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TOURISM NOOSA LIMITED

CONSTITUTION

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Constitution

of

Tourism Noosa Limited

ACN 097 924 199

INTRODUCTION

1. REPLACEABLE RULES EXCLUDED

- 1.1 The replaceable rules contained in the Act do not apply to the Company.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Constitution:

Act means the *Corporations Act 2001* (Cth) and includes any amendment, consolidation, substitution or re-enactment of it or any legislation passed in substitution for it;

Appointor means the party or parties that appointed a Director;

Board means all or some of the Directors acting as a board;

Board Manual means a manual adopted by the Board in its discretion from time to time that sets out the role, structure and purpose of the Board including the Eligibility Criteria;

Business Day means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Office is located;

Chair means the Chair of the Board appointed under rule 57 from time to time

Committee means a committee to which powers have been delegated under rule 34;

Company means Tourism Noosa Limited ACN 097 924 199;

Commencement Date means the date this Constitution is adopted by the Company via a special majority vote of the Members;

Constitution means the constitution of the Company as amended from time to time;

Deputy Chair means the Deputy Chair of the Board, elected under rule 19.2 from time to time;

Director means a person holding the office of director of the Company under this Constitution;

Eligibility Criteria has the meaning given to that term in rule 20.2;

Executive Officer means the Executive Officer appointed under rule 29 from time to time;

Funding means funding provided to the Company by NC in any form, including by way of distribution of revenue received by Council from ratepayers in accordance with the Local Government Act;

General Meeting means a meeting of the Members;

HSA means Hastings Street Association Inc. ABN 13 447 932 241;

HSA Eligibility Criteria means a natural person who:

- (a) is a current member of HSA; and
- (b) provides their written consent to being appointed as a director of the Company;
- (c) is over the age of 18; and
- (d) who has experience and knowledge of the local tourism sector.

Honorary Member means a member of the Company who is entitled to access to:

- (a) the Company's network night; and
- (b) tourism newsletters and associated publications;

Independent Chairman means a Chair appointed by the Board which Chair may, but need not, be a person of substantial tourism industry background but must have the appropriate business and governance experience, which may include previous chair experience on a board of directors;

Liability means a claim, action, suit, proceeding, damage, or loss.

Life Member means a Member who, in the opinion of the Board, has rendered outstanding service to the Company and has been elected a life member of the Company by a special resolution of the Members;

Local Government Act means the *Local Government Act 1993* of the State of Queensland and includes any amendment or re-enactment of it or any legislation passed in substitution for it;

Member means a Standard Member, Honorary Member, Life Member or a member of any other class of members of the Company from time to time and **Membership** has a corresponding meaning;

NC means the Noosa Council exercising powers vested under the Local Government Act 2009;

Nominated Representative means, in the case of a Member which is not a single natural person:

- (a) in the case of a body corporate, a single natural person who is authorised under section 250D of the Act; and
- (b) in every other case, a single natural person who is nominated by a Member in accordance with rule 82,

to represent that Member at General Meetings and to perform such functions as are necessary for that Member to comply with the Constitution;

Noosa means the geographical area encompassed with the boundaries of the Noosa Shire as constituted under the Local Government Act and **Noosa area** has a corresponding meaning;

Observer has the meaning given to that term under rule 60A.1;

Objects means the objects of the Company listed in rule 3;

Office means the registered office of the Company for the time being;

Officer means a Director, Secretary or Executive Officer;

Plan means the strategic plan adopted by the Company in its discretion from time to time for the operation and business development of the Company;

Register means the register of Members kept pursuant to the Act;

Rule or rule means a rule of this Constitution;

Secretary means the person appointed from time to time to perform the duties of Company secretary;

Standard Member means a Member which:

- (a) is, or carries on, a business of a type acceptable to the Board; and
- (b) is financial as at 30 June each year;

Subsidiary means any subsidiary company of the Company that may be incorporated from time to time with objects consistent with the Objects and the incorporation of which has been approved by the Company in General Meeting;

Term means a period of three years from the date of a Directors' appointment;

Treasurer means the Treasurer of the Board, elected under rule 19.1 from time to time; and

UNESCO means the United Nations Educational, Scientific and Cultural Organisation.

2.2 Interpretation

- (a) Reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular; and
 - (iii) a person includes a body corporate.
- (b) Except so far as the contrary intention appears in this Constitution:
 - (i) an expression has in this Constitution the same meaning as in the Act; and
 - (ii) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (c) "Including" and similar expressions are not words of limitation.
- (d) Headings and any table of contents or index are for convenience only and do not form part of this Constitution or affect its interpretation.

3. OBJECTS

- (a) The principal object for which the Company was established is to promote the tourism industry in and around the Noosa region for the benefit of Members as a whole.
- (b) To achieve the principal object, the Company may, without limitation:
 - (i) work towards the strategies outlined in the Plan adopted by the Company from time to time;
 - (ii) influence and consult with NC regarding NC's strategies, plans or actions that affect the tourism industry in the Noosa region;
 - (iii) liaise directly with and to encourage the support and co-operation of commercial organisations, business establishments and tourism associations within the region;
 - (iv) achieve adequate funding and support from public and private sources to meet these Objects.

4. POWERS

- 4.1 Subject to rule 6, the Company has all the powers of an individual and body corporate but does not have the power to issue shares.

5. APPLICATION OF INCOME AND PROPERTY

- 5.1 The income and property of the Company, from wherever it is derived, must be applied solely in support of the Objects.

6. **NO DISTRIBUTION TO MEMBERS**

- 6.1 Subject to rule 6.2, no portion of the income or property of the Company may be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to the Members.
- 6.2 Rule 6.1 does not prevent:
- (a) the payment in good faith of remuneration to any Member, Officer or servant of the Company in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
 - (b) the payment of interest at a rate not exceeding 12% per annum on money borrowed by the Company from any Member;
 - (c) the payment of reasonable and proper rent by the Company to a Member for premises leased by the Member to the Company;
 - (d) the reimbursement of expenses incurred by any Member on behalf of the Company;
 - (e) the disbursement of income or property under rule 97.

7. **LIMITED LIABILITY**

- 7.1 The Liability of the Members is limited.

8. **GUARANTEE**

- 8.1 Every Member undertakes to contribute an amount not exceeding \$10 to the property of the Company in the event of its being wound up while the Member is a Member or within 1 year after the Member ceases to be a Member, if required for payment:
- (a) of the debts and liabilities of the Company (contracted before the member ceases to be a Member);
 - (b) of the costs, charges and expenses of winding up; and
 - (c) for the adjustment of the rights of the contributories among themselves.

MEMBERSHIP

9. **CLASSES OF MEMBERS**

- 9.1 Membership of the Company will consist of the following classes of Members:

- (a) Standard Members;
- (b) Honorary Members; and
- (c) Life Members,

and the rules provided in rules 9.2 – 9.8 inclusive apply, as relevant, to each class.

- 9.2 Standard Members are entitled to:

- (a) voting rights to the Nominated Representative of its business or, businesses, subject to rule 9.2(e);
- (b) have its Nominated Representative or other nominee eligible for nomination to become a Director;
- (c) access all services of the Company including, without limitation:
 - (i) the Company's network night;
 - (ii) tourism newsletters and associated publications; and
 - (iii) booking services, website and brochure display.

- (d) transfer their Membership with the sale of the Member's business to the person, body corporate or body politic that purchases the Member's business. A Standard Member, if not a natural person, must nominate one Nominated Representative to be its nominee for the purpose of Membership, with details of the name and address of such Nominated Representative to be recorded in the Register and kept current.
- (e) Despite anything to the contrary expressed or implied in rule 9.2(d) or in any other provision of this Constitution, where a Standard Member has more than one business and has taken out a separate Membership for each such business, the Standard Member will still only be entitled to exercise one (1) vote at any General Meeting, irrespective of how many different businesses or Memberships that Standard Member has.

9.3 Honorary Membership:

- (a) is not transferable;
- (b) may be:
 - (i) for a fixed period of time; or
 - (ii) until the occurrence of an ascertainable event, to be determined by the Board; and
 - (iii) terminable at the Board's discretion at any time;
- (c) confers no voting rights;
- (d) confers no eligibility for Directorship;
- (e) may be unlimited as to number; and
- (f) may be conferred only upon natural persons.

9.4 Life Members:

- (a) are entitled to vote at any General Meeting; but otherwise
- (b) have the same rights as Honorary Members.

9.5 The number of Members in all classes of Membership is unlimited. Membership will be restricted to persons over the age of eighteen (18) years at the date of their Application for Membership.

9.6 Membership may be in the name of the person, body corporate or body politic.

9.7 Subject to these Rules, a Member may continue to be a Member provided that all Membership fees payable by that Member have been paid and that the Member is not financially indebted to the Company in any way.

9.8 The Company, at any General Meeting, may waive the requirement for payment of Membership fees by, and confer honorary Membership on a natural person who:

- (a) has made and continues to make a substantial contribution in furthering the Objects;
- (b) need not be a resident of Noosa nor have a pecuniary interest in any property, business or enterprise within the Noosa area; and
- (c) agrees to continue to promote the Objects.

10. **MEMBERSHIP**

10.1 A person wishing to apply to become a Member of any class of Membership must apply for Membership in the form prescribed by the Board from time to time.

10.2 Every application for Membership must be in such form as the Board may from time to time prescribe.

10.3 In the case of Standard Membership, the applicant may (where applicable) nominate the Nominated Representative or other person intended to receive notices on behalf of such organisation.

- 10.4 By no later than the next Board meeting after receipt by the Secretary of any application and the Membership fee payable, the Board will consider and determine upon the granting, rejection or deferment of the application.
- 10.5 Upon acceptance, rejection or deferment of an application for Membership, the Secretary must, within one (1) month of the Board meeting referred to in rule 10.4, give the applicant notice in writing of such acceptance, rejection or deferment of the application for Membership.
- 10.6 Should an application for Membership be rejected by the Board then the applicant rejected will have the same rights of appeal as if it were a termination of Membership pursuant to rule 17.
- (a) The Board may request from any Member information it considers necessary to satisfy the Board that the Member is lawfully operating their business or businesses; and
 - (b) has taken out and maintains all insurances required by them having regard to the nature of their business, including (but not limited) to those insurances required by law.

11. NOTIFICATION BY MEMBERS

- 11.1 Each Standard Member must promptly notify the Secretary in writing of any change in the person nominated as its Nominated Representative under rule 82.
- 11.2 A person nominated as a Nominated Representative must consent to the nomination in writing.

12. REGISTER OF MEMBERS

- 12.1 A Register must be kept in accordance with the Act.
- 12.2 The following must be entered in the Register in respect of each Member:
- (a) the full name of the Member;
 - (b) the residential address, facsimile number and electronic mail address, if any, of the Member;
 - (c) the category of Membership;
 - (d) the date of admission to and cessation of Membership;
 - (e) the date of last payment of the Member's annual subscription;
 - (f) in the case of a Standard Member, the full name, address, facsimile number and electronic mail address, if any, of its Nominated Representative;
 - (g) the date on which any former Member ceased to be a Member and the reason for cessation of Membership (if known); and
 - (h) such other information as the Directors require.
- 12.3 Each Member and any nominated representative of a Member must notify the Secretary in writing of any change to that person's name, address, facsimile number or electronic mail address within one month after the change.
- 12.4 The Register will be open for inspection at all reasonable times to any financial Member who applies to the Secretary for such inspection. Copies of the Register will be provided at the fee prescribed by the Board from time to time.

APPLICATION FEE AND ANNUAL SUBSCRIPTION

13. APPLICATION FEE

- 13.1 The application fee payable by each applicant for Membership is the sum the Board determines from time to time for each category of Membership.

14. ANNUAL SUBSCRIPTION

- 14.1 The annual subscription payable by a Member will be the sum the Board determines from time to time.
- 14.2 All accepted Memberships will commence on the date the annual subscription is received by the Secretary.
- 14.3 Despite their respective commencement dates, all Memberships will fall due for renewal on 1 July of each year.

CESSATION OF MEMBERSHIP

15. RESIGNATION

- 15.1 A Member may resign from Membership by giving written notice to the Secretary by facsimile, post, electronic mail.
- 15.2 The resignation of a Member takes effect on the date of receipt of the notice of resignation or any later date provided in the notice.

16. TERMINATION OF MEMBERSHIP

- 16.1 If a Member:
- (a) is convicted of an indictable offence;
 - (b) fails to comply with any of the provisions of this Constitution;
 - (c) has Membership fees in arrears for a period of two months or more;
 - (d) enters into an arrangement for the benefit of the Member's creditors, is adjudged bankrupt, or, being incorporated, commences liquidation proceedings or has liquidation proceedings commenced against it; or
 - (e) operates in violation of, or in contradiction of the Act;
- then that Member's Membership will be forfeited.
- 16.2 If a Member's conduct is considered by the Board to:
- (a) breach any code of conduct promulgated by the Board from time to time for observance by the Members; and/or
 - (b) be injurious or prejudicial to the interests of the Company;
- the Board may consider whether such Membership is to be terminated.
- 16.3 The Member concerned will be given a full and fair opportunity to present the Member's case pursuant to rule 17.3. If the Board resolves to terminate the Member's Membership, it will instruct the Secretary to advise the Member in writing accordingly.
- 16.4 For the purposes of this rule, 'Member' includes any Nominated Representative of a Member.

17. APPEAL AGAINST REJECTION OF APPLICATION FOR MEMBERSHIP OR TERMINATION OF MEMBERSHIP

- 17.1 A person whose:
- (a) Membership has been terminated; or
 - (b) application for Membership has been rejected;
- by the Board may, within one (1) month of receiving written notification thereof, lodge with the Secretary written notice of his, her or its intention to appeal against the decision of the Board.

- 17.2 Within three (3) months after the date of receipt by the Secretary of such notice of intention to appeal against the decision of the Board, the Secretary must convene a General Meeting to determine the appeal.
- 17.3 At any such General Meeting, the appellant will be given the opportunity to fully present the appellant's case and the Board will likewise have the opportunity to present its case.
- 17.4 The appeal will be determined by the vote of the majority of Members present at such General Meeting who are entitled to vote.

18. CESSATION OF MEMBERSHIP

- 18.1 A Standard Member ceases to be a member if it is wound up or is otherwise dissolved or deregistered.

EFFECT OF CESSATION OF MEMBERSHIP

- 18.2 If any Member ceases to be a Member under this Constitution, the Member remains liable to pay to the Company any money which, at the time of the Member ceasing to be a Member, the Member owes to the Company on any account and for any sum not exceeding \$10 for which the Member is liable under rule 8.

DIRECTORS

19. NUMBER OF DIRECTORS

- 19.1 Subject to rule 19.3, the Board must consist of seven (7) Directors, comprising:
- (a) four (4) Directors to be appointed or elected by the Board in accordance with rule 20.4;
 - (b) two (2) Directors to be appointed or elected by the Members in accordance with rule 20.5; and
 - (c) one (1) Director to be appointed or elected by HSA in accordance with rule 20.6.
- 19.2 The Board may choose to elect, from the incumbent Board, on an annual basis, a Chair, Deputy Chair and Treasurer. If the votes are equal on a proposed resolution, the Chair of the meeting has a casting vote, in addition to any deliberative vote.
- 19.3 The Board may consist of less than seven (7) Directors during the process of the election or appointment of Directors to the Board in accordance with rules 20, 22 and 23.

20. ELECTION OF DIRECTORS

- 20.1 The Board may elect or appoint Directors to the Board in accordance with this rule 20 and the Board Manual.
- 20.2 To be eligible for election or appointment as a Director, an individual must:
- (a) be a natural person over the age of 18;
 - (b) give their written consent to be appointed as a Director; and
 - (c) have the appropriate mix of skills and demonstrable experience required to support the Company achieving the Objects as determined by the Board in accordance with rule 20.3 from time to time,

(Eligibility Criteria).

- 20.3 For the avoidance of doubt, the Board has the discretion to determine and vary from time to time the Eligibility Criteria required to support the Company achieving the Objects and will record the Eligibility Criteria and any variations in the Board Manual.
- 20.4 The process for the election of Directors by the Board will occur using the following process:

- (a) upon the retirement of a Director, or Directors, appointed by the Board, the Board must meet to set the Eligibility Criteria in accordance with rule 20.2 and 20.3;
- (b) the Board must publicly advertise for the position of a Director, which must include:
 - (i) the Eligibility Criteria;
 - (ii) a requirement for applicants to meet the Eligibility Criteria;
 - (iii) sufficient details of where applicants must submit their applications to;
 - (iv) sufficient details of when applications must be submitted by; and
 - (v) any other details determined by the Board acting reasonably;
- (c) the Board must call a meeting of the Directors to consider any applications received by the Board for the appointment as a Director, and at such meeting each Director present and entitled to vote must decide by majority vote:
 - (i) a shortlist of candidates of applications who meet the Eligibility Criteria; and
 - (ii) upon determining the shortlist of candidates, determine the candidate to be appointed as a Director.

20.5 The process for the election of Directors by the Members will occur using the following process:

- (a) upon the retirement of a Director appointed by Members, the Board must meet to set the Eligibility Criteria for each vacant position in accordance with rule 20.2 and 20.3;
- (b) the Board must notify Members of the Eligibility Criteria;
- (c) where a Member meets the Eligibility Criteria, that Member may apply to be appointed as a Director by making a written application to the Board and that application must include information on how the applicant does meet that Eligibility Criteria;
- (d) the Secretary must provide all Members with written notice including:
 - (i) the list of candidates and the supporting application for each candidate; and
 - (ii) a voting paper (or particulars of any electronic online voting procedure permitted by law for the purpose) in the form and by the procedure prescribed by the Board from time to time;
- (e) Members must complete and return their voting paper to the Secretary (or have properly cast a permitted electronic vote online) by seven (7) days after the date the notice provided under rule 20.5(d);
- (f) where voting is required to be affected by voting paper:
 - (i) any voting paper not received by the Secretary before the time set out in the notice provided under rule 20.5(d) will be ineffective; and
 - (ii) voting papers must be signed by the Member (or the Member's duly constituted attorney) or by the Nominated Representative of the Member; and
- (g) the named candidate for election as Director who obtains the highest number of valid votes of the Members in accordance with this rule 20.5 will be appointed as a Director.

20.6 The process for the election of a Director by HSA will occur using the following process:

- (a) within 90 days of the retirement of a Director appointed by HSA, HSA must nominate a person for the vacant position who meets the HSA Eligibility Criteria
- (b) if HSA makes no election pursuant to rule 20.6, the vacancy on the Board is to be filled by the Members pursuant to rule 20.5; and
- (c) If HSA does not exist at the time the Director appointed by HSA retires from the Board, the vacancy on the Board is to be filled by a Member pursuant to rule 20.5.

21. **TERM OF APPOINTMENT OF DIRECTORS**

- (a) Subject to rule 21(b), Directors will hold office for the Term, unless their office is earlier vacated under rule 35.1 or rule 36.
- (b) A Director must not serve more than two (2) continual Terms, unless otherwise agreed by the Board.

22. **RETIREMENT AND APPOINTMENT OF DIRECTORS**

22.1 Upon the retirement of a Director (**outgoing Director**) at the expiration of the Term:

- (a) if the Board appointed the outgoing Director, the Board must appoint a Director to fill the vacancy (**incoming Director**) after following the procedure set out in rule 20.4;
- (b) if the Members appointed the outgoing Director, the Members must appoint a Director to fill the vacancy (**incoming Director**) after following the procedure set out in rule 20.5;and
- (c) if the HSA appointed the outgoing Director, the HSA must appoint a Director to fill the vacancy (incoming Director) after following the procedure set out in rule 20.6.
- (d) the incoming Director will hold office for the Term, unless their office is earlier vacated under rule 35.1 or rule 36.

22.2 Subject to rule 21(b), outgoing Directors are eligible for re-appointment to the Board under this rule 22 but do not have a right to vote under rule 22 until such time as the outgoing Director has been reappointed to the Board.

23. **CASUAL VACANCIES OF DIRECTORS**

23.1 If a Director (**vacating Director**) vacates office before their term of appointment has expired, the party who appointed the vacating Director must appoint a Director (**replacement Director**) to fill the vacancy within 3 months of the office being vacated.

23.2 If the Board appointed the vacating Director, the Board must appoint a **replacement Director** to fill the vacancy after following the procedure set out in rule 20.4.

23.3 If the Members appointed the vacating Director, the Members must appoint a Director to fill the vacancy **replacement Director** after following the procedure set out in rule 20.5.

23.4 If:

- (a) the appointor does not appoint a replacement Director under rule 23.1; or
- (b) the nominee chosen by the appointor to be the replacement Director is unwilling or unable to accept the appointment,

the Board must meet to appoint a replacement Director, who meets the Eligibility Criteria and the requirements of rule 20.2. Subject to 23.2 The replacement Director will hold office as Director for the balance of the unexpired term of appointment of the vacating Director.

23.5 Subject to rule 21(b), replacement Directors are eligible for re-appointment to the Board under rule 22.1.

23.6 Nothing in this rule 23 requires an appointor to fill a casual vacancy where the balance of the unexpired term of appointment of the vacating Director is 3 months or less.

24. **INSUFFICIENT DIRECTORS**

24.1 In the event of a vacancy in the office of a Director, the remaining Directors may act, but if the number of remaining Directors is not sufficient to constitute a quorum at a Board meeting, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum for the purpose of convening a General Meeting.

POWERS OF DIRECTORS

25. VALIDATION OF ACTS OF DIRECTORS AND SECRETARIES

- 25.1 The acts of a Director or Secretary are valid despite any defect that may afterwards be discovered in that Director's appointment or qualification.
- 25.2 Where a person whose office as Director has been vacated under a provision of the Act purports to do an act as a Director, that act is as valid, in relation to a person dealing with the Company in good faith and for value and without actual knowledge of the matter because of which the office was vacated, as if the office had not been vacated.

26. GENERAL BUSINESS MANAGEMENT

- 26.1 The business of the Company is to be managed by or under the direction of the Board in accordance with the Board Manual.
- 26.2 The Board may exercise all the powers of the Company except any powers that the Act or this Constitution requires the Company to exercise in General Meeting.
- 26.3 A rule made or resolution passed by the Company in General Meeting does not invalidate any prior act of the Board which would have been valid if that rule or resolution had not been made or passed.

27. APPOINTMENT OF ATTORNEY

- 27.1 The Board may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the Board), for the period and subject to the conditions they see fit.
- 27.2 A power of attorney may contain the provisions for the protection and convenience of persons dealing with the attorney that the Board sees fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

28. NEGOTIABLE INSTRUMENTS

- 28.1 The Executive Officer may either:
- (a) unilaterally, with Board approval; or
 - (b) jointly with a member of any finance Committee established by the Board, but in any event, subject to any levels of financial delegation agreed to by the Board,
- sign, countersign, draw, accept, endorse or otherwise create a negotiable instrument.
- 28.2 Despite rule 28.1, the Directors may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

EXECUTIVE OFFICER

29. POWER TO APPOINT

- 29.1 The Directors may appoint any person or persons, not being a Director, to the position of Executive Officer for the period and on the terms (including as to remuneration) the Directors see fit.

30. NOT A MEMBER OF THE BOARD

- 30.1 Executive Officers are not members of the Board but may attend Board meetings except where the Directors otherwise request.

31. **NOT TO EXERCISE DIRECTORS' POWERS**

- 31.1 Executive Officers are to act in an advisory capacity and have the responsibility to implement the directions and decisions of the Directors. The Board may not confer on the Executive Officer any of the powers that a Director must exercise, other than those of an advisory nature or as conferred in this Constitution.

32. **WITHDRAWAL OF APPOINTMENT OR ADVISORY POWERS**

- 32.1 The Board may revoke or vary:
- (a) an appointment; or
 - (b) any of the advisory powers conferred on an Executive Officer.

33. **TEMPORARY APPOINTMENTS**

- 33.1 If an Executive Officer becomes incapable of acting in that capacity the Board may appoint any other person, not being a Director, to act temporarily as Executive Officer.

COMMITTEES

34. **COMMITTEES**

- 34.1 The Board may direct the formation of a Committee of such Directors, Members or others as it thinks fit.
- 34.2 Committees are to act in an advisory capacity only and the Board may not confer on a Committee any of the powers, other than those of an advisory nature, that a Director must exercise.
- 34.3 The meetings and proceedings of any Committee consisting of two or more Directors are governed by the provisions in this Constitution regulating the meetings and proceedings of the Board.

REMOVAL AND RESIGNATION OF DIRECTORS

35. **RESIGNATION OF DIRECTOR**

- 35.1 A Director may resign as a Director by giving a written notice of resignation to the Secretary or Chairman by facsimile, post, electronic mail.

36. **VACATION OF OFFICE OF DIRECTOR**

- 36.1 In addition to any other circumstances in which the office of a Director becomes vacant under the Act, the office of a Director becomes vacant if the Director:
- (a) becomes bankrupt or suspends payment or compounds with that Director's creditors;
 - (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (c) is absent from 3 consecutive Board meetings without special leave of absence from the Board and the Board declares that Director's seat to be vacant;
 - (d) ceases to be qualified as a Director under rule 20;
 - (e) becomes prohibited from being a Director under or by reason of any order made under the Act; or
 - (f) resigns from office in accordance with rule 35.

- 36.2 Despite anything to the contrary expressed or implied in these Rules, the Company may by resolution passed in General Meeting:
- (a) appoint new Directors;
 - (b) increase or reduce the number of Directors;
 - (c) remove any Director before the end of the Director's period of office; and
 - (d) subject to rule 23, appoint another person in the Director's place.
- 36.3 A person appointed under rule 36.2(d) will hold office for the period for which the Director replaced would have held office if the Director had not been removed.
- 36.4 If the conduct or position of any Director is such that continuance in office appears to the majority of the Board to be prejudicial to the interests of the Company, a majority of Directors at a meeting of the Board specifically convened for that purpose may suspend that Director.
- 36.5 Within 14 days of the suspension, the Board must call a General Meeting, at which the Members may either confirm the suspension and remove the Director from office in accordance with rule 36.2(c) or annul the suspension and reinstate the Director.

DIRECTORS' INTERESTS

37. PROHIBITION ON BEING PRESENT OR VOTING

- 37.1 Except where permitted by the Act, a Director who has a material personal interest in a matter that is being considered at a Board meeting:
- (a) must not be counted in a quorum;
 - (b) must not vote on the matter; and
 - (c) must not be present while the matter is being considered at the meeting.
- 37.2 If a Director who has a material personal interest in a matter that is being considered at a Board meeting is not prohibited by the Act from being present at the meeting and voting, the Director may be present, be counted in the quorum and may be heard but may not vote on the matter.

38. DIRECTOR TO DISCLOSE INTERESTS

- 38.1 A Director who is in any way, whether directly or indirectly, interested in a contract, proposed contract or any other arrangement with the Company must, as soon as practicable after the relevant facts have come to the Director's knowledge, declare the nature of the interest at a Board meeting or by written notice to the Secretary.
- 38.2 A Director who holds any office or possesses any property by which, whether directly or indirectly, duties or interests might be created in conflict with that Director's duties or interests as Director must declare at a Board meeting or by written notice to the Secretary the fact and the nature, character and extent of the conflict.
- 38.3 No Director may as a director vote in respect of any contract, proposed contract or any other arrangement in which the Director has directly or indirectly any material personal interest if to do so would be contrary to the Act and if the Director does vote their vote may not be counted. The Director must not be counted in the quorum present at the meeting.
- 38.4 For the purposes of rules 38.1 to 38.3, a Director's interest or any conflict must be disregarded if it arises from or relates solely to:
- (a) a guarantee to be given by the Director (or by persons including the Director or by a body corporate of which the Director is a member or officer) in respect of a loan to the Company; or
 - (b) the position of the Director as director of a related body corporate of the Company, provided that the Director's position is disclosed to the Board.

39. **EFFECT OF INTEREST IN CONTRACT**

39.1 If a Director has an interest in a contract proposed contract or any other arrangement with the Company (other than as a member), or a conflicting interest or duty in relation to any other matter being considered by the Directors, and the Director discloses the nature and extent of the interest or duty at a Board meeting or by written notice to the Secretary:

- (a) the contract may be entered into; and
- (b) if the disclosure is made before the contract is entered into:
 - (i) the Director may retain benefits under the contract even though the Director has an interest in the contract;
 - (ii) the Company cannot avoid the contract merely because of the existence of the interest; and
 - (iii) the Director is not disqualified from the office of Director.

39.2 For the purposes of this rule **contract** includes an arrangement, dealing or other transaction.

40. **OTHER INTERESTS**

40.1 Without limiting rule 37, rule 38 or rule 39, a Director may to the extent permitted by the Act:

- (a) hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of Director;
- (b) be interested in any operation, undertaking or business undertaken or assisted by the Company or in which the Company is or may be interested.

41. **EXTENSION OF MEANING OF “COMPANY”**

41.1 For the purposes of rules 37, 38 and 39 **Company** includes any Subsidiary of the Company and any other company in which the Company or any Subsidiary of the Company is or becomes a shareholder or is otherwise interested.

42. **OTHER DIRECTORSHIPS AND SHAREHOLDINGS**

42.1 A Director may be or become a director, officer, employee or member of any company promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable for any reasonable benefits received as a director, officer, employee or member of the other company.

42.2 Subject to the Act:

- (a) the Directors may exercise the voting power conferred by the shares or other interest held by the Company in another company in favour of a resolution appointing themselves or any of them as directors or other officers of the other company;
- (b) any Director may vote at a Board meeting in favour of a resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other company to appoint that Director as a director or other officer of the other company;
- (c) any Director may be appointed as representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that Director as a director or other officer of the other company; and
- (d) a Director who is also a director of the other company may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the Director to any other office in the other company and a resolution appointing any other Directors as directors or other officers of the other company.

REMUNERATION OF DIRECTORS

43. DIRECTORS' REMUNERATION AND EXPENSES

43.1 Subject to rule 43.4, the Company may pay:

- (a) a Director for services in that Director's capacity as a Director; and
- (b) the Directors' travelling and other expenses that they properly incur:
 - (i) in attending Board meetings or any meetings of committees of Directors;
 - (ii) in attending any General Meetings; and
 - (iii) in connection with the Company's business.

43.2 Payments to the Chair (whether an Independent Chair or otherwise) may be determined by the Board in its discretion. Without limiting that discretion, a payment to the Chair (whether an Independent Chair or otherwise) for acting in that capacity may be greater than that payable to a Director for services in that Director's capacity as a Director.

43.3 Subject to rule 43.2, all payments made to Directors must be approved by the Company in General Meeting.

43.4 Remuneration provided for in rule 43.1(a) for services in the capacity as a Director may not be paid to any Director who is also an elected councillor of NC. For the avoidance of doubt, travelling and other expenses incurred by a Director as detailed in rule 43.1(b) may be paid to a Director who is also an elected councillor of NC.

44. FINANCIAL BENEFIT

44.1 To the extent, if any, required by the Act, a Director must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the Company to the Director or to any other related party of the Director.

SECRETARY

45. TERMS OF OFFICE OF SECRETARY

45.1 A Secretary need not be a Director nor a Member.

45.2 A Secretary holds office on the terms and conditions (including as to remuneration) that the Board determines.

INDEMNITY AND INSURANCE

46. INDEMNITY

46.1 To the extent permitted by the Act, the Company indemnifies:

- (a) every person who is or has been an Officer; and
- (b) where the Board considers it appropriate to do so, any person who is or has been an Officer of a related body corporate of the Company,

against any Liability incurred by that person in his or her capacity as an Officer or of the related body corporate (as the case may be).

46.2 In accordance with section 199A of the Act, the Company must not indemnify a person against:

- (a) any of the following liabilities incurred as an Officer:
 - (i) a Liability owed to the Company or a related body corporate of the Company;

- (ii) a Liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
 - (iii) a Liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith; or
- (b) legal costs incurred in defending an action for a Liability incurred as an Officer if the costs are incurred:
- (i) in defending or resisting proceedings in which the person is found to have a Liability for which they could not be indemnified under rule 46.1;
 - (ii) in defending or resisting criminal proceedings in which the person is found guilty;
 - (iii) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the Court to have been established; or
 - (iv) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.
- Rule 46.2(b)(iii) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for a court order.
- (c) For the purposes of rule 46.2(b) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to those proceedings.

46.3 An officer must:

- (a) give notice to the Company promptly on becoming aware of any Claim against the officer that may give rise to a right to be indemnified under rule 46.1;
- (b) take such action as the Company reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
- (c) not make any admission of Liability in respect of or settle any Claim without the prior written consent of the Company;
- (d) allow the Company or its insurers to assume the conduct, negotiation or defence of any Claim and, on request by the Company, render all reasonable assistance and co-operation to the Company or its insurers in the conduct of any Claim, including giving the Company or its insurers any document, authority or direction that the Company or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
- (e) on request by the Company or its insurers, do everything necessary or desirable which the Company reasonably requests to enable the Company or its insurers (so far as it is possible) to be subrogated to and enjoy the benefits of the officer's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by the Company or its insurers for that purpose; and
- (f) notify any Claim to an insurer or any other person who may be liable to indemnify the officer in respect of that Claim and promptly take all reasonable steps to enforce all the officer's rights against the insurer or other person.

46.4 In rule 46.3 **Claim** means:

- (a) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as such an officer;
- (b) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as that officer; or
- (c) any written or oral demand or threat that might result in the officer reasonably believing that any such process, hearing, complaint, inquiry, investigation, proceeding or application referred to in rule 46.4(a) or 46.4(b) may be initiated.

47. **INSURANCE**

- 47.1 The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an Officer or a related body corporate of the Company against any Liability incurred by the person as an Officer or a related body corporate except a Liability (other than one for legal costs) arising out of:
- (a) conduct involving a wilful breach of duty in relation to the Company; or
 - (b) a contravention of section 182 or 183 of the Act.

48. **DIRECTOR VOTING ON CONTRACT OF INSURANCE**

- 48.1 Despite anything in this Constitution, a Director is not precluded from voting in respect of any contract or proposed contract of insurance, merely because the contract insures or would insure the Director against a Liability incurred by the Director as an Officer or as an officer of a related body corporate.

49. **LIABILITY**

- 49.1 To the extent permitted by law, an Officer is not liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of the Officer's office unless it arises through that Officer's own wilful:
- (a) negligence;
 - (b) default
 - (c) breach of duty; or
 - (d) breach of trust.

INSPECTION OF RECORDS

50. **RIGHTS OF INSPECTION**

- 50.1 The Directors, or the Company by a resolution passed at a General Meeting, may authorise a Member to inspect books of the Company.
- 50.2 A Member other than a Director does not have the right to inspect any document of the Company, other than the minute books for the meetings of its Members and for resolution of Members passed without meetings, except as provided by law or authorised by the Directors or by the Company in General Meeting.

51. **CONFIDENTIAL INFORMATION**

- 51.1 Except as provided by the Act, no Member (not being a Director) is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company.

DIRECTORS' MEETINGS

52. **CIRCULATING RESOLUTIONS**

- 52.1 The Directors may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution (except a Director absent from Australia who has not left a facsimile number or electronic address at which that Director may be given notice) sign a document containing a statement that the Director is in favour of the resolution set out in the document.
- 52.2 Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 52.3 The resolution is passed when the last Director signs.

52.4 A facsimile or electronic mail addressed to or received by the Company and purporting to be signed or sent by a Director for the purpose of this rule 53 must be treated as a document in writing signed by that Director.

53. **MEETINGS OF DIRECTORS**

53.1 The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they see fit.

54. **CALLING DIRECTORS' MEETINGS**

54.1 A Director may at any time, and a Secretary must on the requisition of a Director, call a Board meeting within 7 days of any such request.

55. **NOTICE OF MEETING**

55.1 2 clear days notice of every Board meeting must be given to each Director except that it is not necessary to give notice of a Board meeting to any Director who:

- (a) has been given special leave of absence; or
- (b) is absent from Australia and has not left a facsimile number or an electronic mail address at which the Director may be given notice.

55.2 Any notice of a Board meeting may be given in writing or orally, and whether by facsimile, telephone, electronic mail or any other means of communication.

56. **TECHNOLOGY MEETING OF DIRECTORS**

56.1 A Board meeting may be held using telephone, audio-visual or other any instantaneous technological means. For the purposes of this Constitution such a meeting may be referred to as a technology meeting.

56.2 If a Board meeting is held using any technology and all the Directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.

56.3 The following provisions apply to a technology meeting:

- (a) each of the Directors taking part in the meeting must be able to hear and be heard by each of the other Directors taking part in the meeting; and
- (b) at the commencement of the meeting each Director must announce that Director's presence to all the other Directors taking part in the meeting.

56.4 If the Secretary is not present at a technology meeting one of the Directors present must take minutes of the meeting.

56.5 A Director may not leave a technology meeting by disconnecting that Director's link to the meeting unless that Director has previously notified the Chair.

56.6 A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that Director has previously obtained the express consent of the Chair to leave the meeting.

57. **CHAIRING DIRECTORS' MEETINGS**

57.1 The Directors must appoint a Chair being either one of their number or an Independent Chair to preside as Chair at each Board meeting.

57.2 The appointment as Chair in accordance with rule 57.1 may be a standing appointment, in which case if at any Board meeting, the Chair is not present within 10 minutes after the time appointed for the meeting the Directors present must elect one of their number to chair the meeting.

57.3 The Chair or an Independent Chair of a general meeting:

- (a) has charge of the general conduct of the meeting and the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in that chairperson's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting,

and a decision by that chairperson under this rule is final.

58. QUORUM

- 58.1 The quorum for a Board meeting is at least 4 Directors of the Company entitled to vote and who are present at the meeting. The quorum must be present at all times during the meeting.
- 58.2 The Directors may from time to time determine a different number of Directors to constitute a quorum for the purposes of this rule.

59. PASSING OF DIRECTORS' RESOLUTIONS

- 59.1 A resolution of the Directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- 59.2 The Chair has a casting vote if necessary in addition to any vote the Chair has as a Director. The Chair has discretion both as to whether or not to use the casting vote and as to the way in which it is used.

60A. NOOSA COUNCIL OBSERVER

- 60A.1 Subject to rule 60A.2, NC will have the right to appoint an elected and currently sitting Noosa councillor to the Company's Board meetings to be present in an observational capacity (**Observer**). For the avoidance of doubt, the Observer appointed under this rule does not hold office as a director of the Company.
- 60A.2 The power conferred upon NC to appoint or to nominate an Observer for appointment to the Board will be exercisable only whilst there is a Funding agreement in place between NC and the Company.

MEETINGS OF MEMBERS

60. CIRCULATING RESOLUTIONS

- 60.1 This rule 60 applies to resolutions which the Act, or this Constitution, requires or permits to be passed at a General Meeting, except a resolution under section 329 of the Act to remove an auditor.
- 60.2 The Company may pass a resolution without a General Meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 60.3 Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- 60.4 The resolution is passed when the last member signs.
- 60.5 If the Company receives by facsimile transmission a copy of a document referred to in this rule 60 it is entitled to assume that the copy is a true copy.

61. CALLING OF GENERAL MEETING

- 61.1 A majority of Directors may call a General Meeting whenever they see fit.

61.2 Except as provided in the Act:

- (a) no fewer than 5% of Members may call a General Meeting; and
- (b) if so called, the costs of the meeting must be borne by the Members calling the meeting.

62. **CALLING OF ANNUAL GENERAL MEETING**

62.1 Except as permitted by law, an General Meeting (to be called the **Annual General Meeting**) must be held at least once in every calendar year and within 5 months after the end of its financial year.

63. **AMOUNT OF NOTICE OF MEETING**

63.1 Subject to the provisions of the Act as to short notice, at least 21 days' notice of a General Meeting must be given in writing to those persons who are entitled to receive notices from the Company.

64. **PERSONS ENTITLED TO NOTICE OF GENERAL MEETING**

64.1 Written notice of a General Meeting must be given individually to:

- (a) each Member entitled to vote at the meeting;
- (b) each Director; and
- (c) the Company's auditor.

64.2 No other person is entitled to receive notice of General Meetings.

65. **HOW NOTICE IS GIVEN**

65.1 The Company may give the notice of meeting to a member:

- (a) personally;
- (b) by sending it by post to the address for the member in the register of Members or the alternative address (if any) nominated by the member; or
- (c) by sending it to the facsimile number or electronic address (if any) nominated by the member.

66. **WHEN NOTICE IS GIVEN**

66.1 A notice of meeting sent by post is taken to have been given 3 days after it is posted.

66.2 Except as provided by rule 66.3, a notice of meeting sent by facsimile, or other electronic means, is taken to have been given, if sent before 5 p.m. on a Business Day at the place of receipt, on the day it is sent, and otherwise on the next Business Day at the place of receipt.

66.3 Service by facsimile or electronic mail is not effective if:

- (a) in the case of service by facsimile, the Company's facsimile machine issues a transmission report that the transmission was unsuccessful;
- (b) in the case of service by electronic mail, the Company's computer system reports that delivery has failed; or
- (c) in either case the addressee notifies the Company that the notice was not fully received in a legible form within 3 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given, whichever is later.

66.4 A certificate signed by any manager or Officer that the notice was given in accordance with this rule 66 is conclusive evidence that the notice was given in accordance with this rule 66.

67. **PERIOD OF NOTICE**

67.1 Subject to the Act and this Constitution where a specified number of days' notice or notice extending over any period is required to be given, the day of service is excluded, and the day upon which the notice expires is included.

68. **CONTENTS OF NOTICE**

68.1 A notice of a General Meeting must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used);
- (b) state the general nature of the meeting's business;
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
- (d) contain a statement setting out the following information:
 - (i) that the member has a right to appoint a proxy; and
 - (ii) that the proxy need not be a Member.

69. **NOTICE OF ADJOURNED MEETING**

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

70. **ACCIDENTAL OMISSION TO GIVE NOTICE**

70.1 The accidental omission to give notice of any General Meeting to or the non-receipt of the notice by any person entitled to receive notice of a General Meeting under this Constitution does not invalidate the proceedings at or any resolution passed at the meeting.

71. **POSTPONEMENT OF GENERAL MEETING**

71.1 The Directors may postpone the holding of any General Meeting whenever they see fit (other than a meeting requisitioned by Members as provided by the Act) for not more than 42 days after the date for which it was originally called.

71.2 Whenever any meeting is postponed (as distinct from being adjourned under rule 73.3 or rule 74.2) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

72. **TECHNOLOGY**

72.1 The Company may hold a meeting of its Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

73. **QUORUM**

73.1 The quorum for a General Meeting is 5% of the total number of Members entitled to vote and the quorum must be present at all times during the meeting.

73.2 In determining whether a quorum is present, individuals attending as proxies or body corporate representatives are counted, with one count for each individual or body corporate so represented.

73.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:

- (a) where the meeting was called by the Members or upon the requisition of Members, the meeting is dissolved; or

- (b) in any other case, the meeting is adjourned to the date, time and place the Directors specify. If the Directors do not specify 1 or more of those things, the meeting is adjourned to:
 - (i) if the date is not specified – the same day in the next week;
 - (ii) if the time is not specified – the same time; and
 - (iii) if the place is not specified – the same place.

73.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

74. CHAIR AT GENERAL MEETINGS

74.1 The Chair appointed in accordance with rule 57 will also chair each General Meeting. The appointment may be a standing appointment.

74.2 The Chair must adjourn a General Meeting if the Members present with a majority of votes at the meeting agree or direct that the Chair must do so.

75. BUSINESS AT ADJOURNED MEETINGS

75.1 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

PROXIES AND BODY CORPORATE REPRESENTATIVES

76. WHO CAN APPOINT A PROXY

76.1 A Member who is entitled to attend and cast a vote at a General Meeting may appoint a person as the Member's proxy to attend and vote for the Member at the meeting. The proxy need not be a Member.

77. RIGHTS OF PROXIES

77.1 A proxy appointed to attend and vote for a Member has the same rights as the Member:

- (a) to speak at the meeting;
- (b) to vote (but only to the extent allowed by the appointment); and
- (c) to join in a demand for a poll.

77.2 If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.

77.3 A proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting.

77.4 A proxy may be revoked at any time by notice in writing to the Company.

78. APPOINTING A PROXY

78.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the following information:

- (a) the Member's name and address;
- (b) the Company's name;
- (c) the proxy's name or the name of the office held by the proxy; and
- (d) the meetings at which the appointment may be used.

78.2 A proxy's appointment may be a standing one.

- 78.3 An undated appointment is taken to have been dated on the day it is given to the Company.
- 78.4 An appointment may specify the way the proxy is to vote on a particular resolution.
- 78.5 An appointment does not have to be witnessed.
- 78.6 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

79. FORM OF PROXY SENT OUT BY COMPANY

- 79.1 A form of proxy sent out by the Company may be in a form determined by the Directors but must:
 - (a) enable the Member to specify the manner in which the proxy must vote in respect of a particular transaction; and
 - (b) leave a blank for the Member to fill in the name of the person primarily appointed as proxy.
- 79.2 The form may provide that if the Member leaves it blank as to the person primarily appointed as proxy or if the person or persons named as proxy fails or fail to attend, the Chair is appointed proxy.
- 79.3 Despite rule 79.1 an instrument appointing a proxy may be in the following form or in a form that is as similar to the following form as the circumstances allow:

Tourism Noosa Limited

I/We,
 of _____,
 being a Member/Members of the abovenamed company,
 appoint
 of _____,
 or, in his or her absence,
 of _____,
 as my/our proxy to vote for me/us on my/our behalf at the *annual genera/*General Meeting of the
 Company to be held on _____
 and at any adjournment of that meeting.

† This form is to be used *in favour of/*against the resolution.

Signed on _____

*Strike out whichever is not desired.

† To be inserted if desired.

80. RECEIPT OF PROXY DOCUMENTS

- 80.1 For an appointment of a proxy for a General Meeting to be effective, the following documents must be received by the Company at least 24 hours before the meeting:
 - (a) the proxy's appointment; and
 - (b) if the appointment is signed by the appointor's attorney – the authority under which the appointment was signed or a certified copy of the authority.
- 80.2 If a General Meeting has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

- 80.3 The Company receives an appointment or authority when it is received at any of the following:
- (a) the Office;
 - (b) a place or electronic mail address specified for the purpose in the notice of meeting.
- 80.4 An appointment of a proxy is ineffective if it does not comply with the requirements under this document.

81. VALIDITY OF PROXY VOTE

- 81.1 A vote cast by a proxy is valid although, before the proxy votes:
- (a) the appointing Member dies;
 - (b) the Member is mentally incapacitated;
 - (c) the Member revokes the proxy's appointment; or
 - (d) the Member revokes the authority under which the proxy was appointed by a 3rd party;
- unless the Company receives written notice of that event before the start or resumption of the meeting at which the proxy votes.

82. BODY CORPORATE REPRESENTATIVE

- 82.1 A Member which is a body corporate, partnership or in any event not a single natural person must appoint an individual as a Nominated Representative to exercise all or any of the powers the body corporate may exercise:
- (a) at General Meetings;
 - (b) at meetings of creditors or debenture holders; or
 - (c) relating to resolutions to be passed without meetings.
- 82.2 The appointment may be a standing one.
- 82.3 The appointment may set out restrictions on the Nominated Representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- 82.4 A Member may appoint more than 1 Nominated Representative in accordance with this rule but only 1 Nominated Representative may exercise the Member's powers at any one time.
- 82.5 Unless otherwise specified in the appointment, the Nominated Representative may exercise, on the Member's behalf, all of the powers that the Member could exercise at a general meeting or in voting on a resolution.

83. ATTORNEY OF MEMBER

- 83.1 An attorney for a Member may do whatever the Member could do personally as a member, but if the attorney is to vote at a meeting of Members or a class of Members the instrument conferring the power of attorney or a certified copy of the authority must be produced to the Company at least 24 hours before the meeting, in the same way as the appointment of a proxy.

VOTING AT MEETINGS OF MEMBERS

84. HOW VOTE MAY BE EXERCISED

- 84.1 A Standard Member is not entitled to vote at a General Meeting if the Member's annual subscription is in arrears at the date of the meeting.
- 84.2 At any General Meeting, each Member present and entitled to vote has one vote.
- 84.3 The vote may be exercised in person or by proxy, Nominated Representative or attorney.

ANNUAL GENERAL MEETING

85. BUSINESS OF AN ANNUAL GENERAL MEETING

- 85.1 The business of an Annual General Meeting may include consideration of the annual financial report, Directors' report and auditor's report, even if not referred to in the notice of meeting.
- 85.2 All other business transacted at an annual General Meeting and all other business transacted at any other General Meeting is special business.
- 85.3 The business of the annual General Meeting also includes any other business which under this Constitution or the Act ought to be transacted at an annual General Meeting.
- 85.4 The chair of the annual General Meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company.
- 85.5 If the Company's auditor or the auditor's representative is at the meeting, the Chair must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

86. RESOLUTIONS PROPOSED BY MEMBERS

- 86.1 A Member may not at any meeting move any resolution relating to special business unless:
- (a) the Member has given not less than 30 business days' notice in writing of the Member's intention to move an ordinary resolution or 2 months' notice in writing of the Member's intention to move a special resolution at the meeting by leaving the notice and a signed copy of the resolution at the Office; or
 - (b) the resolution has previously been approved by the Board.
- 86.2 Upon receiving a notice referred to in rule 86.1(a) the Secretary must:
- (a) if the notice convening the meeting has already been sent, immediately notify the Members of the proposed resolution; or
 - (b) otherwise include notice of the proposed resolution in the notice convening the meeting.

MINUTES

87. MINUTES TO BE KEPT

- 87.1 The Directors must keep minute books in which they record within 1 month:
- (a) proceedings and resolutions of General Meetings;
 - (b) proceedings and resolutions of Board meetings (including meetings of a committee of Directors);
 - (c) resolutions passed by Members without a meeting; and
 - (d) resolutions passed by Directors without a meeting.
- 87.2 The Board must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:
- (a) the Chair of the meeting; or
 - (b) the Chair of the next meeting.
- 87.3 The Board must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

- 87.4 Without limiting rule 87.1 the Directors must record in the minute books:
- (a) all appointments of officers and executive employees;
 - (b) the names of the Directors present at all meetings of the Board and the Company;
 - (c) in the case of a technology meeting the nature of the technology; and
 - (d) all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a Director of a material personal interest.

ACCOUNTS, AUDIT AND RECORDS

88. ACCOUNTS

- 88.1 The Board must cause proper accounting and other records to be kept in accordance with the Act.
- 88.2 The Board must distribute copies of every profit and loss account, balance sheet and statement of cash flows (including every document required by law to be attached to them) as required by the Act.

89. AUDIT

- 89.1 A registered company auditor must be appointed.
- 89.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

EXECUTION OF DOCUMENTS

90. COMMON SEAL

- 90.1 The Company may, but need not, have a common seal.

91. USE OF COMMON SEAL

- 91.1 If the Company has a common seal the Board must provide for its safe custody.
- 91.2 The common seal may not be affixed to any document except by the authority of a resolution of the Board or of a committee of the Directors duly authorised by the Board.
- 91.3 The Company executes a document with its common seal if the affixing of the seal is witnessed by:
- (a) 2 Directors; or
 - (b) 1 Director and the Secretary.

92. EXECUTION OF DOCUMENTS WITHOUT COMMON SEAL

- 92.1 The Company may execute a document without using a common seal if the document is signed by:
- (a) 2 Directors; or
 - (b) 1 Director and the Secretary.

93. EXECUTION OF DOCUMENT AS A DEED

- 93.1 The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with rule 91 or rule 92.

94. EXECUTION – GENERAL

- 94.1 The same person may not sign in the dual capacities of Director and Secretary.

- 94.2 A Director may sign any document as Director, with or without the common seal, even though the document relates to a contract, arrangement, dealing or other transaction in which the Director is interested and the Director's signature complies with the requirements of this Constitution as to execution despite the Director's interest.
- 94.3 Rules 91 and 92 do not limit the ways in which the Directors may authorise documents (including deeds) to be executed on behalf of the Company.

INADVERTENT OMISSIONS

95. FORMALITIES OMITTED

- 95.1 If some formality required by this Constitution is inadvertently omitted or is not carried out, the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the Directors that the omission has directly prejudiced any Member financially. The decision of the Directors is final and binding on all Members.

ALTERATIONS

96. ALTERATIONS

- 96.1 If the Company is approved as a public benevolent institution by the Australian Taxation Office, the Australian Taxation Office must be notified in writing of any alterations to this Constitution.

WINDING UP

97. WINDING UP

- 97.1 If upon the winding up or dissolution of the Company, any property remaining after satisfaction of all the Company's debts and liabilities, that property must not be paid to or distributed among the Members but must be given or transferred to some other institution or institutions determined by the Members at or before the time of dissolution, which has similar objects to the Company and (if the Company is approved as a public benevolent institution by the Australian Taxation Office) which is approved by the Commissioner of Taxation as a public benevolent institution for the purposes of any Commonwealth Taxation Act.
- 97.2 If the Members do not make the necessary determination under rule 97, the Company may apply to have the Supreme Court determine the institute or institutes to receive the distribution of the Company's property.

Signed: _____



Louise Formosa – Acting Chair

Dated: 19th November 2021