

Constitution

Pittwater Environmental Foundation (“**Company**”)

A Company Limited by Guarantee

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- (a) of remuneration for services to the Company provided by, or reimbursement of expenses incurred by, that person (other than as a Director) or firm, including in accordance with articles 6.10 and 6.11; or
- (b) for goods supplied in the ordinary course of business,
- (c) for repayment of any money borrowed from an officer of the Company or a Member;
- (d) of interest at a rate not exceeding the rate fixed for the purposes of this article by the Company in general meeting on money borrowed from an officer of the Company or a Member; or
- (e) of reasonable rent for premises let by an officer of the Company or a Member.

with the unanimous approval of the Directors.

2.4 Charitable Fundraising Act

Funds raised by a fundraising appeal within the meaning of the *Charitable Fundraising Act 1991* (NSW) must be maintained in accordance with that Act.

2.5 Amendment of this Constitution

No provision of this Constitution may be amended without the prior approval of the elected council of the Settlor.

3 Membership

3.1 Becoming a Member

Except for a person who agreed in writing to this Constitution before the application for the Company's registration was lodged, a person may only become a Member under article 3.2.

3.2 Serving Directors are Members

The Directors appointed under article 6.7 or under article 6.9 are Members, subject to this Constitution.

3.3 Appointment of Member by Settlor to rectify vacancy

Notwithstanding article 3.2, if all of the Directors contemporaneously cease to be eligible to hold office as a Director in accordance with article 6.14, and accordingly cease to be a Member in accordance with article 3.6, then:

- (a) the elected council of the Settlor may appoint a person as a Member; and
- (b) a person will be admitted as a Member upon the person's appointment being passed by resolution of the elected council of the Settlor.

3.4 Register of Members

Upon admission as a Member, that person's details will be recorded in a Register by a Director or the Secretary.

A Member must promptly notify the Company of any change in the Member's details which are recorded in the Register.

3.5 No transfer of membership

A Member must not sell, transfer or dispose of their interests in the Company to another Member or a third party.

3.6 Ceasing to be a Member

A person ceases to be a Member upon:

- (a) resignation;
- (b) ceasing to hold office as a Director;
- (c) death;
- (d) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
- (e) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health; or
- (f) the termination of the person's membership by the Settlor in accordance with this Constitution.

3.7 Resignation

A Member may by written notice to the Company resign from membership with immediate effect or with effect from a specified date occurring not more than one month after the service of the notice.

The Directors agree to provide the Settlor with written notice of any resignation under this article.

3.8 Termination

The Settlor may by written notice to the Member terminate the Member's membership with immediate effect or with effect from a specified date occurring not more than one month after service of the notice.

3.9 Limited liability

A Member has no liability as a Member except as set out in Part 14 of this Constitution.

3.10 Settlor may establish other interests

With the prior approval of the elected council of the Settlor, the Directors may:

- (a) adopt by-laws for the Company to establish classes of Contributors and define the rights, restrictions and obligations of Contributors in that class (including the right to attend but not vote at general meetings); and
- (b) vary or cancel the rights, restrictions and obligations of Contributors in any new or existing class.

- (e) A Director may nominate a person or persons whom they consider appropriate to be considered by the Settlor as an Eligible Person.

6.9 Casual vacancy or additional Director

The Directors may at any time appoint an Eligible Person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors.

A Director appointed under this article holds office until the conclusion of the next annual general meeting of the Company but is eligible for election at that meeting.

6.10 Remuneration of Directors

A Director may not be paid any remuneration for services as a Director.

6.11 Reimbursement of expenses

A Director is entitled to be reimbursed out of the funds of the Company for their reasonable travelling, accommodation and other expenses incurred when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the affairs of the Company.

6.12 Payments to Directors

Any payment to a Director must be approved by the Directors.

6.13 Director's interests

- (a) Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:
- (i) hold any office or place of profit in the Company, except that of auditor;
 - (ii) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
 - (iii) enter into a contract or arrangement with the Company;
 - (iv) participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company or persons dependent on or connected with them;
 - (v) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
 - (vi) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors; and
 - (vii) sign or participate in the execution of a document by or on behalf of the Company.
- (b) A Director may do any of the above despite the fiduciary relationship of the Director's office:

- (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
 - (ii) without affecting the validity of any contract or arrangement.
- (c) A reference to the Company in this article is also a reference to any related body corporate of the Company and the Pittwater Environmental Trust .

6.14 Vacation of office

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (b) resigns office by notice in writing to the Company;
- (c) is not present personally at meetings of the Directors for a continuous period of six months without leave of absence from the Directors; or
- (d) ceases to be a Member (including because the Member's membership is terminated by the Settlor in accordance with article 3.6(f)).

7 Powers and duties of Directors

7.1 Duties of Directors

The Directors must comply with their duties as Directors under any applicable law.

7.2 Directors to manage Company

The Directors are to manage the business of the Company and may exercise all the powers of the Company that are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

7.3 Specific powers of Directors

Without limiting the generality of article 7.1, the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

7.4 Appointment of attorney

The Directors may, by power of attorney, appoint any person to be the attorney of the Company for the purposes and with the powers, authorities and discretions held by the Directors for the period and subject to the conditions that they think fit.

7.5 Provisions in power of attorney

A power of attorney granted under article 7.4 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by

is entitled to be indemnified out of the property of the Company against:

- (e) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (f) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

unless:

- (g) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (h) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

13.2 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary, the Executive Officer, or an executive officer of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

The Settlor has agreed to maintain directors' and officers' insurance, to the satisfaction of the Directors, on behalf of every person who is or has been a Director, a Secretary, the Executive Officer, or, an executive officer or other employee of the Company.

14 Winding up

Each Member undertakes to contribute to the Company's property if the Company is wound up during, or within one year after the cessation of, the Member's membership on account of:

- (a) payment of the Company's debts and liabilities contracted before they ceased to be a Member;
- (b) the costs of winding up; and
- (c) adjustment of the rights of the contributories among themselves,

an amount not to exceed \$10.00.

14.2 Application of property on winding up

If any property or funds remain on the winding-up or dissolution of the Company and after satisfaction of all its debts and liabilities, the property or funds may not be paid to or distributed among the Members but must be given or transferred to one or more funds or institutions:

Director means a director of the Company.

Directors means all or some of the directors of the Company acting as a board.

Eligible Person means a person has been approved by the elected council of the Settlor, in accordance with article 6.8, as eligible for appointment as a Director.

Executive Officer means a person appointed as an executive director under Part 9 of this Constitution.

Former Pittwater Local Government Area means that part of Northern Beaches Local Government Area that was the former Pittwater Local Government Area immediately prior to the creation of the Northern Beaches Council.

Member means a member of the Company.

Objects means the objects of the Company, as set out in article 1.

Part means a Part of this Constitution.

Pittwater Environmental Trust means the trust fund to be established by the Settlor and called the Pittwater Environmental Trust.

Register means a register of Members kept in accordance with article 3.4.

Registered Office means the registered office for the time being of the Company.

Representative means a representative of a Member duly appointed by that Member.

Responsible Person means an individual who

- (a) performs a significant public function;
- (b) is a member of a professional body having a code of ethics and rules of conduct;
- (c) is officially charged with a spiritual function by a religious institution;
- (d) is a director of a company whose shares are listed on the Australian Securities Exchange;
- (e) has received formal recognition from government for services to the community; or
- (f) persons holding public or elected office.

Secretary means a person appointed as a secretary of the Company, and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

Settlor means the Northern Beaches Council, (formerly the Council of Pittwater), a local council constituted under the *Local Government Act 1993* (NSW), or any other local government body which succeeds and encompasses the Northern Beaches Council. In the event that the boundaries of the Northern Beaches Council are modified, **Settlor** means the local government body responsible for the majority of the land that comprised the Council of Pittwater as at the date the Company was established.

16.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) a reference to writing includes typewriting, printing, telex, telegram, facsimile and other modes of representing or reproducing words in a visible form;
- (e) a reference to an article is a reference to one of the articles;
- (f) a power, an authority or a discretion given to a Director, the Directors, the Company in general meeting or a Member may be exercised from time to time and at any time.

16.3 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act; and
- (b) “section” means a section of the Corporations Act.

The provisions of the **Corporations Act** that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

16.4 Headings

Headings are inserted for convenience and do not affect the interpretation of this Constitution.

16.5 Powers

Powers conferred on the Company, the Directors, a Committee of Directors, a Director or a Member may be exercised at any time and from time to time.

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Signing page

The undersigned, being a person specified in the application for registration of the Company, as a person who consents to become a Member of the Company, agrees to the terms of this Constitution.

Name []

Address []

Signature _____

Date

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