

Constitution

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

A Company Limited by Guarantee

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Constitution

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Constitution

1 Purpose of Company

1.1 Charitable purpose of the Company

The Company may only pursue charitable purposes associated with its Objects and must do so in Australia.

1.2 Principal Objects

The principal Object of the Company is to advance the natural environment within the Former Pittwater Local Government Area.

1.3 Other Objects

In furtherance of article 1.2, the Objects of the Company include to:

- (a) advance the natural environment within the Former Pittwater Local Government Area, including by:
 - (i) protecting, preserving, caring for and educating the community about the natural environment;
 - (ii) preserving native flora and fauna;
 - (iii) rescuing or caring for native animals;
 - (iv) preserving or rehabilitating habitats; and
 - (v) acquiring land in order to conserve the natural environment within the Former Pittwater Local Government Area;
- (b) operate as trustee of the Pittwater Environmental Trust, or any other trust as may be established with similar objects or purposes;
- (c) do all other things as may be incidental or ancillary to the attainment of these Objects.

2 Income and Property of the Company

2.1 Application of income for Objects only

The profits (if any) or other income and the property of the Company (including capital), however derived, must be applied solely towards the promotion of the Objects of the Company referred to in Part 1 of this Constitution.

2.2 No dividend, bonus or profit paid to Members

No part of the profits, income or property of the Company may be paid or transferred to a Member, either directly or indirectly by way of dividend, bonus or otherwise, other than in accordance with article 2.3.

2.3 Permitted payments by the Company

Article 2.2 does not prevent payment in good faith to an officer of the Company or a Member, or to a firm of which an officer of the Company or a Member is a partner:

- (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.

3.11 Patron

The Directors may appoint a person with appropriate standing in the community as patron of the Company.

4 General meetings

4.1 Annual general meeting

Annual general meetings of the Company are to be held in accordance with the Corporations Act.

4.2 Power to convene general meeting

A Director or the Directors may convene a general meeting of the Company when they think fit and must do so if required to do so under the Corporations Act.

4.3 Use of technology at general meetings

The Company may hold a meeting of Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate including, without limiting the foregoing, via a teleconference.

For the avoidance of doubt, a Member present at a meeting held via the use of technology will be present at the meeting in person for the purposes of this Constitution.

4.4 Notice of general meeting

Notice of a general meeting must be given in accordance with Part 12 of this Constitution and the Corporations Act.

The notice must specify the business to be conducted at the general meeting. The only business that may be transacted at the general meeting is the business specified in the notice of general meeting.

4.5 Calculation of period of notice

In computing the period of notice for a general meeting under article 4.4, both the days on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

4.6 Directors entitled to attend general meetings

A Director is entitled to receive notice of and attend all general meetings and speak at those meetings.

4.7 Cancellation or postponement of general meeting

Where a general meeting (including an annual general meeting) is convened by the Directors, they may, when they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place of the meeting.

This article does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members, or to a meeting convened by a court.

4.8 Written notice of cancellation or postponement of general meeting

Written notice of cancellation or postponement or change of place of a general meeting must be given to all persons entitled to receive notices of general meetings from the Company. The notice must be given at least two days before the date the meeting is convened and must specify the reason(s) for cancellation or postponement or change of place. A notice of a change of place of a general meeting must specify the different place for the holding of the meeting.

4.9 Contents of notice postponing general meeting

A notice postponing the holding of a general meeting must specify:

- (a) a date and time for the holding of the meeting; and
- (b) a place for the holding of the meeting, which may be either the same as or different to the place specified in the notice convening the meeting.

4.10 Notice period for postponed general meeting

The number of clear days from when a notice postponing the holding of a general meeting is given to the date specified in that notice for the holding of the meeting may not be less than the number of days' notice of the meeting required to be given by this Constitution or the Corporations Act.

4.11 Business at postponed general meeting

The only business that may be transacted at a postponed general meeting is the business specified in the original notice convening the meeting.

4.12 Non-receipt of notice

The non-receipt of, or accidental omission to give, a notice of a general meeting or cancellation, postponement or change of details for a general meeting to a person entitled to receive the notice, does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

4.13 Proxy at postponed general meeting

Where by the terms of an instrument appointing a proxy or a Representative,

- (a) the appointed person is authorised to attend and vote at:
 - (i) a general meeting to be held on a specified date; or
 - (ii) a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy or appointment of Representative,

then that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy or appointment of Representative unless the Member appointing the proxy or Representative gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

4.14 Circulating resolutions

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.

Separate copies of the document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.

The resolution is passed when the last Member signs.

5 Proceedings at general meetings

5.1 Reference to a Member

Unless the contrary intention appears, a reference to a Member in this Part 5 means a person who is a Member, or:

- (a) a proxy; or
- (b) a Representative,
of that Member.

5.2 Number for a quorum

Subject to article 5.5, three Members present in person or by proxy constitute a quorum at a general meeting.

5.3 Requirement for a quorum

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the beginning of a meeting it is taken to be present throughout the meeting unless the Chair of the meeting on their own motion or at the request of a Member or proxy who is present declares otherwise.

5.4 If quorum not present

If within 15 minutes after the time appointed for a general meeting a quorum is not present, the meeting stands adjourned to the same day, time and place in the next week or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

5.5 Adjourned meeting

At a meeting adjourned under article 5.4, two persons each being a Member or proxy present at the meeting constitute a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

5.6 Appointment and powers of Chair of general meeting

If the Directors have elected one of their number as Chair, that person is entitled to preside as Chair at a general meeting.

5.7 Absence of Chair at general meeting

If a general meeting is held and:

- (a) a Chair has not been elected by the Directors; or
- (b) the elected Chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as Chair of the meeting (in order of precedence):

- (c) the Deputy Chair (if any);
- (d) a Director chosen by a majority of the Directors present;
- (e) the only Director present.

5.8 Conduct of general meetings

The Chair of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the Chair'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, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the Chair considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the Chair under this article is final.

5.9 Adjournment of general meeting

The Chair of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting. The adjournment may be either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:

- (a) in exercising this discretion, the Chair may, but need not, seek the approval of the Members present. Unless required by the Chair, a vote may not be taken or demanded by the Members present in respect of any adjournment; and
- (b) only unfinished business is to be transacted at a meeting resumed after an adjournment.

5.10 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given in accordance with article 4.4.

5.11 Questions decided by majority

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

5.12 Equality of votes - casting vote for Chair

If there is an equality of votes, whether on a show of hands or on a poll, the Chair of the general meeting is entitled to a casting vote in addition to any votes to which the Chair is entitled as a Member or proxy of a Member.

5.13 Voting on show of hands

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is effectively demanded and the demand is not withdrawn. A declaration by the Chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the Chair nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded in favour of or against the resolution.

5.14 Demanding a poll

At a general meeting of the Company, a poll may be demanded by:

- (a) at least 20% Members entitled to vote on the resolution;
- (b) Members with at least 10% of the votes that may be cast on the resolution on a poll; or
- (c) the Chair or Deputy Chair (if any) of the meeting.

5.15 Poll

If a poll is effectively demanded in accordance with article 5.14:

- (a) it must be taken in the manner and at the date and time directed by the Chair and the result of the poll is the resolution of the meeting at which the poll was demanded;
- (b) on the election of a Chair or on a question of adjournment it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

5.16 Entitlement to vote

Subject to this Constitution and to any rights and any restrictions attached to any class of Members:

- (a) on a show of hands, each Member present in person and each other person present as proxy, attorney or Representative of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote and each person present as proxy, attorney or Representative of a Member has one vote for each Member that the person represents.

5.17 Validity of vote in certain circumstances

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;
- (b) the appointing Member is mentally incapacitated; or
- (c) the Member revokes the appointment or authority.

5.18 Objection to voting qualification

An objection to the right of a person to attend or vote at a general meeting or adjourned general meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the Chair of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

5.19 Chair to determine any poll dispute

If there is a dispute as to the admission or rejection of a vote, the Chair of the meeting must decide it and the Chair's decision made in good faith is final and conclusive.

5.20 Right to appoint attorney

A Member may, with the prior approval of the Settlor, by power of attorney appoint an attorney to act on the Member's behalf at all or any meetings of the Company or of any class of Members.

To be effective, an instrument appointing an attorney under this article, together with any evidence of non-revocation that the Directors require, must be received by the Company at least 48 hours before the meeting.

5.21 Right to appoint proxy

Subject to the Corporations Act, a Member entitled to attend at a meeting of the Company or of any class of Members is entitled to appoint another person who is also a Member as proxy to attend in the Member's place at the meeting. A proxy has the same right as the Member to speak and vote at the meeting and may be appointed in respect of more than one meeting.

6 Directors

6.1 Number of Directors

The number of Directors must be not less than three and not more than seven, subject to article 6.3.

6.2 Majority of Directors to be Responsible Persons

A majority of the Directors in office at any particular time must be Responsible Persons.

6.3 Change of number of Directors

Subject to article 6.1, the elected council of the Settlor may increase or reduce the number of Directors and may also determine any provisions for the rotation or retirement of Directors.

6.4 Rotation of Directors

At each annual general meeting one-third of the Directors, or, if their number is not a multiple of three, then the number nearest one-third, and any other Director who has held office for three years or more since last being appointed must retire from office.

6.5 Office held until conclusion of meeting

A retiring Director holds office until the conclusion of the meeting at which that Director retires but is eligible for re-election.

6.6 Directors to retire

The Directors to retire at any annual general meeting must be those who have been longest in office since their last election. As between persons who were last elected as Directors on the same day, those to retire must be determined by lot, unless they otherwise agree among themselves.

6.7 Directors elected at general meeting

At any general meeting at which a Director retires or otherwise vacates office, the Company may by resolution fill the vacated office by electing a person to that office, provided that:

- (a) the person is an Eligible Person; and
- (b) the person's election as a Director is consistent with the requirement in article 6.2.

6.8 Settler to maintain a pool of Eligible Persons

- (a) A person is eligible for election as a Director under either article 6.7 or 6.9 if that person has been approved by the elected council of the Settlor as an Eligible Person.
- (b) For the purposes of article 6.8(a), a person will be taken to have been approved by the elected council of the Settlor as an Eligible Person, if:
 - (i) a representative of the Settlor has notified the Directors in writing that the person has been approved by the Settlor as eligible for election as a Director; or
 - (ii) the person has retired from the office of Director in accordance with article 6.6, provided that the elected council of the Settlor has not notified the Directors in writing that the person is ineligible for re-election as a Director.
- (c) The Settlor will endeavour to maintain a pool of at least six persons who have been approved as Eligible Persons for the purposes of article 6.8(a).
- (d) The Directors must notify the Settlor in writing if the number of Eligible Persons, excluding any person who has been appointed a Director, is less than six.

- (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

way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

7.6 Minutes

The Directors must direct minutes of meetings to be made and kept in accordance with the Corporations Act.

8 Proceedings of Directors

8.1 Directors meetings

The Directors may meet for conducting business, adjourn and otherwise regulate their meetings as they think fit.

8.2 Director may convene a meeting

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

8.3 Use of technology for Directors' meetings

A Directors' meeting may be called or held using any technology consented to by all the Directors, including, without limiting the foregoing, via a teleconference. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

For the avoidance of doubt, a Director present at a meeting held via the use of technology will be present at the meeting in person for the purposes of this Constitution.

8.4 Questions decided by majority

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.

8.5 Proxy voting

A person who is present at a meeting of Directors as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is a proxy. That person may also cast any vote they are entitled to cast in their own capacity as a Director.

8.6 Chair's casting vote

In the event of an equality of votes the Chair of the meeting has a casting vote, unless only two Directors are present and entitled to vote at the meeting on the question.

8.7 Quorum

Until otherwise determined by the Directors, three Directors present in person or by proxy constitute a quorum.

8.8 Two Directors can constitute a quorum

Notwithstanding article 8.7, a quorum is only present during the consideration of a matter at a meeting of the Directors if at least two Directors entitled to vote on

any motion that may be moved at the meeting in relation to that matter are present in person at the meeting.

8.9 Effect of vacancy

The continuing Directors may act despite a vacancy in their number. However, if their number is reduced below the minimum fixed by article 6.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or for calling a general meeting.

8.10 Director attending and voting by proxy

A Director may attend and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the appointor.

The appointment may be general or for one or more particular meetings. A Director present as proxy of another Director who would be entitled to vote if present at the meeting has one vote for the appointor and one vote in his or her own capacity as a Director.

8.11 Chair and Deputy Chair

The Directors:

- (a) must elect a Director as Chair; and
- (b) may elect a Director as Deputy Chair; and
- (c) may determine the period during which each is to hold office.

8.12 Removal of Chair by the Directors

The Chair or Deputy Chair may be removed by a resolution of the Directors of which not less than 14 days' notice has been given to the Directors.

8.13 Chair to preside over Directors' meeting

The Chair is entitled to preside at meetings of the Directors. If the Chair is not present and able and willing to act within 15 minutes after the time appointed for a meeting or has signified an intention not to be present and able and willing to act, the following may preside (in order of entitlement):

- (a) the Deputy Chair; or
- (b) a Director chosen by a majority of the Directors present.

8.14 Questions of Directors' meeting decided by majority

Questions arising at a meeting of the Directors are to be decided by a majority of votes and in the event of an equality of votes the Chair of the meeting has a second or a casting vote.

8.15 Directors' Committees

The Directors may delegate, and revoke the delegation of, any of their powers, other than the powers required by law to be dealt with by Directors as a board, to Committee or Committees consisting of one or more of their number as they think fit.

8.16 Powers delegated to Directors' Committees

A Committee to which any powers have been delegated under article 8.15 must exercise those powers in accordance with any directions of the Directors.

8.17 Directors' Committee meetings

Subject to article 8.16, the meetings and proceedings of a Committee consisting of two or more Directors are governed by the provisions of this Constitution as to the meetings and proceedings of the Directors so far as they are applicable.

8.18 Circulating resolutions

The Directors may pass a resolution without a Directors' meeting being held if all of the Directors who are 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. 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. The resolution is passed when the last Director signs.

8.19 Validity of acts of Directors

All acts done at a meeting of the Directors or of a Committee of Directors, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

9 Chief Executive Officer

The Directors, with the prior approval of the Settlor, may appoint an Executive Officer. The Directors may give an Executive Officer any of the powers conferred on them by this Constitution, subject, at the Director's discretion, to:

- (a) any time period;
- (b) specific purposes; and
- (c) any other terms and restrictions.

All or any of those powers may be given collaterally with or to the exclusion of the powers of the Directors and may be revoked or varied by the Directors.

10 Secretary

10.1 Appointment of Secretary

There must be at least one Secretary who is to be appointed by the Directors.

10.2 Suspension and removal of Secretary

The Directors may suspend or remove a Secretary from that office.

10.3 Powers, duties and authorities of Secretary

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors.

11 Seals

11.1 Safe custody of common seals

The Directors must provide for the safe custody of any seal of the Company.

11.2 Use of common seal

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee of the Directors authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

12 Service of documents

12.1 Document includes notice

In this Part 12, a reference to a document includes a notice and a notification by electronic means.

12.2 Form of document

Unless expressly stated otherwise in this Constitution, all notices, certificates, statements, demands, appointments, directions and other documents referred to in this Constitution must be in writing.

12.3 Methods of service

The Company may give a document to a Member:

- (a) personally;
- (b) by delivering it or sending it by post to the address for the Member in the Register or an alternative address nominated by the Member;

- (c) by sending it to a fax number or electronic address nominated by the Member; or
- (d) by notifying the Member by an electronic means nominated by the Member that:
 - (i) the document is available; and
 - (ii) how the Member may use the nominated access means to access the document.

12.4 Post

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and in either case is taken to have been received seven days after the date of its posting.

12.5 Fax or electronic transmission

If a document is sent by fax or electronic transmission, delivery of the document is taken:

- (a) to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (b) to have been delivered on the day following its transmission.

12.6 Electronic notification

A document made available by electronic means is taken to have been given and received on the day after the date of transmission of the notification specifying that the document is available and how it can be accessed.

12.7 Evidence of service

A certificate signed by a Director or a Secretary stating that a document was sent, delivered or given to a Member by post, fax or other electronic means on a particular date is evidence that the document was sent, delivered or given on that date and by that means.

13 Indemnity and insurance

13.1 Indemnity of officers

Every person who is or has been:

- (a) a Director; or
- (b) a Secretary; or
- (c) the Executive Officer; or
- (d) an executive officer of the Company,

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:

- (a) having a public charitable purpose or public charitable objects similar to the purpose and Objects of the Company;
- (b) whose constitution or rules prohibit the distribution of its property and funds among its members to an extent at least as great as is imposed on the Company under this Constitution; and
- (c) which is an Approved Institution.

The fund or institution is to be determined by the Directors at or before the time of dissolution and in default by application to the court.

15 Reporting

15.1 Legislative accounting obligations

The Directors must prepare annual financial reports and cause the accounts of the Company to be audited in accordance with the requirements of the Corporations Act and the *Charitable Fundraising Act 1991* (NSW).

15.2 Obligation to report to the Settlor

The Directors must cause to be prepared and made available to the Settlor:

- (a) the annual financial reports and audits referred to in article 15.1 no less than one business day after they are provided to the relevant regulatory body pursuant to that section; and
- (b) an annual report in relation to the Company's activities no less than one business day after the Company's annual general meeting.

16 Definitions and interpretation

16.1 Definitions

In this Constitution unless the contrary intention appears:

article means an article of this Constitution.

Approved Institution means a fund, authority or institution having similar objects to the Objects of the Company, and whose rules shall prohibit the distribution of its or their income among its or their members, such fund, authority or institution to be eligible for tax exemption under Division 50 of the *Income Tax Assessment Act 1997*.

Chair means the chair of the Directors of the Company and **Deputy Chair** means the deputy chair of the Directors.

Committee means a committee of Directors constituted under article 8.15.

Constitution means this constitution as it is amended from time to time.

Contributor means any person who donates money, or who otherwise provides support, to the Company in its capacity as trustee for the Pittwater Environmental Trust.

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

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.

Constitution

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

Constitution