



Constitution of Theodore Water Pty Ltd ACN 615 708 944

This is the proposed constitution for Theodore Water Pty Ltd to apply following any transfer of the Irrigation Network to Theodore Water Pty Ltd.

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Theodore Water Pty Ltd, ACN 615 708 944

Constitution

Preliminary

1. Definitions

In this Constitution:

Allocation means, in relation to a person, the nominal volume of the following water allocations of which they are the holder:

- (a) a Medium A priority allocation;
- (b) a High priority allocation; or
- (c) where the context requires, a Medium A priority allocation and a High priority allocation.

Annual General Meeting has the meaning given in Article 21(a).

Associate:

- (a) has the meaning given in sections 12 and 16 of the Corporations Act; and
- (b) includes, in respect of a reference to an associate of a person:
 - (i) a spouse or child of the person;
 - (ii) a child of the person's spouse;
 - (iii) a dependant of the person or the person's spouse;
 - (iv) anyone else who is one of the person's family and may be expected to influence the person, or be influenced by the person, in the person's dealings with the Company; and
 - (v) an entity that the person Controls.

Attending Shareholder means, in relation to a meeting of Shareholders, a Shareholder present at the place of the meeting, in person or by proxy, by attorney or, where the Shareholder is a body corporate, by Corporate Representative.

Board means the Directors of the Company from time to time.

Charges has the meaning given in the Supply Contract.

Company means Theodore Water Pty Ltd ACN 615 708 944.

Control has the meaning given in section 50AA of the Corporations Act.

Corporate Representative means a person authorised in accordance with the Corporations Act (or a corresponding previous law) by a Shareholder which is a body corporate to act as its representative at a meeting of Shareholders.

Corporations Act means the *Corporations Act 2001* (Cth).

Default Rate means the interest rate per annum that is the sum of 3% and the rate advised by the bank nominated by the Company as an equivalent rate charged by that bank for overdrafts in excess of \$100,000.

Director means a person who is, for the time being, a director of the Company including, where appropriate, an alternate director of the Company.

DOL means a distribution operations licence issued under the *Water Act 2000* (Qld).

Entitlement has the meaning given in Article 7.2(a).

Fitzroy Water Plan means the Water Plan (Fitzroy Basin) 2011 (Qld), as amended or substituted from time to time, including by operation of sections 1259(2)(a) and 1264 of the *Water Act 2000* (Qld).

High priority allocation means a High priority water allocation in zone Dawson I, as that zone is defined in the Fitzroy Water Plan, which is distributed under the DOL held by the Company.

Independent Director means a person who is not eligible to be a Shareholder Director at the time of their appointment or election.

Jointly Held means, in relation to a Share, a Share which the Register records 2 or more persons as the holders of that Share.

Legal Costs of a person means legal costs calculated on a solicitor-and-client basis incurred by that person in defending or resisting any proceedings (whether criminal, civil, administrative or judicial), appearing before or responding to actions taken by any court, tribunal, government authority or agency, other body or commission, a liquidator, an administrator, a trustee in bankruptcy or other authorised official, where that proceeding, appearance or response relates to a Liability of that person.

Liability of a person means any liability including negligence (except a liability for legal costs) incurred by that person in or arising out of the discharge of duties as an officer of the Company or in or arising out of the conduct of the business of the Company, including as result of appointment or nomination by the Company or a subsidiary as a trustee or as a director, officer or employee of another body corporate.

Medium A priority allocation means a Medium A priority water allocation in zone Dawson I, as that zone is defined in the Fitzroy Water Plan, which is distributed under the DOL held by the Company.

Notice means a notice given pursuant to, or for the purposes of, this Constitution or the Corporations Act.

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

Register means the register of Shareholders kept pursuant to the Corporations Act and, where appropriate, includes any branch register.

Relevant Officer means a person who is, or has been, a Director or Secretary.

Relevant Shares has the meaning given in Article 7.5.

Secretary means a person appointed as, or to perform the duties of, secretary of the Company for the time being.

Share means a share in the capital of the Company.

Shareholder means a person whose name is entered in the Register as the holder of a Share and **registered holder** has a corresponding meaning.

Shareholder Director means a Director who is a Shareholder, or who is a director, secretary, employee or shareholder of a Shareholder that is a body corporate, or a unitholder or beneficiary of a Shareholder which holds its shares as a trustee, or any other person who is nominated (with their consent) by a Shareholder to be a Shareholder Director.

Special Majority Resolution means a resolution passed by at least 75% of the votes cast by Shareholders entitled to vote on the resolution.

Strategic Asset Management Plan has the meaning given in Article 6(a).

Supply Contract means the Distribution Contract: Theodore Channel Scheme between the Company and Shareholders (as customers) setting out the terms and conditions on which the Company provides distribution services and other services to customers, as amended, varied or replaced from time to time.

Theodore Channel Irrigation Scheme means the distribution system used to supply water under water allocations to customers who purchase irrigation services in the Dawson Valley water supply scheme, which, for the purposes of this definition, comprises the irrigation infrastructure by which water is supplied from Theodore Weir to those customers.

Transmission Event means:

- (a) if a Shareholder is an individual, the death or bankruptcy of that Shareholder or that Shareholder becoming of unsound mind or becoming a person whose property is liable to be dealt with pursuant to a law about mental health; or
- (b) if a Shareholder is a body corporate, the deregistration of that Shareholder pursuant to the laws of the jurisdiction of its registration or the succession by another body corporate to the assets and liabilities of the Shareholder.

2. Interpretation

Headings are for convenience only and do not affect interpretation. Unless the context indicates a contrary intention, in this Constitution:

- (a) a reference to a **person** includes an individual, the estate of an individual, a corporation, a regulatory authority, an incorporated or unincorporated association or parties in a joint venture, a partnership and a trust;
- (b) a word importing the singular includes the plural (and vice versa);
- (c) a word indicating a gender includes every other gender;
- (d) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) the word "includes" in any form is not a word of limitation;
- (f) a reference to a partly paid Share is a reference to a Share on which there is an amount unpaid;
- (g) a reference to a call or an amount called in respect of a Share includes an amount that, by the terms of issue of a Share or otherwise, is payable at one or more fixed times;
- (h) a reference to something being "written" or "in writing" includes that thing being represented or reproduced in any mode in a visible form;
- (i) a notice or document required by this Constitution to be signed may be authenticated by any other manner permitted by the Corporations Act or any other law;

- (j) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements; and
- (k) a reference to the “holder” of a water allocation is to the holder of the water allocation registered on the water allocations register administered by the Queensland Land Titles Registry, and does not include a person who receives a temporary transfer or seasonal assignment of a water allocation or who leases or receives an assignment of land irrigated by a water allocation where that water allocation continues to be held by the same water allocation holder.

3. Application of Corporations Act

- (a) Unless the context indicates a contrary intention, in this Constitution:
 - (i) a reference to the Corporations Act is to the Corporations Act in force in relation to the Company after taking into account any waiver, modification or exemption which is in force either generally or in relation to the Company;
 - (ii) a word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Corporations Act, unless that word or phrase is otherwise defined in this Constitution.
- (b) The replaceable rules in the Corporations Act (other than section 249X of the Corporations Act) do not apply to the Company.

4. Enforcement

- (a) Each Shareholder submits to the non-exclusive jurisdiction of the courts of Queensland, the Federal Court of Australia and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to this Constitution.
- (b) If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect pursuant to the law of any jurisdiction, then that does not affect or impair:
 - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
 - (ii) the legality, validity or enforceability pursuant to the law of any other jurisdiction of that or any other provision of this Constitution.

5. Objects

- (a) The objects of the Company are to:
 - (i) own, operate and maintain the Theodore Channel Irrigation Scheme;
 - (ii) provide irrigation services, water transportation services and drainage services to customers;
 - (iii) purchase, sell, transfer or lease water allocations distributed under the DOL for the Theodore Channel Irrigation Scheme, or to facilitate the purchase, sale, transfer or lease of such water allocations;

- (iv) plan and provide for the renewal and refurbishment of the Theodore Channel Irrigation Scheme infrastructure, plant and equipment to meet anticipated future requirements; and
 - (v) do all such other lawful things as are incidental or conducive to (and for the purpose of) the attainment of any of the above objects.
- (b) The assets and income of the Company shall be applied solely in furtherance of its above-mentioned objects and no portion shall be distributed directly or indirectly to the Shareholders of the Company except as bona fide compensation for services rendered or expenses incurred on behalf of the Company.

6. Strategic Asset Management Plan

- (a) Every year, or such lesser period as the Board determines from time to time, the Board must review the Company's plans for managing the Company's strategic assets for the subsequent five year period (**Strategic Asset Management Plan**) and submit a new or revised Strategic Asset Management Plan to the following Annual General Meeting for approval in accordance with Article 33(e).
- (b) If a Strategic Asset Management Plan is not approved by the necessary majority at a particular Annual General Meeting then the most recently approved Strategic Asset Management Plan continues to apply for the periods to which it relates and, if the period of that most recently approved Strategic Asset Management Plan expires without a replacement Strategic Asset Management Plan being approved in accordance with Article 33(e), the Board may adopt an interim Strategic Asset Management Plan for the period up to the next Annual General Meeting.

Capital

7. Eligibility for Shareholding and Entitlements

7.1 Eligibility to be a Shareholder

A person is only eligible to be a Shareholder if they are the holder of an Allocation.

7.2 Entitlement

- (a) A holder of an Allocation is permitted to hold one ordinary Share for every megalitre of the total Allocation held by that person (**Entitlement**).
- (b) A person's Entitlement will vary with any changes to the size of their Allocation from time to time.

7.3 Shareholding limit

A person and their Associates must not together hold more than 35% of the Shares at any time.

7.4 Persons holding less than their Entitlement

Where:

- (a) a new Allocation is granted in or permanently transferred into the Theodore Channel Irrigation Scheme (including where a different priority allocation is converted into a Medium A or High priority allocation) and the holder of the new Allocation wishes to hold Shares in respect of that Allocation;
- (b) a person holds or acquires an Allocation in the Theodore Channel Irrigation Scheme and the holder of that Allocation wishes to hold Shares in respect of that

Allocation (including where they already hold the Allocation but do not hold their full Entitlement relating to that Allocation); or

- (c) an existing holder of an Allocation who does not already hold Shares, or the transferee of an Allocation in respect of which the transferor did not hold Shares, wishes to become a Shareholder,

the holder of the relevant Allocation may apply to the Company for the issue or transfer of fully paid ordinary Shares up to their Entitlement and the Company will (at the Board's discretion) issue and/or procure the transfer of the relevant number of fully paid ordinary Shares to the holder of that Allocation for no issue or purchase price.

7.5 Dealing with Relevant Shares

Where:

- (a) an Allocation is surrendered or permanently transferred out of the Theodore Channel Irrigation Scheme (including where a Medium A or High priority allocation is converted into a different priority allocation) and the Shareholder holds Shares in respect of that Allocation (**Relevant Shares**); or
- (b) a holder of Shares proposes to permanently transfer some or all of their Allocation to another person and the transferee of the Allocation does not wish to acquire the corresponding number of Shares (**Relevant Shares**);
- (c) at any time, the number of Shares held by a person exceeds their Entitlement (the **Relevant Shares** being the number of Shares held in excess of their Entitlement);
- (d) at any time, the number of Shares held by the person and their Associates together exceeds the limit in Article 7.3 (the **Relevant Shares** being the number of Shares held in excess of that limit and which were most recently acquired); or
- (e) the holder of Shares in respect of an Allocation no longer wishes to hold those Shares (**Relevant Shares**);
- (f) the Shareholder has failed to pay any Charges to the Company under the Supply Contract between the Shareholder and the Company for more than:
 - (i) 90 days after those Charges become due and payable; or
 - (ii) 12 months after those Charges become due and payable,(all of the Shareholder's Shares being the **Relevant Shares**),

then upon:

- (g) the Shareholder ceasing to hold the relevant Allocation or exceeding their Entitlement;
- (h) the limit in Article 7.3 being exceeded;
- (i) the circumstances in Article 7.5(f) occur; or
- (j) the Shareholder giving notice in writing to the Company that they no longer wish to hold Shares, (as applicable),

and while those circumstances exist:

- (k) all rights (including the right to vote) attaching to the Relevant Shares are suspended (but in the circumstances in Article 7.5(f)(i), only if the Board so determines in its discretion); and

- (l) except in the circumstances in Article 7.5(f)(i), at the discretion of the Board, the Board may at any time:
 - (i) direct the relevant Shareholder or Associate (as applicable) in writing to transfer any or all of the Relevant Shares to another person who is eligible to hold them;
 - (ii) direct that any or all of the Relevant Shares be bought-back or cancelled under Article 12(c); or
 - (iii) determine that any or all of the Relevant Shares be forfeited under Article 13,in each case for no cash consideration.

7.6 No requirement for holder of an Allocation to be a Shareholder or to hold their Entitlement

A person who is the holder of an Allocation is not required to hold any Shares in the Company but may hold any number of ordinary Shares up to their Entitlement and any number of other securities determined by the Board from time to time.

8. Issue of securities

- (a) Subject to the Corporations Act, this Constitution and any rights and restrictions attached to a class of Shares or other securities, the Company may, by resolution of the Board, issue Shares, options to acquire Shares, and other securities with rights of conversion to Shares on any terms, to any person, at any time and for any consideration, as the Board resolves.
- (b) The Company may issue preference Shares (including those which may be, or at the option of either or both the Company and the holder are, liable to be redeemed) and may convert any issued Shares into preference Shares, if the rights of the holders of the preference Shares are as approved in accordance with the Corporations Act.
- (c) The Company must not issue Shares to a person:
 - (i) who is not eligible to hold Shares under the terms of this Constitution; or
 - (ii) if upon issue:
 - A. the person would hold more ordinary Shares than their Entitlement;
 - B. the number of Shareholders would exceed the maximum number specified by the Corporations Act for a proprietary company; or
 - C. the Company is aware that any person and their Associates would hold more than 35% of the Shares at any time.

9. Call on Shares

9.1 Power to make calls

Subject to the Corporations Act, this Constitution and the terms on which the Shares are on issue, the Board may make a call or calls on any Shareholder in respect of any amount unpaid on any Share held by that Shareholder.

9.2 Date of call and number of payments

- (a) Subject to the terms on which the Shares are on issue, a call is made on the date the Board resolves to make a call or, where the date of any call is specified in terms on which the Shares are on issue, on the date the Board allots the Shares.
- (b) Subject to the terms on which the Shares are on issue, a call may be payable in one payment or in instalments.

9.3 Notice of call

- (a) Subject to the terms on which the Shares are on issue, at least 14 days' notice must be given to the Shareholder of the date on which the amount of the call or the instalment of the call must be paid.
- (b) Subject to the terms on which the Shares are on issue, the notice must state:
 - (i) the amount of the call or, as the case may be, the amount of each instalment;
 - (ii) the date (or dates) for payment;
 - (iii) the time (or times) for payment;
 - (iv) the place (or places) for payment;
 - (v) that interest is payable if payment is not made on or before the date (or dates) for payment; and
 - (vi) that a lien will arise if the amount of the call or the instalment is not paid in accordance with the notice.
- (c) Any unintentional omission or error in giving or not giving notice of a call or the non-receipt of notice of a call by any person entitled to receive notice does not invalidate the call.

9.4 Revocation, postponement or extension of calls

Subject to the terms on which the Shares are on issue, before the Company receives any amount due under any call or instalment, the Board may resolve to revoke, postpone or extend that call or instalment. If the Board so resolves, the Board must notify all persons on whom the call was made.

9.5 Interest on unpaid calls

- (a) If an amount called is not paid on or before any date specified in the notice for payment, the Shareholder must pay interest on the amount unpaid from the date specified in the notice of the call for payment until and including the date of actual payment. The interest rate may be determined by the Board, or, if the Board does not determine a rate, the interest rate is at the Default Rate. Interest will accrue and compound daily.
- (b) The Board may waive the right to require the payment of interest.

9.6 Joint holders

Each joint holder of any Share is jointly and severally liable to pay each call or instalment and interest and any other amount in respect of that Share.

9.7 Differentiation between Shareholders of amounts payable on calls

The terms on which Shares are on issue may differ between Shareholders as to the amount to be paid on any call or instalment and the date (or dates) on which payment is to be made.

9.8 Payment of calls in advance

- (a) The Board may accept any sum in respect of any amount uncalled or called but not yet payable on any Share. The Board may authorise payment by the Company of interest upon the whole or any part of any sum so accepted until the date on which the sum paid is payable under a call. The interest rate will be determined by the Board.
- (b) Any sum so accepted is:
 - (i) to be treated as a loan to the Company, not as share capital of the Company until the date on which the sum is payable under a call or instalment; and
 - (ii) not to be taken into account in determining an entitlement to vote or the amount of any distribution in respect of any Share.
- (c) The Board may repay any sum so accepted at any time on giving the Shareholder not less than ten days' notice.

10. Lien

10.1 Lien

- (a) The Company has a first and paramount lien:
 - (i) on each partly paid Share in respect of any call (including any instalment) due and payable but unpaid and any interest and any other amount owing in respect of that Share; and
 - (ii) on each Share in respect of any payment which the Company is required by law to pay (and has paid) in respect of the Share.
- (b) By notice, the Board may discharge or waive, in whole or in part, any lien or declare any Share to be wholly or partly exempt from a lien, but otherwise no act or omission is to be taken as discharging or a waiver or grant of an exemption from any lien.

10.2 Enforcement of lien

- (a) The Board may sell or otherwise dispose of any Share the subject of a lien, if:
 - (i) a sum in respect of which the lien exists is due and payable but is unpaid;
 - (ii) the Company has provided notice to the Shareholder or if the Company has notice of the death, bankruptcy or the mental incapacity of the Shareholder, provided notice to the person entitled to be registered as the holder of that Share:
 - A. setting out that amount due but unpaid paid or required to be paid or outstanding;
 - B. requiring payment of that amount; and

- C. stating that the Share is liable to be sold or otherwise disposed of if payment of that amount is not made within 14 days after the date of the notice; and
 - D. the amount specified in the notice is not paid in full in accordance with the notice.
- (b) The terms on which and manner by which any Share may be sold or otherwise disposed of are to be determined by the Board.
 - (c) Interest accrues and compounds daily at the rate determined by the Board or, if no such rate is determined, at the Default Rate on the amount due but unpaid, costs and expenses paid in connection with the enforcement of the lien and the sale or other disposal of the Shares.
 - (d) The Company may receive the net proceeds of the sale or other disposal of any Share and execute an instrument of transfer in respect of the Share. The Company must apply the net proceeds of the sale or disposal of any Share in or towards satisfaction of first, costs and expenses paid or payable in connection with the enforcement of the lien and the sale or other disposal of that Share and secondly, all amounts due but unpaid, and accrued interest on all those amounts.
 - (e) The Company must pay any balance of the net proceeds of sale or other disposal to the Shareholder whose Share has been sold or otherwise disposed of.
 - (f) The purchaser is entitled to assume that the proceeds of sale or other disposal have been applied in accordance with this Constitution and is not responsible for the application of the purchase money by the Company.

10.3 Continuing liability

If the net proceeds from the sale or other disposal are less than the sum of the amount:

- (a) due but unpaid in respect of that Share;
- (b) the costs and expenses paid or payable in connection with the enforcement of the lien and the sale or other disposal; and
- (c) interest on those amounts (together the **Shortfall**),

the person (or persons), whose Share has been sold or otherwise disposed of, continues to be liable for and must pay to the Company an amount equal to the Shortfall together with interest at the Default Rate.

10.4 Protection of lien

The Board may determine to do anything to protect any lien.

11. Class rights

- (a) Subject to the Corporations Act and the terms of issue of Shares in a particular class, the Company may vary or cancel rights attached to Shares in that class:
 - (i) by a special resolution passed at a meeting of the Shareholders holding Shares in that class; or
 - (ii) with the written consent of Shareholders who are entitled to at least 75% of the votes that may be cast in respect of Shares in that class.
- (b) Article 41 applies to a meeting held pursuant to Article 11(a)(i).

- (c) The issue of any new Shares ranking equally, or any conversion of existing securities to Shares ranking equally, with existing Shares is not a variation of the rights conferred on the holders of the existing Shares, unless otherwise provided by the terms of issue of the existing Shares or required by the Corporations Act.
- (d) The issue of any new Shares ranking in priority, or any conversion of existing securities to Shares ranking in priority, to an existing class of preference Shares is a variation of the rights conferred on the holders of the existing preference Shares, unless the issue or conversion is expressly permitted by the terms of the existing preference Shares.

12. Alterations of capital

- (a) The Company may by resolution convert Shares from one class to another, subject to the Corporations Act, this Constitution and the terms of issue of a class of Shares.
- (b) The Company may reduce, alter or buy-back its share capital in any manner provided by the Corporations Act and this Constitution.
- (c) Without limiting Article 12(a), if the circumstances in Article 7.5 apply:
 - (i) the Board may give notice to the holder or, as the case may be, each joint holder, of the Relevant Shares stating that the Company proposes to:
 - A. buy-back any or all of the Relevant Shares; or
 - B. cancel any or all of the Relevant Sharesin each case for no cash consideration; and
 - (ii) subject to the Company complying with the relevant provisions of the Corporations Act, the holder of the Relevant Shares specified in such notice must promptly do all things necessary, or reasonably requested by the Board, to be done by them in connection with the buy-back or cancellation (as applicable) and irrevocably appoints the Company and each Director (severally) to be their attorney to do such things.
- (d) The Board may do anything which is required to give effect to any resolution authorising a reduction, alteration or buy-back of the share capital of the Company, including where a Shareholder becomes entitled to a fraction of a Share on a consolidation or subdivision:
 - (i) making cash payments;
 - (ii) ignoring fractions; and
 - (iii) appointing a trustee to deal with any fractions on behalf of Shareholders.

13. Forfeiture

13.1 Forfeiture where Article 7.5 applies

- (a) If the circumstances in Article 7.5 apply, the Board may give notice to the holder or, as the case may be, each joint holder, of the Relevant Shares stating that any or all of the Relevant Shares are forfeited.
- (b) The Board may accept the surrender of any Share which may be forfeited. If the Board accepts the surrender, that Share will be treated as having been forfeited.

- (c) If any Share is forfeited, the date and details of the forfeiture will be recorded in the Register.
- (d) The Board may sell or otherwise dispose of any forfeited Share on behalf of the Shareholder. The terms and manner of sale or disposal are to be determined by the Board but will not include any cash consideration.
- (e) At any time before any forfeited Share is sold or otherwise disposed of, the Board may cancel the forfeiture on terms determined by it.
- (f) On forfeiture of any Share, the holder of that Share ceases to be a Shareholder, and ceases to have any right as a Shareholder, in respect of that forfeited Share (including in respect of any right to vote),
- (g) The Company may execute an instrument of transfer in respect of the forfeited Shares.

13.2 Forfeiture for failure to pay a call or instalment

- (a) If any Shareholder does not pay the amount of any call or instalment in respect of any Share when it is due, the Board may give notice to the Shareholder or if the Company has notice of the death, bankruptcy or the mental incapacity of the Shareholder, give notice to the person entitled to be registered as the holder of that Share:
 - (i) requiring payment of:
 - A. the unpaid call or instalment;
 - B. any costs and expenses incurred by the Company as a result of the non-payment of the call or instalment and the amount of the costs and expenses; and
 - C. interest that has accrued and compounded (on a daily basis) on the amount of the unpaid call or instalment;
 - (ii) demanding payment of those amounts within 14 days after the date of the notice;
 - (iii) stating the place where payment is to be made; and
 - (iv) stating that the Share is liable to be forfeited and that on forfeiture the Shares may be sold or otherwise disposed of if payment of the amount demanded is not made in full within 14 days after the date of the notice.
- (b) If payment of the amount demanded is not made in full in accordance with the notice, any Share or distribution the subject of the notice may be forfeited on a resolution of the Board.
- (c) The Board may accept the surrender of any Share which may be forfeited. If the Board accepts the surrender, that Share will be treated as having been forfeited.
- (d) If any Share is forfeited, notice of forfeiture will be given to the registered holder of that Share, and the date and details of the forfeiture will be recorded in the Register.
- (e) The Board may sell or otherwise dispose of any forfeited Share on behalf of the Shareholder. The terms and manner of sale or disposal are to be determined by the Board.
- (f) At any time before any forfeited Share is sold or otherwise disposed of, the Board may cancel the forfeiture on terms determined by it.

- (g) On forfeiture of any Share, the holder of that Share ceases to be a Shareholder and ceases to have any right as a Shareholder, in respect of that forfeited Share, but remains liable to pay to the Company for:
- (i) all amounts payable by the holder to the Company at the date of forfeiture;
 - (ii) further costs or expenses incurred by the Company in respect of the forfeiture; and
 - (iii) interest to accrue and to compound daily at a rate determined by the Board or, if no such rate is determined, at the Default Rate on those amounts from the date of forfeiture until payment of amounts and accrued interest in full.
- (h) The liability of a Shareholder continues until:
- (i) the Shareholder pays all those amounts and accrued interest in full; or
 - (ii) the Company receives and applies the net proceeds from the sale or other disposal of the forfeited Share an amount which is equal to or greater than all those amounts and accrued interest.
- (i) The Company may receive the net proceeds from the sale or other disposal of any forfeited Share and execute an instrument of transfer in respect of the forfeited Share. The Company must apply the net proceeds of any sale or other disposal of any Share in or towards satisfaction of first, costs and expenses paid or payable in connection with the enforcement of the forfeiture and the sale or other disposal of that Share and secondly, all amounts due but unpaid, and accrued interest on all those amounts.
- (j) The Company must pay the balance (if any) of the net proceeds of sale or other disposal to the Shareholder whose forfeited Share has been sold or otherwise disposed of.
- (k) The purchaser of any forfeited Share is entitled to assume that the proceeds of the sale or other disposal have been applied in accordance with this Constitution and is not responsible for the application of the purchase money by the Company.
- (l) If the net proceeds from the sale or other disposal are less than the sum of the amount:
- (i) due but unpaid in respect of that Share;
 - (ii) the costs and expenses paid or payable in connection with the enforcement of the forfeiture and the sale or other disposal; and
 - (iii) interest on those amounts (together the **Shortfall**),
- the person (or persons), whose Share has been sold or otherwise disposed of, continues to be liable for and must pay to the Company an amount equal to the Shortfall together with interest at the Default Rate.

13.3 Cancellation of forfeited Shares

By resolution passed at a general meeting, the Company may cancel any forfeited Share.

14. Registered holder

- (a) Except as required by law or this Constitution, the Company is not required to recognise any interest in, or right in respect of, a Share except an absolute right of

legal ownership of the Shareholder registered as the holder of that Share, regardless of whether the Company has notice of the interest or right.

- (b) Other than where more than one person is the holder of an Allocation, the Company is not bound to register more than one person as the registered holder of a Share.
- (c) If the Company registers two or more persons as the registered holders of a Share, those persons are taken to hold that Share as joint tenants.

15. Certificates

- (a) Subject to the Corporations Act, the Company may issue certificates for Shares, cancel any certificates for Shares, and replace lost or destroyed or defaced certificates for Shares, on the basis and in the form which the Board resolves.
- (b) Only the Shareholder whose name appears first in the Register in respect of a Jointly Held Share is entitled to a certificate in respect of that Share and delivery of the certificate to that person is delivery to all holders of that Share.

Dividends

16. No dividends

The Company must not pay any dividends.

Transfers

17. Transfers

- (a) Subject to the Corporations Act, this Constitution and the terms of issue of any Share, a Shareholder:
 - (i) may only transfer Shares to another eligible person to whom the Shareholder transfers an Allocation; and
 - (ii) subject to Articles 7.5(b) and 18, must transfer a number of Shares to the person to whom the Shareholder transfers an Allocation,in each case on the basis of one Share for each megalitre of the Allocation which is transferred.
- (b) Subject to the Corporations Act and this Constitution, if the Board gives a transfer direction under Article 7.5(l)(i), the holder of the Relevant Shares specified in such notice must promptly do all things necessary, or reasonably requested by the Board, to be done by them in connection with the transfer and irrevocably appoints the Company and each Director (severally) to be their attorney to do such things.
- (c) Subject to this Constitution and the restrictions attached to a Share, a Shareholder may transfer one or more Shares that Shareholder holds by a written instrument of transfer in any usual form or in any other form approved by the Board that is otherwise permitted by law.
- (d) An instrument of transfer of a Share referred to in Article 17(c) must be:
 - (i) executed by or on behalf of the transferor and the transferee, unless the Board has resolved that the execution of the transferee is not required;
 - (ii) duly stamped, if required by law; and

- (iii) delivered to the Company, at the place where the Register is kept, together with the certificate (if any) of the Share to be transferred and any other evidence as the Board may require to prove the title of the transferor to that Share, the right of the transferor to transfer that Share, and the proper execution of the instrument of transfer.
- (e) A person transferring a Share remains the registered holder of that Share until a transfer for that Share has been registered and the transferee is entered in the Register as the holder of that Share.
- (f) The Company must not charge a fee to register a transfer of a Share in accordance with this Constitution.

18. Refusal to register transfers

- (a) The Company may refuse to register a transfer of Shares where the Board so resolves. The Company is not required to give any reason for that refusal.
- (b) If permitted by the Corporations Act and the Board so resolves, the Company may refuse to register an instrument of transfer of Shares where:
 - (i) the transfer is not in registrable form;
 - (ii) the Company has a lien on any of the Shares transferred;
 - (iii) the registration of the transfer may breach an Australian law or a court order; or
 - (iv) the Company is otherwise permitted or required to do so pursuant to the terms of issue of the Shares and/or this Constitution.
- (c) The Company must refuse to register a transfer of Shares:
 - (i) where the Corporations Act or a law about stamp duty requires the Company to do so or this Constitution otherwise requires;
 - (ii) where the transferee is not eligible to hold Shares under the terms of this Constitution; or
 - (iii) if upon registration of the transfer:
 - A. the transferee would hold more Shares than their Entitlement;
 - B. the number of Shareholders would exceed any maximum specified by the Corporations Act for a proprietary company; or
 - C. the Company is aware that a Shareholder and their Associates would hold more than 35% of the Shares at any time.
- (d) Failure by the Company to give notice of refusal to register any transfer as may be required pursuant to the Corporations Act does not invalidate the refusal to register the transfer.
- (e) The Company may suspend registration of transfers of Shares at the times and for the periods as the Board resolves. The periods of suspension must not exceed 30 days in aggregate in any one calendar year.

Transmission of Shares

19. Transmission on death

- (a) If the registered holder of a Share which is not Jointly Held dies, the Company must recognise only the Personal Representative of that registered holder as having any title to or interest in, or any benefits accruing in respect of, that Share.
- (b) If a registered holder of a Share which is Jointly Held dies, the Company must recognise only the surviving registered holders of that Share as having any title to or interest in, or any benefits accruing in respect of, that Share.
- (c) The estate of a deceased Shareholder is not released from any liability in respect of the Shares that are registered in the name of that Shareholder.
- (d) Where 2 or more persons are jointly entitled to any Share as a consequence of the death of the registered holder of that Share, they are taken to be Joint Holders of that Share.
- (e) Notwithstanding Articles 19(a) to 19(e), the Company may register or give effect to a transfer of Shares to a transferee who dies before the transfer is registered or given effect to by the Company.
- (f) A transmission pursuant to Article 19 is subject to all of the provisions of this Constitution relating to transfers of Shares and to eligibility to hold those Shares.

20. Transmission Events

- (a) Subject to the *Bankruptcy Act 1966* (Cth) and the Corporations Act, a person who establishes to the satisfaction of the Board that it is entitled to a Share because of a Transmission Event may:
 - (i) elect to be registered as a Shareholder in respect of that Share by giving a signed notice in writing to the Company; or
 - (ii) transfer that Share to another person.
- (b) A transfer pursuant to Article 20(a) is subject to all of the provisions of this Constitution relating to transfers of Shares and to eligibility to hold those Shares.

Proceedings of Shareholders

21. Annual General Meetings

- (a) The Board must call a general meeting during every calendar year and within five months after the end of the Company's financial year (**Annual General Meeting**).
- (b) The business of the Annual General Meeting must include:
 - (i) the consideration of the annual financial report, directors' report and any auditor's report;
 - (ii) an election of Directors, if an election is required in that year under Article 42.

22. Written resolutions of Shareholders

- (a) While the Company has only one Shareholder, the Company may pass a resolution by that Shareholder signing a record in writing of that resolution.

- (b) The Company may pass a resolution without a meeting of Shareholders in accordance with the Corporations Act.

23. Calling meetings of Shareholders

- (a) The Company may by resolution of the Board call a meeting of Shareholders to be held at the time and place (including 2 or more venues using technology which gives Attending Shareholders as a whole a reasonable opportunity to participate) and in the manner that the Board resolves.
- (b) No Shareholder may call or arrange to hold a meeting of Shareholders except where permitted by the Corporations Act.

24. Notice of meetings of Shareholders

- (a) Where the Company has called a meeting of Shareholders, notice of the meeting and any proxy form for the meeting may be given in the form and in the manner in which the Board resolves, subject to any requirements of the Corporations Act.
- (b) A person may waive notice of any meeting of Shareholders by written notice to the Company.
- (c) A person who has not duly received notice of a meeting of Shareholders may, before or after the meeting, notify the Company of the person's agreement to anything done or resolution passed at the meeting.
- (d) A person's attendance at a meeting of Shareholders waives any objection which that person may have had to a failure to give notice, or the giving of a defective notice, of the meeting, unless the person at the beginning of the meeting objects to the holding of the meeting.
- (e) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Shareholders is not invalid because either or both a person does not receive notice of the meeting or a proxy form, or the Company accidentally does not give notice of the meeting or a proxy form to a person.

25. Business of meetings

Except with the approval of the Board, with the permission of the chairperson of the meeting or pursuant to the Corporations Act, no person may move at any meeting of Shareholders:

- (a) any resolution (except in the form set out in the notice of meeting given pursuant to Article 24(a)); or
- (b) any amendment of any resolution or a document which relates to any resolution and a copy of which has been made available to Shareholders to inspect or obtain.

26. Quorum

- (a) No business may be transacted at a meeting of Shareholders except, subject to Article 27, the election of the chairperson of the meeting unless a quorum for a meeting of Shareholders is present at the time when the meeting commences.
- (b) A quorum for a meeting of Shareholders is five Attending Shareholders entitled to vote on a resolution at that meeting. Each individual present may only be counted once towards a quorum. If a Shareholder has appointed more than one proxy or attorney or Corporate Representative, only one of them may be counted towards a quorum.

- (c) If there is not a quorum present within 30 minutes after the time specified in the notice of the meeting, the meeting is dissolved.

27. Chairperson of meetings of Shareholders

- (a) Subject to Articles 27(b) and 27(c), the chairperson of the Board must chair each meeting of Shareholders.
- (b) If at a meeting of Shareholders:
 - (i) there is no chairperson of the Board; or
 - (ii) the chairperson of the Board is not present within 15 minutes after the time appointed for the commencement of a meeting of Shareholders or is not willing to chair all or part of the meeting,

the Directors who are or will be present at the meeting may (by majority vote) elect one of their number or, in the absence of all the Directors or if none of the Directors present is willing to act, the Attending Shareholders may elect one of their number, to chair that meeting.

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

28. Conduct of meetings of Shareholders

- (a) Subject to the Corporations Act, the chairperson of a meeting of Shareholders is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The chairperson of a meeting of Shareholders may make rulings without putting the question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting.
- (c) The chairperson of a meeting of Shareholders may determine the procedures to be adopted for proper and orderly discussion or debate at the meeting, and the casting or recording of votes at the meeting.
- (d) The chairperson of a meeting of Shareholders may determine any dispute concerning the admission, validity or rejection of a vote at the meeting.
- (e) The chairperson of a meeting of Shareholders may, subject to the Corporations Act, at any time terminate discussion or debate on any matter being considered at the meeting and require that matter be put to a vote.
- (f) The chairperson of a meeting of Shareholders may refuse to allow debate or discussion on any matter which is not business referred to in the notice of that meeting or is not business of the meeting permitted pursuant to the Corporations Act without being referred to in the notice of meeting.
- (g) Nothing contained in this Article 28 limits the powers conferred by law on the chairperson of a meeting of Shareholders.

29. Attendance at meeting of Shareholders

- (a) Subject to this Constitution and any rights and restrictions attached to a class of Shares, a Shareholder who is entitled to attend and cast a vote at a meeting of Shareholders, may attend and vote in person or by proxy, by attorney or, if the Shareholder is a body corporate, by Corporate Representative.
- (b) The chairperson of a meeting of Shareholders may require a person acting as a proxy, attorney or Corporate Representative at that meeting to establish to the chairperson's satisfaction that the person is the person who is duly appointed to act. If the person fails to satisfy this requirement, the chairperson may exclude the person from attending or voting at the meeting.
- (c) A Director is entitled to receive notice of and to attend all meetings of Shareholders and all meetings of a class of Shareholders and is entitled to speak at those meetings.
- (d) A person who is requested by the Board to attend a meeting of Shareholders or a meeting of a class of Shareholders is, regardless of whether that person is a Shareholder, entitled to attend that meeting and, at the request of the chairperson of the meeting, is entitled to speak at that meeting.

30. Authority of Attending Shareholders

- (a) Unless otherwise provided in the document or resolution appointing a person as proxy, attorney or Corporate Representative of a Shareholder, the person so appointed has the same rights to speak, demand a poll, join in demanding a poll or act generally at a meeting of Shareholder to which the appointment relates, as the appointing Shareholder would have had if that Shareholder was present at the meeting.
- (b) Unless otherwise provided in the document or resolution appointing a person as proxy, attorney or Corporate Representative of a Shareholder, the appointment is taken to confer authority to:
 - (i) vote on any amendment moved to a proposed resolution and on any motion that a proposed resolution not be put or any similar motion; and
 - (ii) vote on any procedural motion, including any motion to elect the chairperson of the meeting of Shareholders to which the appointment relates, to vacate the chair or to adjourn the meeting,even though the appointment may refer to specific resolutions and may direct the proxy, attorney or Corporate Representative how to vote on particular resolutions.
- (c) Unless otherwise provided in the document or resolution appointing a person as proxy, attorney or Corporate Representative of a Shareholder, the appointment is taken to confer authority to attend and vote at a meeting which is rescheduled, postponed or adjourned to another time or changed to another place, even though the appointment may refer to a specific meeting to be held at a specified time or place.

31. Multiple appointments

- (a) If more than one attorney or Corporate Representative appointed by a Shareholder is present at a meeting of Shareholders and the Company has not received notice of any revocation of any of the appointments:

- (i) an attorney or Corporate Representative appointed to act at that particular meeting may act to the exclusion of an attorney or Corporate Representative appointed pursuant to a standing appointment; and
 - (ii) subject to Article 31(a)(i), an attorney or Corporate Representative appointed pursuant to the most recent appointment may act to the exclusion of an attorney or Corporate Representative appointed earlier in time.
- (b) An appointment of a proxy of a Shareholder is revoked (or, in the case of a standing appointment, suspended for that particular meeting of Shareholders) if the Company receives a further appointment of a proxy from that Shareholder which would result in there being more than 2 proxies of that Shareholder entitled to act at the meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this Article 31(b).
- (c) The appointment of a proxy for a Shareholder is not revoked by an attorney or Corporate Representative for that Shareholder attending and taking part in a meeting of Shareholders to which the appointment relates, but if that attorney or Corporate Representative votes on a resolution at that meeting, the proxy is not entitled to vote, and must not vote, as the Shareholder's proxy on that resolution.

32. Voting at meeting of Shareholders

- (a) A resolution put to the vote at a meeting of Shareholders must be decided on a show of hands, unless a poll is demanded in accordance with Article 36 and that demand is not withdrawn.
- (b) The Board may determine that Shareholders entitled to attend and vote at a meeting of Shareholders or at a meeting of a class of Shareholders may vote at that meeting without an Attending Shareholder in respect of that person being present at that meeting (and voting in this manner is referred to in this Article 32(b) as direct voting). The Board may determine rules and procedures in relation to direct voting, including the class of Shareholders entitled to cast a direct vote, the manner in which a direct vote may be cast, the circumstances in which a direct vote will be valid and the effect of a Shareholder casting both a direct vote and a vote in any other manner. Where a notice of meeting specifies that direct voting may occur by eligible Shareholders, a direct vote cast by an eligible Shareholder is taken to have been cast by that person at the meeting if the rules and procedures for direct voting determined by the Board (whether set out in the notice of meeting or otherwise) are complied with.
- (c) Subject to this Constitution and any rights or restrictions attached to a class of Shares, on a show of hands at a meeting of Shareholders, each Attending Shareholder having the right to vote on the resolution has one vote, provided that where a person is entitled to vote in more than one capacity, that person is entitled only to one vote.
- (d) Subject to this Constitution and any rights or restrictions attached to a class of Shares, on a poll at a meeting of Shareholders, each Attending Shareholder having the right to vote on the resolution has:
 - (i) one vote for each fully paid up Share held by that Attending Shareholder or by the Shareholder that the Attending Shareholder represents; and
 - (ii) a fraction of one vote for each partly paid up Share held by that Attending Shareholder or by the Shareholder that Attending Shareholder represents. The fraction is equal to the proportion which the amount paid up bears to the total issue price of that Share. Any amount paid up in advance of the applicable due date for payment are ignored when calculating the proportion.

- (e) Subject to this Constitution and any rights or restrictions attached to a class of Shares, where the Board has determined other means (including electronic) permitted by law for the casting and recording of votes by Shareholders on any resolution to be put at a meeting of Shareholders, each Shareholder having a right to vote on the resolution has
 - (i) one vote for each fully paid up Share that the Shareholder holds; and
 - (ii) a fraction of one vote for each partly paid up Share that the Shareholder holds. The fraction is equal to the proportion which the amount paid up bears to the total issue price of that Share. Any amounts paid up in advance of the applicable due date for payment are ignored when calculating the proportion.
- (f) If the total number of votes which a person has pursuant to Article 32(d) or 32(d)(ii) does not constitute a whole number, the Company must disregard the fractional part of that total.
- (g) An objection to a right to vote at a meeting of Shareholders or to a determination to allow or disregard a vote at the meeting may only be made at that meeting (or any resumed meeting if that meeting is adjourned). Any objection pursuant to this Article 32(g) must be decided by the chairperson of the meeting of Shareholders, whose decision, made in good faith, is final and conclusive.
- (h) Except where a resolution at a meeting of Shareholders requires a Special Majority Resolution under this Constitution or a special resolution pursuant to the law, the resolution is passed if more votes are cast by Shareholders entitled to vote in favour on the resolution than against it.
- (i) In the case of an equality of votes on a resolution at a meeting of Shareholders, the chairperson of that meeting does not have a casting vote on that resolution.
- (j) Unless a poll is demanded and the demand is not withdrawn, a determination by the chairperson of a meeting of Shareholders following a vote on a show of hands that a resolution has been passed or not passed is conclusive, without proof of the number or proportion of the votes recorded in favour or against the resolution.

33. Special Majority Resolutions

The Company may not undertake any of the following matters unless and until the Board's decision is ratified by Special Majority Resolution of the Company:

- (a) changing the Company's name;
- (b) changing the Company to a different type of company under Part 2B.7 of the Corporations Act or making an application to transfer registration under Part 5A.2 of the Corporations Act;
- (c) modification or repeal of this Constitution;
- (d) changing rights attaching to any issued Shares;
- (e) approving a new or revised Strategic Asset Management Plan;
- (f) except for expenditure that is reasonably required in connection with any action to protect life or property, or as a result of fire, flood, storm, cyclone, lightning, earthquake, mudslide, landslide or other physical natural disaster, incurring or committing to capital expenditure, deferred maintenance or asset refurbishment that is not provided for in the then current Strategic Asset Management Plan.

34. Voting by representatives

- (a) A person who is entitled to be registered as the holder of a Share because of a Transmission Event may vote in respect of that Share at a meeting of Shareholders provided that person has satisfied the Board of that entitlement not less than 48 hours before the time appointed for the commencement of that meeting. Any vote by that person so entitled must be accepted to the exclusion of the vote of the registered holder of that Share.
- (b) The validity of any resolution passed at a meeting of Shareholders is not affected by the failure of any proxy or attorney to vote in accordance with directions (if any) of the appointing Shareholder.
- (c) If a proxy of a Shareholder purports to vote in a way or circumstances that contravene the Corporations Act, on a show of hands the vote of that proxy is invalid and the Company must not count it. If a poll is demanded, votes which the Corporations Act require a proxy of a Shareholder to cast in a given way must be treated as cast in that way.
- (d) Subject to this Constitution and the Corporations Act, a vote cast at a meeting of Shareholders by a person appointed by a Shareholder as a proxy, attorney or Corporate Representative is valid despite:
 - (i) a Transmission Event occurring in respect of that Shareholder; or
 - (ii) the revocation of the appointment (or the authority pursuant to which the appointment was executed),if no notice in writing of that matter has been received by the Company before the time appointed for the commencement of that meeting.
- (e) A vote cast at a meeting of Shareholders by a person appointed by a Shareholder as a proxy, attorney or Corporate Representative is valid despite the transfer of the Share in respect of which the appointment is made, if the transfer is not registered before the commencement of that meeting.

35. Restrictions on voting rights

- (a) If there is more than one Shareholder of a Jointly Held Share present at a meeting of Shareholders (either in person, by proxy, attorney or Corporate Representative), only the vote by the Shareholder who is present (either in person, by proxy, attorney or Corporate Representative) whose name appears first in the Register in respect of that Share will count.
- (b) The authority of a proxy or attorney for a Shareholder to speak or vote at a meeting of Shareholders in respect of the Shares to which the authority relates is suspended while the Shareholder is present in person at that meeting.
- (c) If a Shareholder has appointed two proxies in respect of a meeting of Shareholders and each proxy attends that meeting, neither of those proxies may vote:
 - (i) on a show of hands; or
 - (ii) on a poll if the number or proportion of the Shareholder's vote for which the proxies have been appointed exceeds the total number or proportion of votes that could be cast by the Shareholder.
- (d) An Attending Shareholder is not entitled to vote on any resolution in respect of any Shares on which any calls due and payable in respect of those Shares have not been paid.

- (e) An Attending Shareholder is not entitled to vote on a resolution at a meeting of Shareholders where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (f) The Company must disregard any vote on a resolution at a meeting of Shareholders purported to be cast by an Attending Shareholder where that person is not entitled to vote on that resolution. A failure by the Company to disregard a vote on a resolution as required by this Article 35(f) does not invalidate that resolution or any act, matter or thing done at the meeting, unless that failure occurred by wilful default of the Company or of the chairperson of that meeting.

36. Polls

- (a) A poll on a resolution at a meeting of Shareholders may be demanded by a Shareholder only in accordance with the Corporations Act or by the chairperson of that meeting.
- (b) No poll may be demanded at a meeting of Shareholders on the election of a chairperson of that meeting, or unless the chairperson of the meeting otherwise determines, the adjournment of that meeting.
- (c) A demand for a poll may be withdrawn.
- (d) A poll demanded on a resolution at a meeting of Shareholders for the adjournment of that meeting must be taken immediately. A poll demanded on any other resolution at a meeting of Shareholders must be taken in the manner and at the time and place the chairperson of the meeting directs.
- (e) The result of a poll demanded on a resolution of a meeting of Shareholders is a resolution of that meeting.
- (f) A demand for a poll on a resolution of a meeting of Shareholders does not prevent the continuance of that meeting or that meeting dealing with any other business.

37. Proxies

- (a) A Shareholder who is entitled to attend and vote at a meeting of Shareholders may appoint a person as proxy to attend and vote for the Shareholder in accordance with the Corporations Act but not otherwise.
- (b) A proxy appointed in accordance with the Corporations Act to attend and vote may only exercise the rights of the Shareholder on the basis and subject to the restrictions provided in the Corporations Act.
- (c) A form of appointment of proxy is valid if it is in accordance with the Corporations Act or in any other form (including electronic) which the Board may determine or accept.
- (d) If the name of the proxy or the name of the office of the proxy in a proxy appointment of a Shareholder is not filled in, the proxy of that Shareholder is:
 - (i) the person specified by the Company in the form of proxy in the case that Shareholder does not choose; or
 - (ii) if no person is so specified, the chairperson of that meeting.

38. Receipt of appointments

- (a) An appointment of proxy or attorney for a meeting of Shareholders is effective only if the Company receives the appointment (and any authority pursuant to which the

appointment was signed or a certified copy of the authority) not less than 48 hours before the time appointed for the commencement of the meeting or (in the case of an adjourned meeting) resumption of the meeting.

- (b) Where a notice of meeting specifies an electronic address or other electronic means by which a Shareholder may give the Company a proxy appointment, a proxy given at that electronic address or by that other electronic means is taken to have been given by the Shareholder and received by the Company if the requirements set out in the notice of meeting are complied with.

39. Adjournments

- (a) The chairperson of a meeting of Shareholders may at any time during the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered at the meeting or any discussion or debate, either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the chairperson.
- (b) If the chairperson of a meeting of Shareholders exercises the right to adjourn that meeting pursuant to Article 39(a), the chairperson may (but is not obliged to) obtain the approval of Attending Shareholders to the adjournment.
- (c) No person other than the chairperson of a meeting of Shareholders may adjourn that meeting.
- (d) The Company may give notice of a meeting of Shareholders resumed from an adjourned meeting as the Board resolves. Failure to give notice of an adjournment of a meeting of Shareholders or the failure to receive any notice of the meeting does not invalidate the adjournment or anything done (including the passing of a resolution) at a resumed meeting.
- (e) Only business left unfinished is to be transacted at a meeting of Shareholders which is resumed after an adjournment.

40. Cancellations and postponements

- (a) Subject to the Corporations Act, the Company may by resolution of the Board cancel or postpone a meeting of Shareholders or change the place for the meeting, prior to the date on which the meeting is to be held.
- (b) Article 40(a) does not apply to a meeting called in accordance with the Corporations Act by Shareholders or by the Board on the request of Shareholders, unless those Shareholders consent to the cancellation or postponement of the meeting.
- (c) The Company may give such notice of a cancellation or postponement or change of place of a meeting of Shareholders as the Board resolves. Failure to give notice of a cancellation or postponement or change of place of a meeting of Shareholders or the failure to receive any notice of the meeting does not invalidate the cancellation, postponement or change of place of a meeting or anything done (including the passing of a resolution) at a postponed meeting or the meeting at the new place.
- (d) The only business that may be transacted at a meeting of Shareholders the holding of which is postponed is the business specified in the original notice calling the meeting.

41. Meetings of a class of Shareholders

All the provisions of this Constitution relating to a meeting of Shareholders apply so far as they are capable of application and with any necessary changes to a meeting of a class of

Shareholders required to be held pursuant to this Constitution or the Corporations Act except that:

- (a) a quorum is 2 Attending Shareholders who hold (or whose Shareholder that they represent holds) Shares of the class, or if only one person holds all the Shares of the class, that person (or an Attending Shareholder representing that person); and
- (b) any Attending Shareholder who holds (or whose Shareholder that they represent holds) Shares of the class may demand a poll.

Directors

42. Appointment of Directors

- (a) There must be a minimum of three Directors and a maximum of six Directors.
- (b) At least one Director must be an Independent Director.
- (c) To the extent it is reasonable practicable, at least two Directors must be Shareholder Directors.
- (d) Subject to this Constitution, the Company in general meeting may appoint Directors by ordinary resolution.
- (e) The Company in general meeting cannot validly appoint a person as a Director unless the person:
 - (i) is a natural person; and
 - (ii) if the person is not an existing Director who is seeking election or re-election, is nominated by the Nominations Committee in accordance with Article 54.
- (f) The Board may appoint a person who is nominated by the Nomination as a Director to fill a casual vacancy or as an additional Director, provided that the appointee must retire at the next Annual General Meeting and is eligible for election at that meeting.

43. Removal of Directors

The Company may by ordinary resolution remove any Director, and if thought fit, appoint another person in place of that Director in accordance with Article 42.

44. Rotation of Directors

- (a) Without limiting Article 44(b), at the first Annual General Meeting after the date this Constitution is adopted and at every second Annual General Meeting thereafter, one half of the Directors (or, if the number of Directors is not a multiple of two, then the number nearest to but less than one half of the Directors) will be subject to retirement by rotation.
- (b) No Director may hold office without re-election past the fourth Annual General Meeting following their appointment or four years, whichever is the longer. For the purpose of this Article, the Directors in office at the time that this Constitution takes effect are taken to have been appointed on the date this Constitution takes effect.
- (c) The Directors to retire by rotation at the relevant general meeting must include any Director who wishes to retire and does not wish to be re-appointed as a Director. Any further Director required to retire must be the Director who has been in office

the longest as Director. The Directors to retire by rotation are in addition to any Directors who must retire under Article 42(f).

- (d) If there are two or more Directors that have been in office for an equal amount of time, and an agreement cannot be reached between those Directors on who will retire, the Director or Directors who will retire must be determined by lot.
- (e) A retiring Director is eligible for re-election.
- (f) Unless a resolution is passed to elect some other person to fill the office of Director to be vacated by the retiring Director, a retirement by rotation at a general meeting does not become effective until the end of the meeting.

45. Termination of office

A person ceases to be a Director if the person:

- (a) fails to attend 3 consecutive Board meetings (either personally or by an alternate director in accordance with Article 46) without the consent of the Board;
- (b) resigns by notice in writing to the Company;
- (c) is removed from office pursuant to Article 43;
- (d) becomes an insolvent under administration;
- (e) becomes of unsound mind or a person whose property is liable to be dealt with pursuant to a law about mental health; or
- (f) is not permitted to be a director, or to manage a corporation, pursuant to the Corporations Act.; or
- (g) completes their prescribed term as a Director without election or re-election.

46. Alternate directors

- (a) A Director may:
 - (i) without the need for approval of other Directors, appoint another Director; and
 - (ii) with the approval of a majority of the other Directors, appoint a person who is not a Director,as an alternate director of that Director for any period. An alternate director need not be a Shareholder.
- (b) Where the alternate is not a Director, an appointment of a person as an alternate 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.
- (c) The appointing Director may terminate the appointment of his or her alternate director at any time.
- (d) A notice of appointment, or termination of appointment, of an alternate director by the appointing Director is effective only if the notice is in writing and signed by that Director and is effective when given to the Company.

- (e) An alternate director is entitled to receive notice of Board meetings and, subject to this Constitution and the Corporations Act, to attend, count in the quorum of, speak at, and vote at a Board meeting at which his or her appointing Director is not present.
- (f) Subject to this Constitution, Article 48(c) and the instrument of appointment of an alternate director, an alternate director may exercise all the powers (except the power pursuant to Article 46(a)) of a Director, to the extent that his or her appointing Director has not exercised them.
- (g) The office of an alternate director is terminated if the appointing Director ceases to be a Director.
- (h) Subject to Article 47, the Company is not required to pay any remuneration or benefit to an alternate director.
- (i) An alternate director is an officer of the Company and not an agent of his or her appointing Director.

47. Remuneration and benefits of Directors

The Directors (other than a Director appointed as an alternate director under Article 46(a)):

- (a) will receive remuneration in respect of their position on the Board of the Company; and
- (b) are entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the Directors, committee of the Directors, general meeting of the company or otherwise in connection with the business affairs of the company.

48. Interests of Directors

- (a) A Director is not disqualified by reason only of being a Director (or the fiduciary obligations arising from that office) from:
 - (i) holding an office (except auditor) or place of profit or employment in the Company or a related body corporate of the Company;
 - (ii) holding an office or place of profit or employment in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest;
 - (iii) being a member, creditor or otherwise be interested in any body corporate (including the Company), partnership or entity, except auditor of the Company;
 - (iv) entering into any agreement or arrangement with the Company; or
 - (v) acting in a professional capacity (or being a member of a firm which acts in a professional capacity) for the Company, except as auditor of the Company.
- (b) Each Director must comply with Corporations Act in relation to the disclosure of the Director's interests.
- (c) A Director who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered at the meeting nor vote on the matter, except where that would be permitted by the Corporations Act if the Company was a public company.

- (d) To remove doubt, being an owner of property (including a water entitlement) in the Theodore Channel Irrigation Scheme area, is not, of itself, a material personal interest.
- (e) If a Director has an interest in a matter, then subject to Article 48(c), Article 48(f) and this Constitution:
 - (i) that Director may be counted in a quorum at the Board meeting that considers matters that relate to the interest provided that Director is entitled to vote on at least one of the resolutions to be proposed at that Board meeting;
 - (ii) that Director may participate in and vote on matters that relate to the interest;
 - (iii) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
 - (iv) the Director may retain the benefits pursuant to any transaction that relates to the interest even though the Director has the interest; and
 - (v) the Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (f) If an interest of a Director is required to be disclosed pursuant to Article 48(b), Article 48(e)(iv) applies only if the interest is disclosed before the transaction is entered into.

Officers

49. Secretary

The Board may appoint one or more Secretaries, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to any agreement between the Company and the Secretary, the Board may vary or terminate the appointment of a Secretary at any time, with or without cause. Where the Company has only one Director who is also the only Secretary, the Company may by ordinary resolution terminate the appointment of that person as Secretary.

50. Indemnity and insurance

- (a) To the extent permitted by law, the Company must indemnify each Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (b) The indemnity pursuant to Article 50(a):
 - (i) is enforceable without the Relevant Officer having first to incur any expense or make any payment;
 - (ii) is a continuing obligation and is enforceable by the Relevant Officer even though the Relevant Officer may have ceased to be an officer of the Company; and
 - (iii) applies to Liabilities and Legal Costs incurred both before and after this Article became effective.
- (c) To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.

- (d) To the extent permitted by law, the Company may:
 - (i) enter into, or agree to enter into; or
 - (ii) pay, or agree to pay, a premium for,

a contract insuring a Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (e) To the extent permitted by law, the Company may enter into an agreement or deed with a Relevant Officer or a person who is, or has been, an officer of the Company or a subsidiary of the Company, pursuant to which the Company must do all or any of the following:
 - (i) keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed;
 - (ii) indemnify that person against any Liability and Legal Costs of that person;
 - (iii) make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs of that person; and
 - (iv) keep that person insured in respect of any act or omission by that person while a Relevant Officer or an officer of the Company or a subsidiary of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

Powers of the Board

51. General powers

- (a) The Board has the power to manage the business of the Company and may exercise to the exclusion of the Company in general meeting all powers of the Company which are not, by the law or this Constitution, required to be exercised by the Company in general meeting.
- (b) A power of the Board can only be exercised by a resolution passed at a meeting of the Board in accordance with Article 57, a resolution passed by signing a document in accordance with Article 56, or in accordance with a delegation of the power pursuant to Article 53 or 55. A reference in this Constitution to the Company exercising a power by a resolution of the Board includes an exercise of that power in accordance with a delegation of the power pursuant to Article 53 or 55.

52. Execution of documents

- (a) 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 one Director and either another Director, a Secretary, or another person appointed by the Board for that purpose.
- (b) The Company may execute a document without a common seal if the document is signed by one Director and either another Director, a Secretary, or another person appointed by the Board for that purpose.
- (c) The Board may determine the manner in which and the persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable or transferable instruments in the name of or on behalf of the Company, and receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed.

53. Committees and delegates

- (a) The Board may delegate any of its powers to a committee of the Board, a Director, an employee of the Company or any other person. A delegation of those powers may be made for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power so delegated.
- (b) A committee or delegate must exercise the powers delegated in accordance with any directions of the Board.
- (c) Subject to the terms of appointment or reference of a committee, Article 57 applies with the necessary changes to meetings and resolutions of a committee of the Board.

54. Nominations Committee

- (a) The Board must establish a Nominations Committee for the purposes of:
 - (i) identifying potential candidates for election or appointment as Directors;
 - (ii) if a candidate is not an existing Director who is seeking election or re-election, assessing the suitability of that candidate for appointment or election as a Director; and
 - (iii) nominating suitable candidates for appointment or election as a Director.
- (b) Subject to Article 54(c), ~~The~~ Nominations Committee must:
 - (i) comprise one Director and two persons determined by the Board from persons nominated in writing by one or more Shareholders;
 - (ii) be convened at least 120 days before an Annual General Meeting at which an election of Directors is required and at such other times, including where there is a casual vacancy or a proposed appointment of an additional Director, as the Nominations Committee or the Board thinks fit; and
 - (iii) nominate candidates to be put forward for:
 - A. election as Directors, at least 60 days before the relevant Annual General Meeting; and
 - B. appointment as a Director to fill a casual vacancy or as an additional Director under Article 42(f).
- (c) If this Constitution takes effect less than 130 days prior to the date the first Annual General Meeting must be held, the time periods set out Articles 54(b)(ii) and 54(b)(iii) shall be reduced by the Board, as required, to ensure that nominations for candidates are put forward for election as Directors by the Nominations Committee prior to the notice of the first Annual General Meeting being issued to Shareholders.¹
- ~~(d)~~ Without limiting Article 54(a) and (b), the Nominations Committee must act in accordance with any terms of appointment or directions that the Board gives from time to time.

¹ The Board is seeking the amendments shown in underline to provide flexibility on the timeframes for nominations on the first Annual General Meeting which will be held shortly after the Transfer Date.

~~(d)~~(e) Subject to any terms of appointment or directions given by the Board, Article 57 applies with the necessary changes to meetings and resolutions of the Nominations Committee.

~~(e)~~(f) The establishment of the Nominations Committee is taken to be a delegation of power under Article 53.

55. Attorney or agent

- (a) The Board 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) as the Board resolves. Subject to the terms of appointment of an attorney or agent of the Company, the Board may revoke or vary that appointment at any time, with or without cause.
- (b) The Board may delegate any of their powers (including the power to delegate) to an attorney or agent. The Board may revoke or vary any power delegated to an attorney or agent.

Proceedings of Directors

56. Written resolutions of Directors

- (a) The Board may pass a resolution without a Board meeting being held if notice in writing of the resolution is given to all Directors and a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of Directors) sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) A resolution pursuant to Article 56(a) may consist of several documents in the same form each signed by one or more Directors and is effective when signed by the last of the Directors constituting the majority of the Directors. A facsimile transmission or other document produced by electronic means under the name of a Director with the Director's authority is taken to be a document signed by the Director for the purposes of Article 56(a) and is taken to be signed when received by the Company in legible form.
- (c) For the purposes of Article 56(a), the reference to Directors includes any alternate director who is appointed by a Director who is at the relevant time on leave of absence approved by the Board but does not include any other alternate directors.

57. Board meetings

- (a) Subject to this Constitution, the Board may meet, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) A Director may call a Board meeting at any time. On request of any Director, a Secretary of the Company must call a meeting of the Directors.
- (c) Notice of a Board meeting must be given to each Director (except a Director on leave of absence approved by the Board) and an alternate director appointed by a Director on leave of absence approved by the Board. Notice of a Board meeting may be given in person, or by post or by telephone, fax or other electronic means.
- (d) A Director or alternate Director may waive notice of a Board meeting by giving notice to that effect to the Company in person or by post or by telephone, fax or other electronic means.

- (e) A person who attends a Board meeting waives any objection that person and:
- (i) if the person is a Director, any alternate director appointed by that person; or
 - (ii) if the person is an alternate director, the Director who appointed that person as alternate director,
- may have to a failure to give notice of the meeting.
- (f) Anything done (including the passing of a resolution) at a Board meeting is not invalid because either or both a person does not receive notice of the meeting or the Company accidentally does not give notice of the meeting to a person.
- (g) For the purposes of the Corporations Act, each Director, by consenting to be a Director or by reason of the adoption of this Constitution, consents to the use of each of the following technologies for the holding of a Board meeting:
- (i) telephone;
 - (ii) video;
 - (iii) any other technology which permits each Director to communicate with every other participating Director; or
 - (iv) any combination of these technologies.
- A Director may withdraw the consent given pursuant to this Article 57(g) in accordance with the Corporations Act.
- (h) If a Board meeting is held in 2 or more places linked together by any technology:
- (i) a Director present at one of the places is taken to be present at the meeting unless and until the Director states to the chairperson of the meeting that the Director is discontinuing his or her participation in the meeting; and
 - (ii) the chairperson of that meeting may determine at which of those places the meeting will be taken to have been held.
- (i) Until otherwise determined by the Board, a quorum for a Board meeting is a majority of Directors entitled to vote on a resolution that may be proposed at that meeting. A quorum for a Board meeting must be present at all times during the meeting.

58. Chairperson of the Board

- (a) The Board must elect a Director as chairperson of the Board.
- (b) A Director elected chairperson of the Board:
 - (i) holds the office of chairperson for a term of four years from the date of his or her appointment or last election or (if sooner) until they cease to be a Director;
 - (ii) may be removed from that office at any time by resolution of the Board; and
 - (iii) may not serve as chairperson for more than two consecutive four year terms.

- (c) Subject to Article 58(d), the chairperson of the Board must chair each Board meeting.
- (d) If at a Board meeting:
 - (i) a chairperson has not been elected pursuant to Article 58(a); or
 - (ii) the chairperson of the Board is not present within 15 minutes after the time appointed for the holding of a Board meeting or is not willing to chair all or part of that meeting,the Directors present must elect one of their number to chair that meeting or part of the meeting.

59. Board resolutions

- (a) A resolution of the Board is passed if more votes are cast in favour of the resolution than against it, by Directors entitled to vote.
- (b) Subject to Articles 46 and 48 and this Article 59, each Director present in person or by his or her alternate director has one vote on a matter arising at a Board meeting.
- (c) In case of an equality of votes on a resolution at a Board meeting, the chairperson of that meeting does not have a casting vote on that resolution in addition to any vote the chairperson has in his or her capacity as a Director in respect of that resolution.

60. Valid proceedings

- (a) An act at any Board meeting or a committee of the Board or an act of any person acting as a Director is not invalidated by:
 - (i) a defect in the appointment or continuance in office of a person as a Director, a member of the committee or of the person so acting; or
 - (ii) a person so appointed being disqualified or not being entitled to vote,if that circumstance was not known by the Board, committee or person (as the case may be) when the act was done.
- (b) If the number of Directors is below the minimum required by this Constitution, the Board must not act except in emergencies, to appoint Directors up to that minimum number or to call and arrange to hold a meeting of Shareholders.

61. Shareholder Advisory Group

- (a) The Board must establish a Shareholder Advisory Group (**SAG**) to provide feedback and recommendations to the Company's executive officers regarding operational matters related to the Theodore Channel Irrigation Scheme.
- (b) The SAG membership must comprise a cross section of shareholders, of varying sizes and from all areas within the Theodore Channel Irrigation Scheme.
- (c) The SAG will be consultative only and will have no executive or supervisory responsibilities in respect of the Company or its operations.
- (d) The Board will approve the terms of reference for the SAG and must ensure that the Company provides it secretarial support.

Notices

62. Notices to Shareholders

- (a) The Company may give Notice to a Shareholder by any of the following means in the Board's discretion:
- (i) delivering it to that Shareholder in person;
 - (ii) delivering it or sending it by post to the address of the Shareholder in the Register or the alternative address (if any) nominated by that Shareholder or person for that purpose;
 - (iii) sending it to the fax number or electronic address (if any) nominated by that Shareholder or person for that purpose;
 - (iv) if permitted by the Corporations Act, notifying that Shareholder of the notice's availability by an electronic means nominated by the Shareholder for that purpose; or
 - (v) any other means permitted by the Corporations Act.
- (b) The Company must send all documents to a Shareholder whose address for Notices is not within Australia by air-mail, air courier, fax or electronic transmission.
- (c) A person entitled to a Share because of a transfer, or otherwise, is bound by every Notice given in respect of that Share.
- (d) Any Notice given or document delivered by the Company to the holder of a Share that is Jointly Held Shareholder whose name appears first in the Register in respect of such Share is taken to be notice or delivery to all holders of the Jointly Held Share.
- (e) Any Notice required or allowed to be given by the Company to one or more Shareholders by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.

63. Notice to Directors

The Company may give Notice to a Director or alternate director by:

- (a) delivering it to that person;
- (b) sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person for that purpose;
- (c) sending it to the fax number or electronic address (if any) nominated by that person for that purpose; or
- (d) any other means agreed between the Company and that person.

64. Notice to the Company

A person may give Notice to the Company by:

- (a) delivering it or sending it by post to the registered office of the Company;
- (b) delivering it or sending it by post to a place nominated by the Company for that purpose;

- (c) sending it to the fax number at the registered office of the Company nominated by the Company for that purpose;
- (d) sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (e) any other means permitted by the Corporations Act.

65. Time of service

- (a) A Notice sent by post or air-mail is taken to be given on the day after the date it is posted.
- (b) A Notice sent by fax or other electronic transmission is taken to be given when the transmission is sent provided that in the case of notice to the Company or a Director or an alternate director, the sender meets any action required by the recipient to verify the receipt of the document by the recipient.
- (c) A Notice given in accordance with Article 62(a)(iv) is taken to be given on the day after the date on which the Shareholder is notified that the Notice is available.
- (d) A certificate by a Director or Secretary to the effect that a Notice by the Company has been given in accordance with this Constitution is conclusive evidence of that fact.

66. Notice requirements

The Board may specify, generally or in a particular case, requirements in relation to Notices given by any electronic means, including requirements as to:

- (a) the classes of Notices that may be sent, and circumstances in which they may be sent;
- (b) verification (whether by encryption code or otherwise); and
- (c) the circumstances in which, and the time when, the Notice is taken to be given.

Winding up

67. Winding up

- (a) On a winding up or dissolution of the Company, any surplus assets of the Company remaining after the payment of its debts may not be paid or distributed to a Shareholder, but will be given or transferred, for no consideration, to some other body:
 - (i) that has objects similar to or consistent with any or all of the objects of the Company; and
 - (ii) that has constituent documents that include provisions prohibiting the distribution of income and property, or surplus assets on a winding up, of the body among members except as bona fide compensation for services rendered or expenses incurred on behalf of the body.
- (b) Such body will be determined by the Shareholders at or before the winding up or dissolution, in default of such determination, by a judge of the Supreme Court of Queensland.