

# Constitution of Eton Irrigation Scheme Limited

[It is intended that this constitution will be approved by the Government Shareholder before the transfer and will apply up to the transfer day and then for a short period after transfer until the conversion to a Cooperative takes effect]

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# Eton Irrigation Scheme Limited, 615 812 505

## Constitution

### Preliminary

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#### 1. Definitions

In this Constitution:

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

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

**Company** means Eton Irrigation Scheme Limited ACN 615 812 505.

**Cooperative Rules** means the rules that will apply upon a conversion of the Company to a cooperative registered under the Cooperatives Act 1997 (Qld), as contemplated in Article 65.

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

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

**Department** means the Department of Energy and Water Supply.

**Director** means a person who is, for the time being, a director of the Company.

**Eton Channel Irrigation Scheme** means the distribution system used to supply water under water allocations to irrigation customers who purchase irrigation services in the Eton water supply scheme.

**Final Transfer** means the legal transfer in ownership of the Company from the State to Local Management Arrangements.

**independent director** means an employee of the Company, or a person nominated by the member directors who has special skills.<sup>1</sup>

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

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

**Liability** of a person means any liability including negligence (except a liability for legal costs) incurred by that person in or arising out of the discharge of duties as an officer of the Company or in or arising out of the conduct of the business of the Company, including as result of

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<sup>1</sup> See sections 47(a)(ii) and 48(a) of the Cooperative Rules.

appointment or nomination by the Company or a subsidiary as a trustee or as a director, officer or employee of another body corporate.

**LMA Principles** means the principles for assessing a move to Local Management Arrangements described in the "Stage 2 Public Report from the LMA Independent Chair" being:

- (a) The long-term benefits (including economic, financial and public interest benefits) to the State of each proposal outweigh the costs incurred in setting up and operating local management.
- (b) A strong majority of irrigators support the move to local management.
- (c) The LMA must be a viable enterprise over the long term with limited risk of financial, operational or other significant failure, without recourse to Government.
- (d) The assets will be maintained and refurbished in line with agreed service levels.
- (e) The LMA demonstrates a capacity to meet the statutory planning, regulatory and environmental obligations.
- (f) Any required debt funding can reasonably be accessed, noting that the new entities would be prohibited from borrowing from the Queensland Treasury Corporation.

**Local Management Arrangements** means arrangements for the control and ownership of the Eton Channel Irrigation Scheme by irrigation customers of that scheme or, such other persons as are approved by the Department from time to time.

**member director** means a director who is a Shareholder or a representative of a corporation that is a Shareholder.<sup>2</sup>

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

**Participation Terms** means the conditions governing the Stage 3 Activities.

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

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

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

**Responsible Ministers** means the Treasurer and Minister for Sport, and Minister for Aboriginal and Torres Strait Islander Affairs, and the Minister for Main Roads, Road Safety and Ports, and Minister for Energy, Biofuels and Water Supply.

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

**Share** means a share in the capital of the Company.

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

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<sup>2</sup> See section 47(a)(i) of the Cooperative Rules.

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

**Stage 3** means, for the Company, the process for determining whether to proceed to, and, if applicable, negotiating and agreeing the terms of the Final Transfer to Local Management Arrangements.

**Stage 3 Activities** means all activities directed towards, or related to, the Transition Scheme, determining whether to proceed to, and, if applicable, the Final Transfer of the Transition Scheme to Local Management Arrangements including, as relevant:

- (g) the conduct of engineering, legal, tax and accounting due diligence investigations in respect of the Transition Scheme;
- (h) finalisation of the terms for the Final Transfer, including in respect of liability issues and changes to the separation payment;
- (i) the conduct of any facilitative work required for the Final Transfer, including in respect of existing contractual arrangements associated with the Transition Scheme, dealing with tenure and asset related issues, preparation and negotiation of service level agreements (as required), addressing industrial relations issues and obtaining regulatory approvals; and
- (j) stakeholder management in local communities in respect of the transition to Local Management Arrangements.

**State** means the State of Queensland.

**Transition Scheme** means the Eton Channel Irrigation Scheme in Queensland.

**Transmission Event** means:

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

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## 2. Interpretation

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

- (a) a reference to a **person** includes an individual, the estate of an individual, a corporation, a regulatory authority, an incorporated or unincorporated association or parties in a joint venture, a partnership and a trust;
- (b) a word importing the singular includes the plural (and vice versa);
- (c) a word indicating a gender includes every other gender;
- (d) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) the word "includes" in any form is not a word of limitation;
- (f) a reference to a partly paid Share is a reference to a Share on which there is an amount unpaid;

- (g) a reference to a call or an amount called in respect of a Share includes an amount that, by the terms of issue of a Share or otherwise, is payable at one or more fixed times;
- (h) a reference to something being "written" or "in writing" includes that thing being represented or reproduced in any mode in a visible form;
- (i) a notice or document required by this Constitution to be signed may be authenticated by any other manner permitted by the Corporations Act or any other law; and
- (j) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements.

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### 3. Application of Corporations Act

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

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### 4. Enforcement

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

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### 5. Objects

The objects of the Company are:

- (a) having regard to the LMA Principles, for the period before the Final Transfer, to carry out the Stage 3 Activities for the Transition Scheme in accordance with the Participation Terms; and
- (b) for the period after the Final Transfer, to conduct the 'primary activities' as set out in section 6(a) of the Cooperative Rules.

## Capital

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### 6. Issue of securities

Subject to the Corporations Act and any rights and restrictions attached to a class of Shares or other securities, the Company may by resolution of the Board issue Shares, options to acquire Shares, and other securities with rights of conversion to Shares:

- (a) before the Final Transfer, on terms, at a time and for the consideration, acceptable to the Department; and
- (b) after the Final Transfer, the Board may resolve to issue Shares to a person eligible to be a member of the cooperative under the Cooperative Rules if the Company had been a cooperative at the time of the issue.

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### 7. Class rights

- (a) Subject to the Corporations Act and the terms of issue of Shares in a particular class, the Company may vary or cancel rights attached to Shares in that class:
  - (i) by a special resolution passed at a meeting of the Shareholders holding Shares in that class; or
  - (ii) with the written consent of Shareholders who are entitled to at least 75% of the votes that may be cast in respect of Shares in that class.
- (b) Article 34 applies to a meeting held pursuant to Article 7(a)(i).
- (c) The issue of any new Shares ranking equally, or any conversion of existing securities to Shares ranking equally, with existing Shares is not a variation of the rights conferred on the holders of the existing Shares, unless otherwise provided by the terms of issue of the existing Shares or required by the Corporations Act.
- (d) The issue of any new Shares ranking in priority, or any conversion of existing securities to Shares ranking in priority, to an existing class of preference Shares is a variation of the rights conferred on the holders of the existing preference Shares, unless the issue or conversion is expressly permitted by the terms of the existing preference Shares.

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### 8. Alterations of capital

- (a) The Company may by resolution convert Shares from one class to another, subject to the Corporations Act, this Constitution and the terms of issue of a class of Shares.
- (b) The Company may reduce, alter or buy-back its share capital in any manner provided by the Corporations Act. The Board may do anything which is required to give effect to any resolution authorising a reduction, alteration or buy-back of the share capital of the Company, including where a Shareholder becomes entitled to a fraction of a Share on a consolidation or subdivision:
  - (i) making cash payments;
  - (ii) ignoring fractions; and
  - (iii) appointing a trustee to deal with any fractions on behalf of Shareholders.

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## 9. Registered holder

- (a) Except as required by law or this Constitution, the Company is not required to recognise any interest in, or right in respect of, a Share except an absolute right of legal ownership of the Shareholder registered as the holder of that Share, regardless of whether the Company has notice of the interest or right.
- (b) The Company is not bound to register more than 1 person as the registered holder of a Share.
- (c) If the Company registers two or more persons as the registered holders of a Share, those persons are taken to hold that Share as joint tenants.

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## 10. Certificates

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

## Dividends

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### 11. No dividends

The Company must not pay any dividends.

## Transfer of Shares

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### 12. Transfers

- (a) Subject to this Constitution and any restrictions attached to a Share, a Shareholder may transfer one or more Shares that Shareholder holds by a written instrument of transfer in any usual form or in any other form approved by the Board that is otherwise permitted by law.
- (b) An instrument of transfer of a Share referred to in Article 12(a) must be:
  - (i) executed by or on behalf of the transferor and the transferee, unless the Board has resolved that the execution of the transferee is not required;
  - (ii) duly stamped, if required by law; and
  - (iii) delivered to the Company, at the place where the Register is kept, together with the certificate (if any) of the Share to be transferred and any other evidence as the Board may require to prove the title of the transferor to that Share, the right of the transferor to transfer that Share, and the proper execution of the instrument of transfer.
- (c) A person transferring a Share remains the registered holder of that Share until a transfer for that Share has been registered and the transferee is entered in the Register as the holder of that Share.
- (d) The Company must not charge a fee to register a transfer of a Share in accordance with this Constitution.

- (e) After the Final Transfer, a Share may not be sold or transferred except with the consent of the Board, and to a person who would be qualified to be admitted to membership of the cooperative under sections 6 and 7 of the Cooperative Rules if the Company was, at that time, a cooperative.

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### 13. Refusal to register transfers

- (a) The Company may refuse to register a transfer of Shares where the Board so resolves. The Company is not required to give any reason for that refusal.
- (b) If permitted by the Corporations Act and the Board so resolves, the Company may refuse to register an instrument of transfer of Shares where:
  - (i) the transfer is not in registrable form;
  - (ii) the Company has a lien on any of the Shares transferred;
  - (iii) the registration of the transfer may breach an Australian law or a court order;
  - (iv) the transfer does not comply with the terms of an employee incentive scheme; or
  - (v) the Company is otherwise permitted or required to do so pursuant to the terms of issue of the Shares.
- (c) The Company must refuse to register a transfer of Shares where the Corporations Act or a law about stamp duty requires the Company to do so or this Constitution otherwise requires (including under Article 12(e)).
- (d) Failure by the Company to give notice of refusal to register any transfer as may be required pursuant to the Corporations Act does not invalidate the refusal to register the transfer.
- (e) The Company may suspend registration of transfers of Shares at the times and for the periods as the Board resolves. The periods of suspension must not exceed 30 days in aggregate in any one calendar year.

### Transmission of Shares

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#### 14. Transmission on death

- (a) If the registered holder of a Share which is not Jointly Held dies, the Company must recognise only the Personal Representative of that registered holder as having any title to or interest in, or any benefits accruing in respect of, that Share.
- (b) If a registered holder of a Share which is Jointly Held dies, the Company must recognise only the surviving registered holders of that Share as having any title to or interest in, or any benefits accruing in respect of that Share.
- (c) The estate of a deceased Shareholder is not released from any liability in respect of the Shares that are registered in the name of that Shareholder.
- (d) Where 2 or more persons are jointly entitled to any Share as a consequence of the death of the registered holder of that Share, they are taken to be Joint Holders of that Share.

- (e) Notwithstanding Articles 14(a) and 14(b), the Company may register or give effect to a transfer of Shares to a transferee who dies before the transfer is registered or given effect to by the Company.

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## 15. Transmission Events

- (a) Subject to the Bankruptcy Act 1966 (Commonwealth) and the Corporations Act, a person who establishes to the satisfaction of the Board that it is entitled to a Share because of a Transmission Event may:
- (i) elect to be registered as a Shareholder in respect of that Share by giving a signed notice in writing to the Company; or
  - (ii) transfer that Share to another person.
- (b) A transfer pursuant to Article 15(a) is subject to all of the provisions of this Constitution relating to transfers of Shares.

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## Proceedings of Shareholders

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### 16. Written resolutions of Shareholders

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

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### 17. Calling meetings of Shareholders

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

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### 18. Notice of meetings of Shareholders

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

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## 19. Business of meetings

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

- (a) any resolution (except in the form set out in the notice of meeting given pursuant to Article 18(a)); or
- (b) any amendment of any resolution or a document which relates to any resolution and a copy of which has been made available to Shareholders to inspect or obtain.

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## 20. Quorum

- (a) No business may be transacted at a meeting of Shareholders except, subject to Article 21, the election of the chairperson of the meeting unless a quorum for a meeting of Shareholders is present at the time when the meeting commences.
- (b) While the Company has only one Shareholder, one Attending Shareholder constitutes a quorum. Otherwise, a quorum for a meeting of Shareholders is:
  - (i) before the Final Transfer - 50% Attending Shareholders entitled to vote on a resolution at that meeting; or
  - (ii) after the Final Transfer, 10 Shareholders present in person who would be 'active members' under the Cooperative Rules if the Company had been a cooperative at the time of the meeting.<sup>3</sup>
- (c) Each individual present may only be counted once towards a quorum.
- (d) If a Shareholder has appointed more than one proxy or attorney or Corporate Representative, only one of them may be counted towards a quorum (if they are entitled to be counted in the quorum).
- (e) If there is not a quorum present within 30 minutes after the time specified in the notice of the meeting, the meeting is dissolved.

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## 21. Chairperson of meetings of Shareholders

- (a) Subject to Articles 21(b) and 21(c), the chairperson of the Board must chair each meeting of Shareholders.
- (b) If at a meeting of Shareholders:
  - (i) there is no chairperson of the Board; or
  - (ii) the chairperson of the Board is not present within 15 minutes after the time appointed for the commencement of a meeting of Shareholders or is not willing to chair all or part of the meeting,the Directors who are or will be present at the meeting may (by majority vote) elect one of their number or, in the absence of all the Directors or if none of the Directors present is willing to act, the Attending Shareholders may elect one of their number, to chair that meeting.
- (c) A chairperson of a meeting of Shareholders may, for any item of business at that meeting or for any part of that meeting, vacate the chair in favour of another person

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<sup>3</sup> See section 37(b) of the Cooperative Rules.

nominated by him or her (**Acting Chair**). Where an instrument of proxy appoints the chairperson as proxy for part of proceedings for which an Acting Chair has been nominated, the instrument of proxy is taken to be in favour of the Acting Chair for the relevant part of the proceedings.

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## 22. Conduct of meetings of Shareholders

- (a) Subject to the Corporations Act, the chairperson of a meeting of Shareholders is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The chairperson of a meeting of Shareholders may make rulings without putting the question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting.
- (c) The chairperson of a meeting of Shareholders may determine the procedures to be adopted for proper and orderly discussion or debate at the meeting, and the casting or recording of votes at the meeting.
- (d) The chairperson of a meeting of Shareholders may determine any dispute concerning the admission, validity or rejection of a vote at the meeting.
- (e) The chairperson of a meeting of Shareholders may, subject to the Corporations Act, at any time terminate discussion or debate on any matter being considered at the meeting and require that matter be put to a vote.
- (f) The chairperson of a meeting of Shareholders may refuse to allow debate or discussion on any matter which is not business referred to in the notice of that meeting or is not business of the meeting permitted pursuant to the Corporations Act without being referred to in the notice of meeting.
- (g) Nothing contained in this Article 22 limits the powers conferred by law on the chairperson of a meeting of Shareholders.

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## 23. Attendance at meeting of Shareholders

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

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## 24. Authority of Attending Shareholders

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

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## 25. Multiple appointments

- (a) If more than one attorney or Corporate Representative appointed by a Shareholder is present at a meeting of Shareholders and the Company has not received notice of any revocation of any of the appointments:
  - (i) an attorney or Corporate Representative appointed to act at that particular meeting may act to the exclusion of an attorney or Corporate Representative appointed pursuant to a standing appointment; and
  - (ii) subject to Article 25(a)(i), an attorney or Corporate Representative appointed pursuant to the most recent appointment may act to the exclusion of an attorney or Corporate Representative appointed earlier in time.
- (b) An appointment of a proxy of a Shareholder is revoked (or, in the case of a standing appointment, suspended for that particular meeting of Shareholders) if the Company receives a further appointment of a proxy from that Shareholder which would result in there being more than 2 proxies of that Shareholder entitled to act at the meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this Article 25(b).
- (c) The appointment of a proxy for a Shareholder is not revoked by an attorney or Corporate Representative for that Shareholder attending and taking part in a meeting of Shareholders to which the appointment relates, but if that attorney or Corporate Representative votes on a resolution at that meeting, the proxy is not entitled to vote, and must not vote, as the Shareholder's proxy on that resolution.

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## 26. Voting at meeting of Shareholders

- (a) A resolution put to the vote at a meeting of Shareholders must be decided on a show of hands, unless a poll is demanded in accordance with Article 29 and that demand is not withdrawn.
- (b) The Board may determine that Shareholders entitled to attend and vote at a meeting of Shareholders or at a meeting of a class of Shareholders may vote at that meeting without an Attending Shareholder in respect of that person being present at that meeting (and voting in this manner is referred to in this Article 26(b) as direct voting). The Board may determine rules and procedures in relation to direct voting, including the class of Shareholders entitled to cast a direct vote, the manner in which a direct vote may be cast, the circumstances in which a direct vote will be valid and the effect of a Shareholder casting both a direct vote and a vote in any other manner. Where a notice of meeting specifies that direct voting may occur by eligible Shareholders, a direct vote cast by an eligible Shareholder is taken to have been cast by that person at the meeting if the rules and procedures for direct voting determined by the Board (whether set out in the notice of meeting or otherwise) are complied with.
- (c) Subject to this Constitution and any rights or restrictions attached to a class of Shares, on a show of hands at a meeting of Shareholders, each Attending Shareholder having the right to vote on the resolution has one vote, provided that where a person is entitled to vote in more than one capacity, that person is entitled only to one vote.
- (d) Subject to this Constitution and any rights or restrictions attached to a class of Shares, on a poll at a meeting of Shareholders, each Attending Shareholder having the right to vote on the resolution has:
  - (i) before the Final Transfer:
    - A. one vote for each fully paid up Share held by that Attending Shareholder or by the Shareholder that the Attending Shareholder represents; and
    - B. a fraction of one vote for each partly paid up Share held by that Attending Shareholder or by the Shareholder that Attending Shareholder represents. The fraction is equal to the proportion which the amount paid up bears to the total issue price of that Share. Any amount paid up in advance of the applicable due date for payment are ignored when calculating the proportion; and
  - (ii) after the Final Transfer - one vote, regardless of the number of Shares they hold, provided that where a person is entitled to vote in more than one capacity, that person is entitled one vote in each such capacity.<sup>4</sup>
- (e) Subject to this Constitution and any rights or restrictions attached to a class of Shares, where the Board has determined other means (including electronic) permitted by law for the casting and recording of votes by Shareholders on any resolution to be put at a meeting of Shareholders, each Shareholder having a right to vote on the resolution has the number of votes determined under Article 26(d).

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<sup>4</sup> See section 40(g) of the Cooperative Rules.

- (f) If the total number of votes to which a person has pursuant to Article 26(d) or 26(e) does not constitute a whole number, the Company must disregard the fractional part of that total.
- (g) After the Final Transfer Date, a Shareholder does not have any right to vote:
  - (i) unless the Shareholder would have been an 'active member' under the Cooperative Rules had the Company been a cooperative at that time;<sup>5</sup> or
  - (ii) in the circumstances set out in section 21 of the Cooperative Rules.
- (h) An objection to a right to vote at a meeting of Shareholders or to a determination to allow or disregard a vote at the meeting may only be made at that meeting (or any resumed meeting if that meeting is adjourned). Any objection pursuant to this Article 26(h) must be decided by the chairperson of the meeting of Shareholders, whose decision, made in good faith, is final and conclusive.
- (i) Except where a resolution at a meeting of Shareholders requires a special majority pursuant to the law or this Constitution, the resolution is passed if more votes are cast by Shareholders entitled to vote in favour on the resolution than against it.
- (j) In the case of an equality of votes on a resolution at a meeting of Shareholders, the chairperson of that meeting does not have a casting vote on that resolution.
- (k) Unless a poll is demanded and the demand is not withdrawn, a determination by the chairperson of a meeting of Shareholders following a vote on a show of hands that a resolution has been passed or not passed is conclusive, without proof of the number or proportion of the votes recorded in favour or against the resolution.
- (l) If a postal ballot or special postal ballot for an ordinary resolution or a special resolution would be required to be held under sections 43 (c), (d) or (e) of the Cooperative Rules if the Company was a cooperative at the relevant time, the Company may not, subject to the Corporations Act, undertake any of those matters unless and until the Board's decision is ratified by an ordinary resolution or a Special Resolution (as applicable) of the Company.<sup>6</sup>

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## 27. Voting by representatives

- (a) A person who is entitled to be registered as the holder of a Share because of a Transmission Event may vote in respect of that Share at a meeting of Shareholders provided that person has satisfied the Board of that entitlement not less than 48 hours before the time appointed for the commencement of that meeting. Any vote by that person so entitled must be accepted to the exclusion of the vote of the registered holder of that Share.
- (b) The validity of any resolution passed at a meeting of Shareholders is not affected by the failure of any proxy or attorney to vote in accordance with directions (if any) of the appointing Shareholder.
- (c) If a proxy of a Shareholder purports to vote in a way or circumstances that contravene the Corporations Act, on a show of hands the vote of that proxy is invalid and the Company must not count it. If a poll is demanded, votes which the

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<sup>5</sup> See section 40(b) of the Cooperative Rules.

<sup>6</sup> Note that sections 43(c) to (e) of the Cooperative Rules require a postal ballot or a special postal ballot to be held in certain circumstances for passing either an ordinary or special resolution. Under the Cooperatives Act, a 'special resolution' is a resolution passed by a two thirds majority in a postal ballot or by three quarters majority in a special postal ballot. For simplicity, and given that the interim period is intended to be very short, we have just provided that any matter that requires a special resolution needs to be passed by a 75% majority. Please advise if you would prefer the two-thirds / three quarters majority to apply.

Corporations Act require a proxy of a Shareholder to cast in a given way must be treated as cast in that way.

- (d) Subject to this Constitution and the Corporations Act, a vote cast at a meeting of Shareholders by a person appointed by a Shareholder as a proxy, attorney or Corporate Representative is valid despite:
- (i) a Transmission Event occurring in respect of that Shareholder; or
  - (ii) the revocation of the appointment (or the authority pursuant to which the appointment was executed),

if no notice in writing of that matter has been received by the Company before the time appointed for the commencement of that meeting.

- (e) A vote cast at a meeting of Shareholders by a person appointed by a Shareholder as a proxy, attorney or Corporate Representative is valid despite the transfer of the Share in respect of which the appointment is made, if the transfer is not registered before the commencement of that meeting.

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## 28. Restrictions on voting rights

- (a) If there is more than one Shareholder of a Jointly Held Share present at a meeting of Shareholders (either in person, by proxy, attorney or Corporate Representative), only the vote by the Shareholder who is present (either in person, by proxy, attorney or Corporate Representative) whose name appears first in the Register in respect of that Share will count.
- (b) The authority of a proxy or attorney for a Shareholder to speak or vote at a meeting of Shareholders in respect of the Shares to which the authority relates is suspended while the Shareholder is present in person at that meeting.
- (c) If a Shareholder has appointed two proxies in respect of a meeting of Shareholders and each proxy attends that meeting, neither of those proxies may vote:
- (i) on a show of hands; or
  - (ii) on a poll if the number or proportion of the Shareholder's vote for which the proxies have been appointed exceeds the total number or proportion of votes that could be cast by the Shareholder.
- (d) An Attending Shareholder is not entitled to vote on any resolution in respect of any Shares on which any calls due and payable in respect of those Shares have not been paid.
- (e) An Attending Shareholder is not entitled to vote on a resolution at a meeting of Shareholders where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (f) The Company must disregard any vote on a resolution at a meeting of Shareholders purported to be cast by an Attending Shareholder where that person is not entitled to vote on that resolution. A failure by the Company to disregard a vote on a resolution as required by this Article 28(f) does not invalidate that resolution or any act, matter or thing done at the meeting, unless that failure occurred by wilful default of the Company or of the chairperson of that meeting.

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## 29. Polls

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

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## 30. Proxies

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

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## 31. Receipt of appointments

- (a) An appointment of proxy or attorney for a meeting of Shareholders is effective only if the Company receives the appointment (and any authority pursuant to which the appointment was signed or a certified copy of the authority) not less than 48 hours before the time appointed for the commencement of the meeting or (in the case of an adjourned meeting) resumption of the meeting.
- (b) Where a notice of meeting specifies an electronic address or other electronic means by which a Shareholder may give the Company a proxy appointment, a proxy given at that electronic address or by that other electronic means is taken to have been given by the Shareholder and received by the Company if the requirements set out in the notice of meeting are complied with.

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## 32. Adjournments

- (a) The chairperson of a meeting of Shareholders may at any time during the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered at the meeting or any discussion or debate, either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the chairperson.
- (b) If the chairperson of a meeting of Shareholders exercises the right to adjourn that meeting pursuant to Article 32(a), the chairperson may (but is not obliged to) obtain the approval of Attending Shareholders to the adjournment.
- (c) No person other than the chairperson of a meeting of Shareholders may adjourn that meeting.
- (d) The Company may give notice of a meeting of Shareholders resumed from an adjourned meeting as the Board resolves. Failure to give notice of an adjournment of a meeting of Shareholders or the failure to receive any notice of the meeting does not invalidate the adjournment or anything done (including the passing of a resolution) at a resumed meeting.
- (e) Only business left unfinished is to be transacted at a meeting of Shareholders which is resumed after an adjournment.

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## 33. Cancellations and postponements

- (a) Subject to the Corporations Act, the Company may by resolution of the Board cancel or postpone a meeting of Shareholders or change the place for the meeting, prior to the date on which the meeting is to be held.
- (b) Article 33(a) does not apply to a meeting called in accordance with the Corporations Act by Shareholders or by the Board on the request of Shareholders, unless those Shareholders consent to the cancellation or postponement of the meeting.
- (c) The Company may give such notice of a cancellation or postponement or change of place of a meeting of Shareholders as the Board resolves. Failure to give notice of a cancellation or postponement or change of place of a meeting of Shareholders or the failure to receive any notice of the meeting does not invalidate the cancellation, postponement or change of place of a meeting or anything done (including the passing of a resolution) at a postponed meeting or the meeting at the new place.
- (d) The only business that may be transacted at a meeting of Shareholders the holding of which is postponed is the business specified in the original notice calling the meeting.

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## 34. Meetings of a class of Shareholders

All the provisions of this Constitution relating to a meeting of Shareholders apply so far as they are capable of application and with any necessary changes to a meeting of a class of Shareholders required to be held pursuant to this Constitution or the Corporations Act except that:

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

## Directors

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### 35. Appointment of Directors

- (a) Before the Final Transfer:
  - (i) there must be a minimum of 4 Directors and a maximum of 9 Directors. Each Director must be a natural person.
  - (ii) subject to Article 35(a)(i), the Company may by ordinary resolution appoint any person as a Director.
- (b) After the Final Transfer:
  - (i) the Directors are taken to be those Directors who were in office immediately before the Transfer Date;
  - (ii) there must be at least 3 member directors;<sup>7</sup> and
  - (iii) there may be up to 2 independent directors;<sup>8</sup>
  - (iv) the majority of Directors must be member directors;<sup>9</sup> and
  - (v) the provisions of sections 50(b) to (h) of the Cooperative Rules apply in relation to the Directors as if the Company was a cooperative, with section 50(c) of the Cooperative Rules modified so that it requires the election of a Director by ordinary resolution.

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### 36. Removal of Directors

The Company may by ordinary resolution remove any Director, and if thought fit, appoint another person in place of that Director in accordance with Article 35.

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### 37. Termination of office

A person ceases to be a Director if the person:

- (a) fails to attend 3 consecutive Board meetings (either personally or by an alternate director in accordance with Article 38) without the consent of the Board;
- (b) resigns by notice in writing to the Company;
- (c) is removed from office pursuant to Article 36 or the Corporations Act;
- (d) becomes an insolvent under administration;
- (e) becomes of unsound mind or a person whose property is liable to be dealt with pursuant to a law about mental health; or
- (f) is not permitted to be a director, or to manage a corporation, pursuant to the Corporations Act.

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<sup>7</sup> See sections 46(b) and 47(a)(i) of the Cooperative Rules.

<sup>8</sup> See sections 48(a) and 47(a)(ii) of the Cooperative Rules.

<sup>9</sup> See section 48(b) of the Cooperative Rules.

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## 38. Alternate directors

- (a) A Director may:
- (i) without the need for approval of other Directors (but, for the period before Final Transfer, with the approval of the Shareholder), appoint another Director; and
  - (ii) with the approval of a majority of the other Directors, appoint a person who is not a Director,
- as an alternate director of that Director for any period. An alternate director need not be a Shareholder.
- (b) The appointing Director may terminate the appointment of his or her alternate director at any time.
- (c) A notice of appointment, or termination of appointment, of an alternate director by the appointing Director is effective only if the notice is in writing and signed by that Director and is effective when given to the Company.
- (d) An alternate director is entitled to receive notice of Board meetings and, subject to this Constitution and the Corporations Act, to attend, count in the quorum of, speak at, and vote at a Board meeting at which his or her appointing Director is not present.
- (e) Subject to this Constitution, Article 40(c), the Corporations Act, and the instrument of appointment of an alternate director, an alternate director may exercise all the powers (except the power pursuant to Article 38(a)) of a Director, to the extent that his or her appointing Director has not exercised them.
- (f) The office of an alternate director is terminated if the appointing Director ceases to be a Director.
- (g) Subject to Article 39(a)(ii), the Company is not required to pay any remuneration or benefit to an alternate director.
- (h) An alternate director is an officer of the Company and not an agent of his or her appointing Director.

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## 39. Remuneration and benefits of Directors

- (a) Subject to Article 39(b) the Directors (other than a Director appointed as an alternate director under Article 38(a)):
- (i) will receive remuneration in respect of their position on the Board of the Company; and
  - (ii) are entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the Directors, committee of the Directors, general meeting of the company or otherwise in connection with the business affairs of the company.
- (b) Before the Final Transfer, the amount of remuneration, payments or reimbursement to be made under Article 39(a) must be approved by the Department in writing to the Board and must be in accordance with the Remuneration Procedures for Part-time Chairs and Members of Queensland Government Bodies, as published by the Queensland Government from time to time.

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## 40. Interests of Directors

- (a) A Director is not disqualified by reason only of being a Director (or the fiduciary obligations arising from that office) from:
  - (i) holding an office (except auditor) or place of profit or employment in the Company or a related body corporate of the Company;
  - (ii) holding an office or place of profit or employment in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest;
  - (iii) being a member, creditor or otherwise be interested in any body corporate (including the Company), partnership or entity, except auditor of the Company;
  - (iv) entering into any agreement or arrangement with the Company; or
  - (v) acting in a professional capacity (or being a member of a firm which acts in a professional capacity) for the Company, except as auditor of the Company.
- (b) Each Director must comply with Corporations Act in relation to the disclosure of the Director's interests.
- (c) A Director who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered at the meeting nor vote on the matter, except where permitted by the Corporations Act.
- (d) To remove doubt being an owner of property (including a water entitlement) in the Transition Scheme area, is not, of itself, a material personal interest.
- (e) If a Director has an interest in a matter, then subject to Article 40(c), Article 40(f) and this Constitution:
  - (i) that Director may be counted in a quorum at the Board meeting that considers matters that relate to the interest provided that Director is entitled to vote on at least one of the resolutions to be proposed at that Board meeting;
  - (ii) that Director may participate in and vote on matters that relate to the interest;
  - (iii) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
  - (iv) the Director may retain the benefits pursuant to any transaction that relates to the interest even though the Director has the interest; and
  - (v) the Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (f) If an interest of a Director is required to be disclosed pursuant to Article 40(b), Article 40(e)(iv) applies only if the interest is disclosed before the transaction is entered into.

## Officers

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### 41. Secretary

The Board may appoint one or more Secretaries, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to any agreement between the Company and the Secretary, the Board may vary or terminate the appointment of a Secretary at any time, with or without cause.

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### 42. Indemnity and insurance

- (a) To the extent permitted by law, the Company must indemnify each Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (b) The indemnity pursuant to Article 42(a):
  - (i) is enforceable without the Relevant Officer having first to incur any expense or make any payment;
  - (ii) is a continuing obligation and is enforceable by the Relevant Officer even though the Relevant Officer may have ceased to be an officer of the Company; and
  - (iii) applies to Liabilities and Legal Costs incurred both before and after this Article became effective.
- (c) To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.
- (d) To the extent permitted by law, the Company may:
  - (i) enter into, or agree to enter into; or
  - (ii) pay, or agree to pay, a premium for,  
  
a contract insuring a Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (e) To the extent permitted by law, the Company may enter into an agreement or deed with a Relevant Officer or a person who is, or has been, an officer of the Company or a subsidiary of the Company, pursuant to which the Company must do all or any of the following:
  - (i) keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed;
  - (ii) indemnify that person against any Liability and Legal Costs of that person;
  - (iii) make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs of that person; and
  - (iv) keep that person insured in respect of any act or omission by that person while a Relevant Officer or an officer of the Company or a subsidiary of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

## Powers of the Board

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### 43. General powers

- (a) Subject to Article 64, the Board has the power to manage the business of the Company and may exercise to the exclusion of the Company in general meeting all powers of the Company which are not, by the law or this Constitution, required to be exercised by the Company in general meeting.
  - (b) A power of the Board can only be exercised by a resolution passed at a meeting of the Board in accordance with Article 48, a resolution passed by signing a document in accordance with Article 47, or in accordance with a delegation of the power pursuant to Article 45 or 46. A reference in this Constitution to the Company exercising a power by a resolution of the Board includes an exercise of that power in accordance with a delegation of the power pursuant to Article 45 or 46.
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### 44. Execution of documents

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

- (a) The Board may delegate any of its powers to a committee of the Board, a Director, an employee of the Company or any other person. A delegation of those powers may be made for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power so delegated.
  - (b) A committee or delegate must exercise the powers delegated in accordance with any directions of the Board.
  - (c) Subject to the terms of appointment or reference of a committee, Article 48 applies with the necessary changes to meetings and resolutions of a committee of the Board.
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### 46. Attorney or agent

- (a) The Board may appoint any person to be attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to the terms of appointment of an attorney or agent of the Company, the Board may revoke or vary that appointment at any time, with or without cause.

- (b) The Board may delegate any of their powers (including the power to delegate) to an attorney or agent. The Board may revoke or vary any power delegated to an attorney or agent.

## Proceedings of Directors

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### 47. Written resolutions of Directors

- (a) The Board may pass a resolution without a Board meeting being held if notice in writing of the resolution is given to all Directors and a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of Directors) sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) A resolution pursuant to Article 47(a) may consist of several documents in the same form each signed by one or more Directors and is effective when signed by the last of the Directors constituting the majority of the Directors. A facsimile transmission or other document produced by electronic means under the name of a Director with the Director's authority is taken to be a document signed by the Director for the purposes of Article 47(a) and is taken to be signed when received by the Company in legible form.

### 48. Board meetings

- (a) Subject to this Constitution, the Board may meet, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) A Director may call a Board meeting at any time. On request of any Director, a Secretary of the Company must call a meeting of the Directors.
- (c) Notice of a Board meeting must be given to each Director (except a Director on leave of absence approved by the Board). Notice of a Board meeting may be given in person, or by post or by telephone, fax or other electronic means.
- (d) A Director may waive notice of a Board meeting by giving notice to that effect to the Company in person or by post or by telephone, fax or other electronic means.
- (e) Anything done (including the passing of a resolution) at a Board meeting is not invalid because either or both a person does not receive notice of the meeting or the Company accidentally does not give notice of the meeting to a person.
- (f) For the purposes of the Corporations Act, each Director, by consenting to be a Director or by reason of the adoption of this Constitution, consents to the use of each of the following technologies for the holding of a Board meeting:
  - (i) telephone;
  - (ii) video;
  - (iii) any other technology which permits each Director to communicate with every other participating Director; or
  - (iv) any combination of these technologies.

A Director may withdraw the consent given pursuant to this Article 48(f) in accordance with the Corporations Act.

- (g) If a Board meeting is held in 2 or more places linked together by any technology:
  - (i) a Director present at one of the places is taken to be present at the meeting unless and until the Director states to the chairperson of the meeting that the Director is discontinuing his or her participation in the meeting; and
  - (ii) the chairperson of that meeting may determine at which of those places the meeting will be taken to have been held.
- (h) A quorum for a Board meeting is:
  - (i) before the Final Transfer - until otherwise determined by the Board, 3 Directors entitled to vote on a resolution that may be proposed at that meeting.
  - (ii) after the Final Transfer - one-half of the number of directors (or if one-half is not a whole number the whole number next higher than one-half) however, the 'members directors' must out number the 'independent directors' by at least one.<sup>10</sup>
- (i) A quorum for a Board meeting must be present at all times during the meeting.

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## 49. Chairperson of the Board

- (a) The Shareholder may elect a Director as chairperson of the Board for any period the Shareholder resolves, or if no period is specified, until that person ceases to be a Director. The Shareholder may remove the chairperson of the Board at any time.
- (b) Failing appointment by the Shareholder in accordance with Article 49(a), the Board may:
  - (i) elect a Director as chairperson of the Board for any period the Board resolves, or if no period is specified, until that person ceases to be a Director; and
  - (ii) remove the chairperson of the Board at any time.
- (c) Subject to Article 49(d), the chairperson of the Board must chair each Board meeting.
- (d) If at a Board meeting:
  - (i) a chairperson has not been elected pursuant to Article 49(a); or
  - (ii) the chairperson of the Board is not present within 15 minutes after the time appointed for the holding of a Board meeting or is not willing to chair all or part of that meeting,

the Directors present must elect one of their number to chair that meeting or part of the meeting.

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<sup>10</sup> See section 58 of the Cooperative Rules.

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## 50. Board resolutions

- (a) A resolution of the Board is passed if more votes are cast by Directors entitled to vote in favour of the resolution than against it.
- (b) Subject to Articles 38 and 40 and this Article 50, each Director present in person has one vote on a matter arising at a Board meeting.
- (c) Subject to the Corporations Act, in case of an equality of votes on a resolution at a Board meeting, the chairperson of that meeting has a casting vote on that resolution in addition to any vote the chairperson has in his or her capacity as a Director in respect of that resolution, provided that the chairperson is entitled to vote on the resolution and at least 3 Directors are present and entitled to vote on the resolution. If the chairperson is not entitled to vote or there are fewer than 3 Directors present or entitled to vote, the resolution will fail.

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## 51. Valid proceedings

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

## Notices

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### 52. Notices to Shareholders

- (a) The Company may give Notice to a Shareholder by any of the following means in the Board's discretion:
  - (i) delivering it to that Shareholder in person;
  - (ii) delivering it or sending it by post to the address of the Shareholder in the Register or the alternative address (if any) nominated by that Shareholder or person for that purpose;
  - (iii) sending it to the fax number or electronic address (if any) nominated by that Shareholder or person for that purpose;
  - (iv) if permitted by the Corporations Act, notifying that Shareholder of the notice's availability by an electronic means nominated by the Shareholder for that purpose; or
  - (v) any other means permitted by the Corporations Act.
- (b) The Company must send all documents to a Shareholder whose address for Notices is not within Australia by air-mail, air courier, fax or electronic transmission.

- (c) A person entitled to a Share because of a transfer, or otherwise, is bound by every Notice given in respect of that Share.
- (d) Any Notice required or allowed to be given by the Company to one or more Shareholders by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.

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### **53. Notice to Directors**

The Company may give Notice to a Director by:

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

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### **54. Notice to the Company**

A person may give Notice to the Company by:

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

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### **55. Time of service**

- (a) A Notice sent by post or air-mail is taken to be given on the day after the date it is posted.
- (b) A Notice sent by fax or other electronic transmission is taken to be given when the transmission is sent provided that in the case of notice to the Company or a Director, the sender meets any action required by the recipient to verify the receipt of the document by the recipient.
- (c) A Notice given in accordance with Article 52(a)(iv) is taken to be given on the day after the date on which the Shareholder is notified that the Notice is available.
- (d) A certificate by a Director or Secretary to the effect that a Notice by the Company has been given in accordance with this Constitution is conclusive evidence of that fact.

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## 56. Notice requirements

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

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

## Audit

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### 57. Auditor

- (a) For the period before the Final Transfer:
  - (i) the Auditor-General of Queensland will be the auditor of the Company; and
  - (ii) the Board must cause the Company's financial reports for each financial year to be audited and obtain an auditor's report.

## Procurement

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### 58. Procurement

For the period before the Final Transfer, the Company is a Special Purpose Vehicle within the meaning of, and subject to, the Queensland Procurement Policy.

## No distribution to Shareholder

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### 59. No distribution to Shareholder

In the period after the Final Transfer, no income or property of the Company may be paid or transferred directly or indirectly to a Shareholder, except for proper payments for any services or goods supplied in the ordinary and usual course of business to the Company.

## Winding up

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### 60. Winding up in the period before the Final Transfer

- (a) Subject to any rights or restrictions attached to a class of Shares, on a winding up of the Company in the period before the Final Transfer, any surplus assets of the Company remaining after the payment of its debts must be divided among the Shareholders in the proportions which the amount paid (including amounts credited) on the Shares of a Shareholder is of the total issue price of the Shares of all Shareholders.
- (b) Subject to any rights or restrictions attached to a class of Shares, on a winding up of the Company, the liquidator may, with the sanction of a special resolution:
  - (i) distribute among the Shareholders the whole or any part of the property of the Company; and

- (ii) decide how to distribute the property as between the Shareholders or different classes of Shareholders.
- (c) The liquidator of the Company may settle any issue concerning a distribution pursuant to this Article 60 in any way. This may include:
  - (i) rounding amounts up or down to the nearest whole number or ignoring fractions;
  - (ii) valuing assets for distribution and paying cash to any Shareholder on the basis of that valuation; and
  - (iii) vesting assets in a trustee on trust for the Shareholders entitled to the distribution.
- (d) A Shareholder need not accept any property, including shares or other securities, in respect of which there is any liability on the part of the Shareholder.

## **61. Winding up in the period after the Final Transfer**

- (a) On a winding up of the Company in the period after the Final Transfer, any surplus assets of the Company remaining after the payment of its debts may not be paid or distributed to a Shareholder, but will be given or transferred to some other institution or body:
  - (i) that has objects similar to or consistent with any or all of the objects of the Company; and
  - (ii) that has constituent documents that include provisions prohibiting the distribution of income and property of the institution or corporation among members.
- (b) Such institution or body will be determined by the Shareholders at or before the winding up or dissolution, in in default of such determination, by a judge of the Supreme Court of Queensland.

## **Approval of Responsible Ministers**

### **62. Amendment of Constitution**

- (a) The Company may amend or repeal this Constitution, or a provision of this Constitution, including this Article 62, by a Special Resolution of the Shareholders.
- (b) For the period before the Final Transfer, no amendment of this Constitution will be effective unless approved in writing by the Responsible Ministers.

### **63. Formation of Subsidiaries**

For the period before the Final Transfer, the Company must not form a subsidiary without the approval in writing of the Responsible Ministers.

### **64. Company activities prior to the Final Transfer**

Notwithstanding anything else in this Constitution, in the period before the Final Transfer, the Company must not (and the Board must not approve or authorise any proposal to), without the prior approval in writing of the Department:

- (a) acquire or hold any assets which, individually or in aggregate, have a value equal to or more than \$1,000; or
- (b) incur any liabilities, other than:
  - (i) by issuing shares in accordance with Article 6; or
  - (ii) an amount of remuneration, payments or reimbursement approved by the Department for the purposes of Article 39(b).

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## 65. Replacement Constitution

Upon a conversion of the Company to a cooperative registered under the *Cooperatives Act* 1997 (Qld), the provisions contained in Article 1 to Article 64 of this Constitution will cease to have effect, and the provisions contained in Schedule 1 to this Constitution will apply.

## Schedule 1 Cooperative Rules