

- (a) With the approval of a majority of the other Directors, a Director may appoint a person as an alternate director of that Director for any period. An Alternate Director need not be a Member.
- (b) In the case of a Director who is appointed as a consequence of being the CEO of a member LGA, they may appoint a person as an alternate director of that Director for any period.

**Commented [HR6]:** Sub-clause b) added 14 May at the request of members, allowing for the appointment of Alternates for LGA CEO's for any period

- 2.9. The appointing Director may terminate the appointment of his Alternate Director at any time. A notice of appointment, or termination of appointment, of an Alternate Director is effective only if the notice is in writing, the notice is signed by the Director who appointed that Alternate Director, and the Company is given a copy of the notice.

- 2.10. If the Director who appointed an Alternate Director is not present at a meeting of Directors, that Alternate Director may, subject to this Constitution and the Corporations Act, exercise all powers (except the power under Clause 2.8) that the appointing Director may exercise. However, an Alternate Director cannot exercise any powers of his appointing Director if that appointing Director ceases to be a Director.

- 2.11. Subject to Clause 2.13, the Company is not required to pay any remuneration to an Alternate Director.

- 2.12. The Company must not pay any fees to a Director for performing that person's duties and responsibilities as a Director. The Company must not pay any amount to a Director unless that payment has been approved by the Directors.

- 2.13. The Company must pay all reasonable travelling, accommodation and other expenses that a Director or Alternate Director properly incurs in attending meetings of Directors or any meetings of committees of Directors, in attending any meetings of Members, and in connection with the business of the Company, except in the case of LGA CEO Directors and Observers from Government Agencies – both of whose employers are expected to meet the expenses of their employees incurred in the course of attending meetings, and serving on the DGL Board.

**Commented [HR7]:** Amended to clarify that member LGAs and Observer Organisations will be responsible for the expenses of their employees serving or observing on the Board

The Board may agree to pay an annual allowance to cover these expenses except in the case of LGA CEO Directors and Observers from Government Agencies – both of whose employers are expected to meet the expenses of their employees incurred in the course of attending meetings, and serving on the DGL Board.

2.14. A Director may:

- (a) hold an office or place of profit (except as auditor) in the Company, on any terms as the Directors resolve (subject to Clause 2.12).
- (b) hold an office or otherwise be interested in any related body corporate of the Company or other body corporate in which the Company is interested; or
- (c) act, or the Director's firm may act, in any capacity for the Company (except as auditor) or any related body corporate of the Company or other body corporate in which the Company is interested,

and retain the benefits of doing so if the Director discloses in accordance with the Corporations Act the interest giving rise to those benefits.

- 2.15. Subject to the Corporations Act, if a Director discloses the interest of the Director in accordance with the Corporations Act, the Director may:
- contract or make an arrangement with the Company, or a related body corporate of the Company or a body corporate in which the Company is interested, in any matter in any capacity.
  - be counted in a quorum for a meeting of Directors considering that contractor arrangement, and vote on whether the Company enters into the contract or arrangement, and on any matter that relates to the contractor arrangement.
  - sign on behalf of the Company, or witness the fixing of the common seal of the Company (if any) to, any document in respect of the contract or arrangement; and
  - retain the benefits under the contract or arrangement.
- 2.16. The Directors may make interim Director appointments if the number of Directors falls below the threshold set out in clause 2.1. The interim appointments may be made by calling for nominations and following the process in clause 2.17 and 2.18 (modified as necessary to give efficacy to this clause) must be ratified by an ordinary resolution at the next meeting of Members. If the appointment is ratified at the general meeting, then that Director serves for the remainder of the term of the replaced Director.
- 2.17. Appointment of Directors shall be made by a process determined by the Board and enacted by a Nominations Committee. The Nominations Committee will make recommendations to the Board.
- 2.18. A sub-committee of 3 people, selected by the Chairman, will review nomination applications, including making all necessary enquiries and then make a recommendation to the Directors and the meeting of Members.
- 2.19. The nomination for Director may be accepted by an ordinary resolution at the meeting of Members.
- 2.20. Directors are appointed for terms of up to 3-years (effective from the date of the meeting of Members at which they were elected). Such terms are to be recommended by the Board.

**Commented [HR8]:** Amended from a public call for nominations with specific time frames, to allowing the Board to determine the process through a Nominations Committee

**Commented [HR9]:** Removed a clause dictating that at least two Directors must retire each year. In practice this became unworkable and led to a mis-match of Directors' terms. The change in intended to allow for a smoother transition process and better continuity. The terms of Directors is set at 3 years, at which time the Director may renominate for appointment by the Members.

### 3. Officers

- 3.1. The Directors may appoint one or more of themselves to the office of managing director for any period and on any terms the Directors resolve (subject to Clause 2.13). Subject to any agreement between the Company and a managing director, the Directors may remove or dismiss a Director from the office of managing director at any time, with or without cause. The Directors may revoke or vary the appointment of a Director to the office of managing director or any power delegated to a managing director. A person ceases to hold the office of managing director if the person ceases to be a Director.
- 3.2. The Directors may delegate any of their powers (including the power to delegate) to a managing director or the Chief Executive Officer. A managing director or CEO must exercise the powers delegated to him or her in accordance with any directions of the Directors. The exercise of a power by a managing director or CEO is as effective as if the Directors exercised the power.
- 3.3. The Directors may appoint one or more Secretaries, for any period and on any terms (including as to remuneration) the Directors resolve. Subject to any agreement between the Company and a Secretary, the Directors may remove or dismiss a Secretary at any time, with or without cause. The Directors may revoke or vary the appointment of a Secretary.
- 3.4. To the extent permitted by law, the Company may (by agreement or deed) indemnify each Relevant Officer against a Liability of that person and Legal Costs of that person. To the extent permitted by law, the Company may also make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.
- 3.5. To the extent permitted by law, the Company may pay, or agree to pay, a premium for a contract insuring a Relevant Officer against a Liability of that person and Legal Costs of that person.

**Commented [HR10]:** Added the power to delegate to a Chief Executive Officer

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#### 4. Powers of the company and directors

- 4.1. The Company may exercise in any manner permitted by the Corporations Act any power which a public company limited by guarantee may exercise under the Corporations Act. The business of the Company is managed by or under the direction of the Directors. The Directors may exercise all the powers of the Company except any powers that the Corporations Act or this Constitution requires the Company to exercise in general meeting.
- 4.2. If the Company has a common seal, the Company may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by 2 Directors, a Director and a Secretary, or a Director and another person appointed by a resolution of the Directors for that purpose.
- 4.3. The Company may execute a document without a common seal if the document is signed by 2 Directors, a Director and a Secretary, or a Director and another person appointed by a resolution of the Directors for that purpose.
- 4.4. The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with Clauses 4.2 or 4.3.
- 4.5. The Directors may resolve, generally or in a particular case, that any signature on certificates of Membership of the Company may be affixed by mechanical or other means.
- 4.6. Negotiable instruments may be signed, drawn, accepted, endorsed, or otherwise executed by or on behalf of the Company in the manner and by the persons as the Directors resolve.
- 4.7. The Directors may delegate any of their powers (including this power to delegate) to a committee of Directors, a Director, an employee of the Company, or any other person. The Directors may revoke or vary any power so delegated. A committee or delegate must exercise the powers delegated in accordance with any directions of the Directors. The exercise of a power by the committee or delegate is as effective as if the Directors exercised the power. Clauses 4.9 to 5.6 apply with the necessary changes to meetings of a committee of Directors.
- 4.8. The Directors may appoint any person to be attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) the Directors resolve. The Directors may delegate any of their powers (including the power to delegate) to an attorney or agent. The Directors may revoke or vary that appointment or any power delegated to an attorney or agent.
- 4.9. Any act done by a person as a Director or Secretary is effective even if the appointment of that person, or the continuance of that appointment, is invalid because the Company or that person did not comply with this Constitution or any provision of the Corporations Act. This Clause does not deal with the question whether an effective act by a person binds the Company in its dealings with other people or makes the Company liable to another person.

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#### 5. Meetings of directors

- 5.1. The Directors may pass a resolution without a meeting of the Directors being held if a document containing the resolution is sent to all Directors and a majority of the Directors entitled to vote on the resolution sign that document containing a statement that they are in favour of the resolution set out in the document. Separate copies of that document may be used for signing by Directors if the wording of the resolution and the statement is identical in each copy.
- 5.2. The Directors may meet, adjourn, and otherwise regulate their meetings as they think fit. A meeting of Directors may be held using any technology consented to by a majority of the Directors. A Director may only withdraw that consent within a reasonable period of time before the meeting. Any Director may call a meeting of Directors at any time. On request of any Director, a Secretary of the Company must call a meeting of the Directors.



5.3. Reasonable notice of a meeting of Directors must be given to each Director and Alternate Director.

5.4. A quorum for a meeting of Directors must be present at all times during the meeting. Subject to the Corporations Act, a quorum for a meeting of Directors is, if the Directors have fixed a number for the quorum, that number of Directors, and in any other case, 50% of Directors entitled to vote on a resolution that may be proposed at that meeting. In determining whether a quorum for a meeting of Directors is present:

**Commented [HR11]:** Amended quorum for a meeting of Directors from 4 Directors, to 50%

- (a) where a Director has appointed an Alternate Director, that Alternate Director is counted if the appointing Director is not present.
- (b) where a person is present as Director and an Alternate Director for another Director, that person is counted separately provided that there is at least one other Director or Alternate Director present; and
- (c) where a person is present as an Alternate Director for more than one Director, that person is counted separately for each appointment provided that there is at least one other Director or Alternate Director present.

5.5. If there are not enough persons to form a quorum for a meeting of Directors, one or more of the Directors (including those who have an interest in a matter being considered at that meeting) may call a general meeting and the general meeting may pass a resolution to deal with the matter.

5.6. The Directors may appoint a Director to the office of chairperson of Directors for any period they resolve, or if no period is specified, until that person ceases to be a Director. The Directors may remove a Director from the office of chairperson of Directors at any time.

5.7. The chairperson of Directors must (if present within 5 minutes after the time appointed for the holding of the meeting and willing to act) chair each meeting of Directors. If there is no chairperson of Directors, or the chairperson of Directors is not present within 5 minutes after the time appointed for the holding of a meeting of Directors or is present within that time but is not willing to chair all or part of that meeting, then the Directors present must elect one of themselves to chair all or part of the meeting of Directors.

5.8. A resolution of Directors is passed if more votes are cast in favour of the resolution than against it. Subject to Clause 2.16 and this Clause, each Director has one vote on a matter arising at a meeting of the Directors. In determining the number of votes a Director has on a matter arising at a meeting of Directors:

- (a) where a person is present as Director and an Alternate Director for another Director, that person has one vote as a Director and, subject to Clause 2.11, one vote as an Alternate Director; and
- (b) where a person is present as an Alternate Director for more than one Director, that person has, subject to Clause 2.11, one vote for each appointment.

5.9. Subject to the Corporations Act, in case of an equality of votes on a resolution at a meeting of Directors, the chairperson of that meeting has a casting vote on that resolution in addition to any vote the chairperson has in his capacity as a Director in respect of that resolution.

## 6. Meetings of members

6.1. While the Company has only one Member, the Company may pass a resolution by that Member signing a record in writing of that resolution.

6.2. Subject to the Corporations Act, the Directors may call a meeting of Members. The Directors must call and arrange to hold a general meeting on the request of Members, and the Members may call and arrange to hold a general meeting, as provided by the Corporations Act.

6.3. The Company must hold an annual general meeting if required by, and in accordance with, the Corporations Act.

- 6.4.** Subject to the Corporations Act, the Company must give not less than 21 days' notice of a meeting of Members. The Company may call an annual general meeting on shorter notice if all Members entitled to attend and vote at the annual general meeting agree beforehand. The Company may call a general meeting (not being an annual general meeting) on shorter notice if Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 6.5.** Notice of a meeting of Members must be given to each Member, each Director, each Alternate Director, and any auditor of the Company.
- 6.6.** A notice of a meeting of Members must:
- (a) set out the place, date and time for the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this).
  - (b) state the general nature of the business of the meeting; and
  - (c) set out or include any other information or documents specified by the Corporations Act.
- 6.7.** Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Members is not invalid if either or both:
- (a) a person does not receive notice of the meeting; or
  - (b) the Company accidentally does not give notice of the meeting to a person.
- 6.8.** A meeting of Members may be held in 2 or more places linked together by any technology that gives the Members as a whole in those places a reasonable opportunity to participate in proceedings, enables the chairperson to be aware of proceedings in each place, and enables the Members in each place to vote on a show of hands and on a poll.
- 6.9.** Each Member and any auditor of the Company are entitled to attend any meetings of Members. Subject to this Constitution, each Director is entitled to attend and speak at all meetings of Members.
- 6.10.** A quorum for a meeting of Members must be present at all times during the meeting. A quorum for a meeting of Members is 2 Members (or in the case of 1 Member, that member only) entitled to vote at that meeting. In determining whether a quorum for a meeting of Members is present:
- (a) where more than one proxy, attorney, or representative of a Member is present, only one of those persons is counted.
  - (b) where a person is present as a Member and as a proxy, attorney or representative of another Member, that person is counted separately for each appointment provided that there is at least one other Member present; and
  - (c) where a person is present as a proxy, attorney or representative for more than one Member, that person is counted separately for each appointment provided that there is at least one other Member present.
- 6.11.** If a quorum is not present within 15 minutes after the time appointed for a meeting of Members:
- (a) if the meeting was called by the Directors at the request of Members or was called by the Members, the meeting is dissolved; and
  - (b) any other meeting is adjourned to the date, time, and place as the Directors may by notice to the Members appoint, or failing any appointment, to the same day in the next week at the same time and place as the meeting adjourned.
- 6.12.** If a quorum is not present within 15 minutes after the time appointed for an adjourned meeting of Members, the meeting is dissolved.

- 6.13.** The chairperson of Directors must (if present within 15 minutes after the time appointed for the holding of the meeting and willing to act) chair each meeting of Members. If at a meeting of Members, there is no chairperson of Directors, or the chairperson of Directors is not present within 15 minutes after the time appointed for the holding of a meeting of Members, or is present within that time but is not willing to chair all or part of that meeting, the Members present must elect another person present and willing to act to chair all or part of that meeting.
- 6.14.** Subject to the Corporations Act, the chairperson of a meeting of Members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- 6.15.** Subject to the Corporations Act, a resolution is passed if more votes are cast in favour of the resolution by Members entitled to vote on the resolution than against the resolution. Unless a poll is requested in accordance with Clauses 6.17 and 6.18, a resolution put to the vote at a meeting of Members must be decided on a show of hands.
- 6.16.** A declaration by the chairperson of a meeting of Members that a resolution on a show of hands is passed, passed by a particular majority, or not passed, and a record of that declaration in the minutes of the meeting, is sufficient evidence of that fact, unless proved incorrect.
- 6.17.** A poll may be demanded on any resolution at a meeting of Members. A poll may be demanded by at least 5 Members present and entitled to vote on that resolution, one or more Members present, and who are together entitled to at least 5% of the votes that may be cast on that resolution on a poll, or the chairperson of that meeting. A poll may be demanded before a vote on that resolution is taken, or before or immediately after the results of the vote on that resolution on a show of hands are declared. A demand for a poll may be withdrawn.
- 6.18.** A poll demanded on a resolution at a meeting of Members for the election of a chairperson of that meeting or the adjournment of that meeting must be taken immediately. A poll demanded on any other resolution must be taken in the manner and at the time and place the chairperson directs. The result of a poll demanded on a resolution of a meeting of Members is a resolution of that meeting. A demand for a poll on a resolution of a meeting of Members does not prevent the continuance of that meeting or that meeting dealing with any other business.
- 6.19.** Subject to the Corporations Act, the chairperson may adjourn a meeting of Members to any day, time, and place, and must adjourn a meeting of Members if the Members present with a majority of votes that may be cast at that meeting agree or direct the chairperson to do so. The chairperson may adjourn that meeting to any day, time, and place. The Company is only required to give notice of a meeting of Members resumed from an adjourned meeting if the period of adjournment exceeds 21 days. Only business left unfinished is to be transacted at a meeting of Members resumed after an adjournment.
- 6.20.** Subject to the Corporations Act, the Directors may at any time postpone or cancel a meeting of Members by giving notice not less than 5 Business Days before the time at which the meeting was to be held to each person who is, at the date of the notice a Member, a Director or Alternate Director; or auditor of the Company. A general meeting called by the Directors at the request of Members or called by the Members must not be cancelled by the Directors without the consent of the Members who requested or called the meeting.
- 6.21.** Subject to this Constitution and any rights or restrictions attached to a class of Membership, at a meeting of Members, every Member present has one vote on a show of hands and on a poll.
- 6.22.** In the case of an equality of votes on a resolution at a meeting of Members, the chairperson of that meeting does not have a casting vote on that resolution either on a show of hands or on a poll.

- 6.23.** A Member present at a meeting of Members is not entitled to vote on any resolution if any fees or any other amount due and payable by that Member to the Company under this Constitution have not been paid, or where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction. The Company must disregard any vote on a resolution purported to be cast by a Member present at a meeting of Members where that person is not entitled to vote on that resolution.
- 6.24.** The authority of a proxy or attorney for a Member to speak or vote at a meeting of Members is suspended while the Member is present in person at that meeting.
- 6.25.** An objection to the qualification of any person to vote at a meeting of Members may only be made at that meeting (or any resumed meeting if that meeting is adjourned), to the chairperson of that meeting. Any objection must be decided by the chairperson of the meeting of Members, whose decision, made in good faith, is final and conclusive.
- 6.26.** A Member, who is entitled to attend and cast a vote at a meeting of Members, may vote on a show of hands and on a poll:
- (a) in person or, if the Member is a body corporate, by its representative appointed in accordance with the Corporations Act; or
  - (b) by not more than one proxy or by not more than one attorney.
- 6.27.** A proxy, attorney, or representative of a Member need not be a Member. A Member may appoint a proxy, attorney, or representative for all or any number of meetings of Members, or a particular meeting of Members.
- 6.28.** An instrument appointing an attorney or representative must be in a form as the Directors may prescribe or accept. An instrument appointing a proxy is valid if it is signed by the Member making the appointment and contains the name and address of that Member, the name of the Company, the name of the proxy or the name of the office of the proxy, and the meetings of Members at which the proxy may be used. The chairperson of a meeting of Members may determine that an instrument appointing a proxy is valid even if it contains only some of this information.
- 6.29.** Subject to the Corporations Act, the decision of the chairperson of a meeting of Members as to the validity of an instrument appointing a proxy, attorney or representative is final and conclusive.
- 6.30.** If the name of the proxy or the name of the office of the proxy in a proxy form of a Member is not filled in, the proxy of that Member is the person specified by the Company in the form of proxy in the case the Member does not choose, or if no person is so specified, the chairperson of that meeting.
- 6.31.** A Member may specify the manner in which a proxy or attorney is to vote on a particular resolution at a meeting of Members. The appointment of a proxy or attorney by a Member may specify the proportion or number of the Member's votes that the proxy or attorney may exercise.
- 6.32.** Unless otherwise provided in the Corporations Act or in the appointment, a proxy or attorney may demand or join in demanding a poll on any resolution at a meeting of Members on which the proxy or attorney may vote.
- 6.33.** An appointment of proxy or attorney for a meeting of Members is effective only if the Company receives the appointment (and any authority under which the appointment was signed or a certified copy of the authority) before the time scheduled for commencement of that meeting (or any adjournment of that meeting).
- 6.34.** Unless the Company has received notice in writing of the matter before the time scheduled for the commencement of a meeting of Members, a vote cast at that meeting by a person appointed by a Member as a proxy, attorney or representative is, subject to this Constitution, valid even if, before the person votes there is a Transmission Event in respect of that Member, that Member revokes the appointment of that person or that Member revokes the authority under which the person was appointed by a third party.

## 7. Members

- 7.1. Any person is eligible to apply to become a Member. Each applicant to become a Member must sign and deliver to the Company an application in the form which the Directors determine and pay any initial fee which the Directors determine. The Directors determine whether an applicant may become a Member. The Directors are not required to give any reason for the rejection of any application to become a Member.
- 7.2. If an application to become a Member is accepted, the Company must give written notice of the acceptance to the applicant and enter the applicant's name in the Register. If an application to become a Member is rejected, the Company must give written notice of the rejection to the applicant and refund in full the fee (if any) paid by the applicant.
- 7.3. The rights of being a Member are not transferable whether by operation of law or otherwise.
- 7.4. A person will cease to be a Member if the Member resigns in accordance with Clause 7.5, if the Member is expelled under Clause 7.6 or Clause 7.7 or if a Cessation Event occurs in respect of that Member. The estate of a deceased Member is not released from any liability in respect of that person being a Member.
- 7.5. A Member may resign as a Member by giving the Company notice in writing. Unless the notice provides otherwise, a resignation by a Member takes effect immediately on the giving of that notice to the Company.
- 7.6. Subject to Clause 7.8, the Directors may resolve to expel a Member if:
  - (a) an Expulsion Event occurs in respect of the Member; and
  - (b) the Company gives that Member at least 10 Business Days' notice in writing stating the Expulsion Event and that the Member is liable to be expelled and informing the Member of its right under Clause 7.8.
- 7.7. The Directors may resolve to expel a Member if the Member does not pay a fee payable by the Member pursuant to this Constitution within 20 Business Days after the due date for its payment.
- 7.8. Before the passing of any resolution under Clause 7.6, a Member is entitled to give the Directors, either orally or in writing, any explanation or defence of the Expulsion Event the Member may think fit.
- 7.9. Where a resolution is passed under Clause 7.6 or 7.7, the Company must give that Member notice in writing of the expulsion within 10 Business Days of the resolution.
- 7.10. A Member may by notice in writing to the Company within 10 Business Days of receipt of the notice referred to in Clause 7.9 request that a resolution under Clause 7.6 be reviewed by the Company at the next general meeting. If such a request is made, the Directors must propose at the next general meeting of the Company that a resolution be moved to confirm the expulsion of the Member concerned.
- 7.11. A resolution under Clause 7.6 takes effect:
  - (a) if the Member gives a notice under Clause 7.10, the date (if any) the resolution is confirmed by a general meeting of the Company; or
  - (b) if the Member does not give a notice under Clause 7.10, the date of the resolution.
- 7.12. A resolution under Clause 7.7 takes effect on the date of the resolution.
- 7.13. The Directors may reinstate an expelled Member on any terms and at any time as the Directors resolve, including a requirement that all amounts due but unpaid by the expelled Member are paid.

7.14. Subject to the Corporations Act and the terms of a particular class of Membership, the Company may vary or cancel rights attached to being a Member of that class, or convert a Member from one class to another, by special resolution of the Company and either:

- (a) a special resolution passed at a meeting of the Members included in that class; or
- (b) the written consent of Members who are entitled to at least 75% of the votes that maybe cast in respect of Membership of that class.

The provisions in this Constitution concerning meetings of Members (with the necessary changes) apply to a meeting held under Clause 97.14 (a).

7.15. The Company may issue to each Member, free of charge, one certificate evidencing that person as a Member.

7.16. The Company may issue a replacement certificate of being a Member if the Company receives and cancels the existing certificate, or the Company is satisfied that the existing certificate is lost or destroyed, and the Member pays any fee as the Directors resolve.

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#### 8. Fees

8.1. The Directors may require the payment of fees or levies by Members in the amounts and at the times as the Directors resolve. The Directors may make fees payable for one or more Members for different amounts and at different times, and subject to the terms of Membership payable by instalments. The Directors may revoke or postpone fees or extend the time for payment of fees.

8.2. The Company must give Members at least 10 Business Days' notice of fees payable by Members. A notice of fees must be in writing and specify the amount of the fee, and the time and place of payment of the fee. A fee is not invalid if a Member does not receive notice of the fee.

8.3. A Member must pay to the Company the amount of each fee made on the Member at the times and places specified in the notice of the fee. If a fee is payable in one or more fixed amounts on one or more fixed dates, the Member must pay to the Company those amounts on those dates.

8.4. A Member must pay to the Company interest at the rate of 10% per annum on any amount referred to in Clause 8.3 which is not paid on or before the time appointed for its payment, from the time appointed for payment to the time of the actual payment, and expenses incurred by the Company because of the failure to pay or late payment of that amount. The Directors may waive payment of all or any part of an amount payable under this Clause 8.4.

8.5. The Company may recover an amount due and payable under Clauses 8.3 and 8.4 from a Member by commencing legal action against the Member for all or part of the amount due.

8.6. The debt due in respect of an amount payable under Clauses 8.3 and 8.4 is sufficiently proved by evidence that the name of the Member sued is entered in the Register and there is a record in the minute books of the Company of the resolution requiring payment of the fee or the fixed amount referred to in Clause 8.3.

8.7. The Company may accept from any Member all or any part of fees payable before that amount is due and payable. The Company may pay interest at any rate the Directors resolve on the amount paid before it is due and payable (from the date of payment until and including the date the amount becomes actually payable) and the Company may repay the amount so paid to that Member.

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**9. Notices and payments**

- 9.1. The Company may give notice to a Member in person, by sending it by post to the address of the Member in the Register or the alternative address (if any) nominated by that Member, or by sending it to the fax number or electronic address (if any) nominated by that Member.
- 9.2. A notice of meeting sent by post to an address within Australia is taken to be given one Business Day after it is posted, or where to an address outside Australia, is taken to be given 5 Business Days after it is posted. Any other notice sent by post is taken to be given at the time of which the notice would be delivered in the ordinary course of post. A notice sent by fax is taken to be given on the Business Day it is sent, provided that the sender's transmission report shows that the whole notice was sent to the correct fax number.
- 9.3. The giving of a notice by post is sufficiently proved by evidence that the notice was addressed to the correct address of the recipient and was placed in the post.
- 9.4. The Directors may decide, generally or in a particular case, that a notice given by the Company be signed by mechanical or other means.
- 9.5. The Company may pay a person entitled to an amount payable in respect of Membership by crediting an account nominated in writing by that person, by cheque made payable to bearer, to the person entitled to the amount or any other person the person entitled directs in writing, or by any other manner as the Directors resolve. The Company may post a cheque under this Clause to the address in the Register of the Member or to any other address which that person directs in writing.

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**10. Records**

- 10.1. The Company must keep minute books in which it records within one month:
  - (a) proceedings and resolutions of meetings of Members.
  - (b) proceedings and resolutions of meetings of the Directors (including meetings of committees of Directors).
  - (c) resolutions passed by Members without a meeting; and
  - (d) resolutions passed by the Directors without a meeting.
- 10.2. The Company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by the chairperson of that meeting or the chairperson of the next meeting. The Company must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after that resolution is passed. A minute recorded and signed in accordance with this Clause is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.
- 10.3. The Company must establish and administer the Register in accordance with the Corporations Act. The Company may establish and administer a branch register of Members in accordance with the Corporations Act. The Company must allow inspection of the Register only as required by the Corporations Act. Unless proved incorrect, the Register is sufficient evidence of the matters shown in the Register.
- 10.4. The Company must keep the financial records required by the Corporations Act.
- 10.5. Unless authorised by a resolution of Directors or the Corporations Act, a Member is not entitled to inspect the books of the Company.
- 10.6.

**11. Accounts**

- 11.1. The Board shall cause proper accounting and other records to be kept and shall distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) accompanied by a copy of the Auditors report as required by the Law to every member.
- 11.2. The Board shall cause to be made out and laid before each Annual General Meeting a balance sheet and profit and loss account made up to the end of the Company's financial year but in no case shall that date be more than five months before the date of the meeting.
- 11.3. The Board shall from time to time determine at what times and places and under what conditions or regulations the accounting and other records of the Company shall be open to the inspection of members provided that all members shall have reasonable opportunity to inspect those records.

**12. Audit**

A properly qualified Auditor or Auditors shall be appointed by the Board and his or her duties will be regulated in accordance with the Law.

**13. Winding up**

- 13.1. On a winding up of the Company, the Members must determine one or more companies, associations or institutions whose constitution:
- (a) requires it to pursue only objects similar to those in Clause 1.2 and to apply its income in promoting those objects.
  - (b) prohibits it from making distributions to its members to at least the same extent as in Clause 1.3; and
  - (c) if a company, prohibits it from paying fees to its directors and requires its directors to approve all other payments the company makes to its directors,
- to whom the liquidator must give or transfer any surplus on winding up.
- 13.2. If the Members fail to make a determination under Clause 11.1 within 20 Business Days of the winding up of the Company, the liquidator must make an application to the Supreme Court in the jurisdiction the Company is taken to be registered to make that determination.

The following person(s), being the person(s) who consented to become a subscriber of the Company in the application for the registration of the Company, agree to the terms of this Constitution.

| Name | Signature |
|------|-----------|
|------|-----------|

*(original signed by Glenn Patterson – copy overleaf)*

**Baw Baw Shire Council**


**(Original) DATE:** 16<sup>th</sup> day of May 2008  
*(Original overleaf)*



**Copy of original signature page***(previously Clause 115) as signed by Glenn Patterson, CEO Baw Baw Shire Council***Winding up**

115. On a winding up of the Company, the Members must determine one or more companies, associations or institutions whose constitution:
- (a) requires it to pursue only objects similar to those in Clause 2 and to apply its income in promoting those objects;
  - (b) prohibits it from making distributions to its members to at least the same extent as in Clause 3; and
  - (c) if a company, prohibits it from paying fees to its directors and requires its directors to approve all other payments the company makes to its directors.
- to whom the liquidator must give or transfer any surplus on winding up.
116. If the Members fail to make a determination under Clause 115 within 20 Business Days of the winding up of the Company, the liquidator must make an application to the Supreme Court in the jurisdiction the Company is taken to be registered to make that determination.

The following person(s), being the person(s) who consented to become a subscribers of the Company in the application for the registration of the Company, agree to the terms of this Constitution.

|      |                 |           |   |
|------|-----------------|-----------|---|
| Name | Glenn Patterson | Signature |  |
|------|-----------------|-----------|---|

Baw Baw Shire Council

DATE: 16<sup>th</sup> day of May 2008



Helen Rose  
Company Secretary  
30.4.2020