

# Macquarie Atlas Roads Limited Constitution

**Macquarie Atlas Roads Limited** (“Company”)

A public company limited by shares

Adopted on

**Mallesons Stephen Jaques**

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# Macquarie Atlas Roads Limited Constitution

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# Macquarie Atlas Roads Limited Constitution

## General Terms

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### 1 Definitions and interpretation

#### 1.1 Definitions

In this Constitution unless the contrary intention appears:

**Alternate Director** means a person appointed as an alternate director under article 13.8.

**ASX** means ASX limited or the Australian Securities Exchange as appropriate.

**Business Day** means a day other than a Saturday or Sunday on which banks are open for general banking business in Sydney and Melbourne but if the shares are Officially Quoted has the meaning given to that term in the Listing Rules.

**Committee** means a committee of Directors constituted under article 12.6.

**Company** means Macquarie Atlas Roads Limited.

**Constitution** means this constitution (including any schedule) as amended from time to time, and a reference to an article is a reference to an article of this Constitution.

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

**CS Facility** has the same meaning as prescribed CS facility in the Corporations Act.

**CS Facility Operator** means the operator of a CS Facility.

**Director** means a person holding office as a director of the Company, and where appropriate includes an Alternate Director.

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

**Executive Director** means a person appointed as an executive director under article 12.8.

**Group** has the meaning set out in schedule 2 to this Constitution.

**GST** means a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

**Independence Criteria** means the criteria published by the Company in its corporate governance reports from time to time.

**Independent Director** means a Director who satisfies the Independence Criteria.

**Issuer Sponsored Holding** means a holding on an electronic sub-register maintained by the Company in accordance with the Listing Rules.

**Listing Rules** means the Listing Rules of ASX and any other rules of ASX which are applicable to the Company while the Company is admitted to the official list of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

**Managing Director** means a person appointed as a managing director under article 12.8.

**Member** means a person entered in the Register as a holder of shares in the capital of the Company.

**Officially Quoted** means quotation on the official list of ASX, including when quotation is suspended for a continuous period of not more than 60 days, all times during that period of suspension.

**Operating Rules** means the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated shares as amended, varied or waived (whether in respect of the Company or generally) from time to time.

**Ordinary Shares** means ordinary, voting shares in the capital of the Company having the rights referred to under article 3.7 and any other rights, and being subject to the restrictions, specified in this Constitution or by the Directors at the time of issue. For the avoidance of doubt, any non-voting shares or preference shares that the Directors see fit to issue from time to time are not Ordinary Shares. **Ordinary Share** has a corresponding meaning.

**Part** means a Part of this Constitution.

**Prescribed Interest Rate** means the rate determined by the Directors for the purpose of this Constitution, and in the absence of a determination means 10% per annum.

**Register** means the register of Members of the Company under the Corporations Act and, if appropriate, includes a branch register.

**Registered Office** means the registered office of the Company.

**Representative** means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Corporations Act.

**Restriction Agreement** means a restriction agreement within the meaning and for the purposes of the Listing Rules.

**SEATS** has the meaning given in the Listing Rules.

**Secretary** means a person appointed under article 14.1 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.

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

**Special Resolution** has the same meaning as in the Corporations Act.

**Stapling** has the meaning set out in schedule 2 to this Constitution. **Stapled** has a corresponding meaning.

**Stapling Commencement Date** has the meaning set out in schedule 2 to this Constitution.

**Stapling Provisions** means the provisions relating to Stapling contained in article 2 and in schedule 2 to this Constitution as the same may be amended or added to from time to time in accordance with that schedule.

**Stapled Security** means the stapled security created by the Stapling together of the Attached Securities.

**State** means the State or Territory in which the Company is for the time being registered.

**Unstapling** has the meaning set out in schedule 2 to this Constitution. **Unstapled** has a corresponding meaning.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation.

In this Constitution unless the contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (c) a document including this Constitution includes any variation or replacement of it;
- (d) the singular includes the plural and vice versa;
- (e) a reference to legislation includes regulations and other instruments under it and any variation or replacement of any of them;
- (f) a reference to a law includes regulations and instruments made under the law;
- (g) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
- (h) a power, an authority or a discretion given to a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (i) a reference to an amount paid on a share includes an amount credited as paid on that share;
- (j) “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and

- (k) a reference to dollars, A\$ or \$ is a reference to the lawful currency of Australia.

### **1.3 Corporations Act**

In this Constitution unless the contrary intention appears:

- (a) a word or expression defined or used in the Corporations Act has the same meaning when used in this Constitution in a similar context; and
- (b) “section” means a section of the Corporations Act.

### **1.4 Listing Rules interpretation**

In this Constitution, unless the contrary intention appears the expressions “closing price on SEATS”, “Takeover Bid”, “Uncertificated Securities”, “disposed of”, “disposed”, “Escrow Period” and “Restricted Securities” have the same meaning as in the Listing Rules.

### **1.5 Replaceable rules not to apply**

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

### **1.6 Official Quotation**

While Ordinary Shares are Officially Quoted the Company and each Member must comply with the provisions of the Listing Rules relevant to them.

### **1.7 Currency**

The Directors may:

- (a) differentiate between Members as to the currency in which any amount payable to a Member is paid (whether by way of or on account of dividends, repayment of capital, participation in surplus property of the Company or otherwise);
- (b) determine to pay a distribution in a currency other than Australian dollars and the amount payable will be converted from Australian dollars in any manner, at any time and at any exchange rate as the Directors think fit; and
- (c) in deciding the currency in which a payment is to be made to a Member, have regard to the registered address of the Member, the register on which a Member’s shares are registered and any other matters as the Directors consider appropriate.

Payment in another currency of an amount converted under this article is as between the Company and a Member adequate and proper payment of the amount payable.

### **1.8 Application of Listing Rules**

In this Constitution a reference to the Listing Rules only applies while the Company is on the official list of ASX.

While the Company is on the official list of ASX:

- (a) despite anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act must not be done;
- (b) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done as the case may be;
- (d) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is taken to contain that provision;
- (e) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is taken not to contain that provision; and
- (f) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is taken not to contain that provision to the extent of the inconsistency.

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## **2 Stapling**

- (a) The Stapling Provisions take effect if determined by the Directors and, if so determined, apply on and from the Stapling Commencement Date unless and until they cease to apply in accordance with this Constitution.
- (b) On and from the Stapling Commencement Date:
  - (i) the Stapling Provisions apply and this Constitution is to be read subject to the Stapling Provisions;
  - (ii) subject to articles 1.5, 1.6 and 1.8, the Stapling Provisions prevail over all other provisions of this Constitution including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules or any other law; and
  - (iii) without limiting article 2(b)(ii), those articles of the Constitution, which by their meaning and context apply only while shares are not Stapled do not apply while the shares are Officially Quoted as part of a Stapled Security, including without limitation:
    - (A) article 5.3 and articles 5.5 to 5.9; and
    - (B) article 6.

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## **3 Share capital and variation of rights**

### **3.1 Directors to issue shares**

The issue of shares in the Company is under the control of the Directors who may:

- (a) issue and cancel shares in the Company;
- (b) grant options over unissued shares in the Company; and
- (c) settle the manner in which fractions of a share, however arising, are to be dealt with,

subject to the Corporations Act, the Listing Rules and any special rights conferred on the holders of any shares or class of shares.

### **3.2 Issue of further shares - no variation**

- (a) The rights conferred on the holders of the shares of any class are not to be taken as varied by the issue of further shares ranking equally with the first-mentioned shares unless:
  - (i) expressly provided by the terms of issue of the first-mentioned shares; or
  - (ii) required by the Corporations Act or, while the Company remains on the official list of ASX, the Listing Rules.
- (b) If at any time the capital of the Company is divided into different classes of shares, the special rights for the time being attached to any class of shares on issue may from time to time (whether or not the Company is being wound up) be varied subject to any necessary additional requirement to comply with the provisions of the Corporations Act and the Listing Rules:
  - (i) in such manner (if any) as may be provided by those rights; or
  - (ii) in the absence of any such provision, with the consent in writing of the holders of three quarters in nominal value of the issued shares in that class, or with the sanction of a Special Resolution passed at a separate meeting of the holders of the shares of that class,

but not otherwise.

### **3.3 Preference shares**

The Company may not issue preference shares (including redeemable preference shares) and issued shares may not be converted into preference shares unless the rights attached to the preference shares are as set out in schedule 1 or have been otherwise approved by Special Resolution.

### 3.4 Class meetings

The provisions of this Constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of the holders of a class of shares except that:

- (a) a quorum is constituted by at least two persons who hold issued shares of the class (unless only one person holds all of the shares of the class, in which case that person constitutes a quorum); and
- (b) any holder of shares of the class, present in person or by proxy, or attorney or Representative, may demand a poll.

### 3.5 Non-recognition of interests

Except as required by law, the Company is not required to recognise:

- (a) a person as holding a share on any trust; or
- (b) any other interest in any share or any other right in respect of a share except an absolute right of ownership in the registered holder,

whether or not it has notice of the trust, interest or right.

### 3.6 Joint holders of shares

Where two or more persons are registered as the joint holders of shares then they are taken to hold the shares as joint tenants with rights of survivorship, but the Company is not bound:

- (a) to register more than three persons as joint holders of a share; or
- (b) to issue more than one certificate or holding statement in respect of shares jointly held.

### 3.7 Ordinary Shares

The holders of the Ordinary Shares shall:

- (a) be entitled to receive notice of and attend any meeting of the Company and shall be entitled to vote on all matters;
- (b) be entitled to such dividends as may be declared by the Directors from time to time; and
- (c) in the event of the winding up or dissolution of the Company, whether voluntary or involuntary or for the reorganisation or otherwise or upon the distribution of capital, after the capital paid up on the preference shares on issue (if any) has been paid to the holders of these shares, be entitled *pari passu* to receive a distribution of capital paid up on the Ordinary Shares and to share *pari passu* in the surplus assets of the Company.

### 3.8 Partly-paid shares

The Directors may allot or issue any share on the basis that the issue price is payable by instalments.

### **3.9 Minimum Holding**

The Directors may set a minimum application amount and a minimum holding and alter or waive those amounts at any time.

### **3.10 Register**

The Directors must maintain in accordance with the Corporations Act a Register of Members recording details of any class of shares.

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## **4 Lien**

### **4.1 Lien on share**

To the extent permitted by law, the Company has a first and paramount lien on every share for:

- (a) all due and unpaid calls and instalments in respect of that share;
- (b) all money which the Company is required by law to pay, and has paid, in respect of that share;
- (c) interest at the Prescribed Interest Rate on the amount due from the date it becomes due until payment, such interest being calculated daily and payable monthly in arrears; and
- (d) reasonable expenses of the Company in respect of the default on payment.

### **4.2 Lien on loans under employee incentive schemes**

The Company also has a first and paramount lien on each share registered in the name of the Member for all money payable to the Company by the Member under loans made under an employee incentive scheme.

### **4.3 Lien on distributions**

A lien on a share under article 4.1 or 4.2 extends to all distributions in respect of that share, including dividends.

### **4.4 Exemption from article 4.1 or 4.2**

The Directors may at any time exempt a share wholly or in part from the provisions of article 4.1 or 4.2.

### **4.5 Extinguishment of lien**

The Company's lien on a share is extinguished if a transfer of the share is registered without the Company giving notice of the lien to the transferee.

### **4.6 Company's rights to recover payments**

A Member must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Member, the death of a Member or the Member's shares or any distributions on the Member's shares, including dividends, where the Company is either:

- (a) required by law to make the relevant payment; or
- (b) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is required by law to make the relevant payment.

The Company is not obliged to advise the Member in advance of its intention to make the payment.

#### **4.7 Reimbursement is a debt due**

The obligation of the Member to reimburse the Company is a debt due to the Company as if it were a call on all the Member's shares, duly made at the time when the written demand for reimbursement is given by the Company to the Member. The provisions of this Constitution relating to non-payment of calls, including payment of interest and sale of the Member's shares under lien, apply to the debt.

#### **4.8 Sale under lien**

Subject to article 4.9, the Company may sell, in any manner the Directors think fit, any share on which the Company has a lien.

#### **4.9 Limitations on sale under lien**

A share on which the Company has a lien may not be sold by the Company unless:

- (a) an amount in respect of which the lien exists is presently payable; and
- (b) the Company has, not less than 14 days before the date of sale, given to the registered holder of the share or the person entitled to the share by reason of the death or bankruptcy of the registered holder, a notice in writing setting out, and demanding payment of, the amount which is presently payable in respect of which the lien exists.

#### **4.10 Transfer on sale under lien**

For the purpose of giving effect to a sale under article 4.8, the Company may receive the consideration, if any, given for the share so sold and may execute a transfer of the share sold in favour of the purchaser of the share, or do all such other things as may be necessary or appropriate for it to do to effect the transfer. The purchaser is not bound to see to the application of the purchase money.

#### **4.11 Irregularity or invalidity**

The title of the purchaser to the share is not affected by any irregularity or invalidity in connection with the sale of the share under article 4.8.

#### **4.12 Proceeds of sale**

The proceeds of a sale under article 4.8 must be applied by the Company in payment of the amount in respect of which the lien exists as is presently payable, and the residue, if any, must be paid to the person entitled to the share immediately before the sale.

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## **5 Calls on shares**

### **5.1 Directors to make calls**

The Directors may:

- (a) make calls on a Member in respect of any money unpaid on the shares of that Member, if the money is not by the terms of issue of those shares made payable at fixed times;
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call.

### **5.2 Time of call**

A call is taken to be made at the time when the resolution of the Directors authorising the call is passed.

### **5.3 Members' liability**

Upon receiving not less than 30 Business Days' notice specifying the time or times and place of payment, each Member must pay to the Company by the time or times, and at the place, specified in the notice the amount called on that Member's shares.

### **5.4 Joint holders' liability**

The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

### **5.5 Non-receipt of notice**

The non-receipt of a notice of any call by, or the accidental omission to give notice of a call to, a Member does not invalidate the call.

### **5.6 Interest on default**

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due must pay interest on the sum from the day it is due to the time of actual payment at the Prescribed Interest Rate. The Directors may waive payment of that interest wholly or in part.

### **5.7 Fixed instalments**

Subject to any notice requirements under the Listing Rules, if the terms of a share make a sum payable on issue of the share or at a fixed date, this is taken to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable. In the case of non-payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

### **5.8 Differentiation between holders as to calls**

The Directors may, on the issue of shares, differentiate between the holders of the shares as to the amount of calls to be paid and the times of payment.

## **5.9 Prepayment of calls and interest**

The Directors may:

- (a) accept from a Member the whole or a part of the amount unpaid on a share even if no part of that amount has been called; and
- (b) authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the Prescribed Interest Rate, as is agreed between the Directors and the Member paying the sum.

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## **6 Forfeiture of shares**

### **6.1 Notice requiring payment of call**

If a Member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the Directors may, at any time afterwards during such time as any part of the call or instalment remains unpaid, give a notice to the Member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all costs and expenses that may have been incurred by the Company by reason of that non-payment.

### **6.2 Contents of notice**

The notice must name a further day, which is at least 14 days from the date of service of the notice, on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

### **6.3 Forfeiture for failure to comply with notice**

If a notice under article 6.1 has not been complied with by the date specified in the notice, the Directors may by resolution forfeit the relevant shares, at any time before the payment required by the notice has been made.

### **6.4 Dividends and distributions included in forfeiture**

A forfeiture under article 6.3 includes all dividends and other distributions declared or to be made in respect of the forfeited shares and not actually paid or distributed before the forfeiture.

### **6.5 Sale or re-issue of forfeited shares**

Subject to the Corporations Act, a share forfeited under article 6.3 may be sold, re-issued or otherwise disposed of to such person and on such terms as the Directors think fit.

### **6.6 Notice of forfeiture**

If any share is forfeited under article 6.3, notice of the forfeiture must be given to the Member holding the share immediately before the forfeiture and an entry of the forfeiture and its date must be made in the Register. Any failure to give notice or enter the forfeiture in the Register does not invalidate the forfeiture.

## **6.7 Surrender instead of forfeiture**

The Directors may accept the surrender of any share which they are entitled to forfeit on any terms they think fit and any share so surrendered is taken to be a forfeited share.

## **6.8 Cancellation of forfeiture**

At any time before a sale, re-issue or disposal of a share under article 6.5, the forfeiture of that share may be cancelled on such terms as the Directors think fit.

## **6.9 Effect of forfeiture on former holder's liability**

A person whose shares have been forfeited:

- (a) ceases to be a Member in respect of the forfeited shares; and
- (b) remains liable to pay the Company all money that, at the date of forfeiture, was payable by that person to the Company in respect of the shares, plus interest at the Prescribed Interest Rate from the date of forfeiture and the reasonable expenses of the sale of the shares, until the Company receives payment in full of all money (including interest and expenses) so payable in respect of the shares.

## **6.10 Evidence of forfeiture**

A statement in writing declaring that the person making the statement is a Director or a Secretary, and that a share in the Company has been forfeited in accordance with this Constitution on the date declared in the statement, is prima facie evidence of the facts in the statement as against all persons claiming to be entitled to the share.

## **6.11 Transfer of forfeited share**

The Company may receive the consideration (if any) given for a forfeited share on any sale, re-issue or disposal of the share under article 6.5 and may execute or effect a transfer of the share in favour of the person to whom the share is sold, re-issued or disposed.

## **6.12 Registration of transferee**

On the execution of the transfer, the transferee must be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.

## **6.13 Irregularity or invalidity**

The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale, re-issue or disposal of the share.

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# **7 Transfer of shares**

## **7.1 Forms of instrument of transfer**

Subject to this Constitution and the Listing Rules, a share in the Company is transferable:

- (a) as provided by the Operating Rules of a CS Facility if applicable; or
- (b) by any other method of transfer which is required or permitted by the Corporations Act and ASX.

## **7.2 Execution and delivery of transfer**

If a duly completed instrument of transfer:

- (a) is used to transfer a share in accordance with article 7.1(b); and
- (b) is left for registration at the share registry of the Company, accompanied by any information that the Directors properly require to show the right of the transferor to make the transfer,

the Company must, subject to the powers vested in the Directors by this Constitution, register the transferee as the holder of the share.

## **7.3 Effect of registration**

Except as provided by any applicable Operating Rules of a CS Facility, a transferor of a share remains the holder of the share transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the share.

## **7.4 Company to register forms without charge**

The Company must register all registrable transfer forms, split certificates, renunciations and transfers, issue certificates and transmission receipts and mark or note transfer forms without imposing a charge except where a charge is permitted by the Listing Rules.

## **7.5 Power to refuse to register**

If permitted by the Listing Rules the Directors may:

- (a) request any applicable CS Facility Operator to apply a holding lock to prevent a transfer of Ordinary Shares in the Company from being registered on the CS Facility's subregister; or
- (b) refuse to register a transfer of other shares in the Company to which paragraph (a) does not apply.

## **7.6 Obligation to refuse to register**

The Directors must:

- (a) request any applicable CS Facility Operator to apply a holding lock to prevent transfer of Ordinary Shares in the Company from being registered on the CS Facility's subregister; or
- (b) refuse to register any transfer of other shares in the Company to which paragraph (a) does not apply,

if:

- (c) the Listing Rules require the Company to do so; or

- (d) the transfer is in breach of the Listing Rules or a Restriction Agreement.

### **7.7 Written notice to security holder of holding lock or refusal**

If in the exercise of their rights under articles 7.5 and 7.6 the Directors request application of a holding lock to prevent a transfer of Ordinary Shares in the Company or refuse to register a transfer of shares they must give written notice of the request or refusal to the holder of the shares, the transferee and any broker lodging the transfer. Failure to give notice does not invalidate the decision of the Directors.

### **7.8 Company to retain instrument of transfer**

The Company must retain every instrument of transfer which is registered for the period required by any applicable law.

### **7.9 Resolution required for proportional takeover provisions**

Despite articles 7.1, 7.2 and 7.3, if offers are made under a proportional takeover bid for securities of the Company in accordance with the Corporations Act:

- (a) articles 7.9 to 7.13 apply;
- (b) the registration of a transfer giving effect to a takeover contract resulting from acceptance of an offer made under the takeover bid is prohibited unless and until a resolution (an “approving resolution”) to approve the bid is passed or taken to be passed in accordance with article 7.12 or article 7.13; and
- (c) the Directors must ensure that an approving resolution is voted on in accordance with articles 7.10 to 7.11 before the fourteenth day before the last day of the bid period.

### **7.10 Procedure for resolution**

The Directors may determine whether the approving resolution is voted on:

- (a) at a meeting of persons entitled to vote on the resolution convened and conducted, subject to the provisions of article 7.11, as if it were a general meeting of the Company convened and conducted in accordance with this Constitution and the Corporations Act with such modifications as the Directors determine the circumstances require; or
- (b) by means of a postal ballot conducted in accordance with the following procedure:
  - (i) a notice of postal ballot and ballot paper must be sent to all persons entitled to vote on the resolution not less than 14 days before the date specified in the notice for closing of the postal ballot, or such lesser period as the Directors determine the circumstances require;
  - (ii) the non-receipt of a notice of postal ballot or ballot paper by, or the accidental omission to give a notice of postal ballot or ballot paper to, a person entitled to receive them does not invalidate the postal ballot or any resolution passed under the postal ballot;

- (iii) the notice of postal ballot must contain the text of the resolution and the date for closing of the ballot and may contain any other information the Directors consider appropriate;
- (iv) each ballot paper must specify the name of the person entitled to vote;
- (v) a postal ballot is only valid if the ballot paper is duly completed and:
  - (A) if the person entitled to vote is an individual, signed by the individual or a duly authorised attorney; or
  - (B) if the person entitled to vote is a corporation, executed under seal or as permitted by the Corporations Act or under the hand of a duly authorised officer or duly authorised attorney;
- (vi) a postal ballot is only valid if the ballot paper and the power of attorney or other authority, if any, under which the ballot paper is signed or a copy of that power or authority certified as a true copy by statutory declaration is or are received by the Company before close of business on the date specified in the notice of postal ballot for closing of the postal ballot at the Registered Office or share registry of the Company or at such other place as is specified for that purpose in the notice of postal ballot; and
- (vii) a person may revoke a postal ballot vote by notice in writing which to be effective must be received by the Company before the close of business on the date for closing of the postal ballot.

### **7.11 Persons entitled to vote**

The only persons entitled to vote on the approving resolution are those persons who, as at the end of the day on which the first offer under the bid was made, held bid class securities. Each person who is entitled to vote is entitled to one vote for each bid class security held by that person at that time.

Neither the bidder nor any associate of the bidder is entitled to vote on the resolution.

### **7.12 Resolution passed or rejected**

If the resolution is voted on in accordance with articles 7.9 to 7.11 then it is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than one-half, and otherwise is to be taken to have been rejected.

### **7.13 Resolution taken as passed**

If a resolution to approve the bid has not been voted on as at the end of the day before the fourteenth day before the last day of the offer period, then a resolution to approve the bid is taken to have been passed in accordance with articles 7.10 to 7.12.

#### **7.14 Takeover articles cease to have effect**

Articles 7.9 to 7.13 cease to have effect on the day three years after the later of their adoption or last renewal.

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## **8 Transmission of shares**

### **8.1 Transmission of shares on death**

If a Member, who does not hold shares jointly, dies, the Company will recognise only the personal representative of the Member as being entitled to the Member's interest in the shares.

### **8.2 Information given by personal representative**

If the personal representative gives the Directors the information they reasonably require to establish the representative's entitlement to be registered as a holder of the shares:

- (a) the personal representative may:
  - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person; and
- (b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under paragraph (a)(i), the Company must register the personal representative as the holder of the shares.

A transfer under paragraph (a)(ii) is subject to the articles that apply to transfers generally.

### **8.3 Death of joint owner**

If a Member, who holds shares jointly, dies, the Company will recognise only the survivor as being entitled to the Member's interest in the shares. The estate of the Member is not released from any liability in respect of the shares.

### **8.4 Transmission of shares on bankruptcy**

If a person entitled to shares because of the bankruptcy of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares, the person may:

- (a) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
- (b) by giving a completed transfer form to the Company, transfer the shares to another person.

On receiving an election under paragraph (a), the Company must register the person as the holder of the shares.

A transfer under paragraph (b) is subject to the articles that apply to transfers generally.

This article 8.4 has effect subject to the Bankruptcy Act 1966 (Cwlth).

## **8.5 Transmission of shares on mental incapacity**

If a person entitled to shares because of the mental incapacity of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:

- (a) the person may:
  - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person; and
- (b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under paragraph (a)(i), the Company must register the person as the holder of the shares.

A transfer under paragraph (a)(ii) is subject to the articles that apply to transfers generally.

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## **9 General meetings**

### **9.1 Annual general meeting**

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

### **9.2 Convening a general meeting**

The Directors may convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the Corporations Act.

### **9.3 Use of technology at general meetings**

A meeting of the shareholders or any class of shareholders may be held by means of such telephone, electronic or other communications facilities as permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.

### **9.4 Notice of general meeting**

Notice of a general meeting must be given in accordance with Part 19 and the Corporations Act and may be given as set out below.

If a Member nominates:

- (a) an electronic means by which the Member may be notified that notices of meeting are available; and
- (b) an electronic means the Member may use to access notices of meeting,  
the Company may give the Member notice of the meeting by notifying the Member (using the notification means nominated by the Member):
- (c) that the notice of meeting is available; and
- (d) how the Member may use the electronic means nominated by the Member to access the notice of meeting.

A notice of meeting given to a Member by this electronic means is taken to be given on the first Business Day after the day on which the Member is notified that the notice of meeting is available.

### **9.5 Calculation of period of notice**

In computing the period of notice under article 9.4, both the day on which the last notice is given to Members or taken to be given and the day of the meeting convened by it are to be disregarded.

### **9.6 Cancellation or postponement of a meeting**

Where a general meeting (including an annual general meeting) is convened by the Directors they may by notice, whenever 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 for the meeting.

This article 9.6 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.

### **9.7 Notice of cancellation or postponement of a meeting**

Notice of cancellation or postponement or change of place of a general meeting must state the reason for cancellation or postponement and be:

- (a) published in a daily newspaper circulating in Australia;
- (b) given to ASX; or
- (c) subject to the Corporations Act and the Listing Rules, given in any other manner determined by the Directors.

### **9.8 Contents of notice of postponement of meeting**

A notice of postponement of a general meeting must specify:

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

- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

### **9.9 Number of clear days for postponement of meeting**

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

### **9.10 Business at postponed meeting**

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

### **9.11 Proxy, attorney or Representative at postponed meeting**

Where by the terms of an instrument appointing a proxy or attorney or an appointment of a Representative:

- (a) the appointed person is authorised to attend and vote at 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, power of attorney or appointment of Representative,

then, by force of this article, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member appointing the proxy, attorney 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.

### **9.12 Non-receipt of notice**

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

### **9.13 Director entitled to notice of meeting**

A Director is entitled to receive notice of and to attend all general meetings and all separate meetings of the holders of any class of shares in the capital of the Company and is entitled to speak at those meetings.

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## **10 Proceedings at general meetings**

### **10.1 Membership at a specified time**

The Directors may determine, for the purposes of a particular general meeting, that all the shares that are quoted on ASX at a specified time before the meeting are taken to be held at the time of the meeting by the persons who hold them at the specified time. The determination must be made and published in accordance with the Corporations Act.

### **10.2 Reference to a Member**

Unless the contrary intention appears, a reference to a Member in this Part 10 means a person who is a Member, or a:

- (a) proxy;
- (b) attorney; or
- (c) Representative,

of that Member.

### **10.3 Number for a quorum**

Subject to article 10.6, two Members present in person or by proxy, attorney or Representative are a quorum at a general meeting. In determining whether a quorum is present, each individual attending as a proxy, attorney or Representative is to be counted, except that:

- (a) where a Member has appointed more than one proxy, attorney or Representative, only one is to be counted; and
- (b) where an individual is attending both as a Member and as a proxy, attorney or Representative, that individual is to be counted only once.

### **10.4 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 time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chairman of the meeting (on the chairman's own motion or at the request of a Member, proxy, attorney or Representative who is present) declares otherwise.

### **10.5 If quorum not present**

If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened by a Director, or at the request of Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, 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.

## **10.6 Adjourned meeting**

At a meeting adjourned under article 10.5(b), two persons each being a Member, proxy, attorney or Representative present at the meeting are a quorum and, if a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

## **10.7 Appointment of chairman of general meeting**

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

## **10.8 Absence of chairman at general meeting**

If a general meeting is held and:

- (a) a chairman has not been elected by the Directors; or
- (b) the elected chairman 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 chairman of the meeting (in order of precedence):

- (c) any deputy chairman;
- (d) a Director chosen by a majority of the Directors present;
- (e) the only Director present; or
- (f) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

## **10.9 Conduct of general meetings**

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman'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 chairman considers it necessary or desirable for the proper conduct of the meeting,

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

## **10.10 Adjournment of general meeting**

The chairman 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 either to a later time at the same meeting or to an adjourned meeting at any time and place, but:

- (a) in exercising the discretion to do so, the chairman may, but need not, seek the approval of the Members present in person or by proxy, attorney or Representative; and
- (b) only unfinished business is to be transacted at a meeting resumed after an adjournment.

Unless required by the chairman, a vote may not be taken or demanded by the Members present in person or by proxy, attorney or Representative in respect of any adjournment.

#### **10.11 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 as in the case of an original meeting.

#### **10.12 Declaration of results**

Unless a poll is properly demanded and the demand is not withdrawn, a declaration by the chairman 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 chairman 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.

#### **10.13 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.

#### **10.14 Demand for a poll**

A poll may be demanded by at least 5 Members entitled to vote on the resolution, Members with at least 5% of the votes that may be cast on the resolution on a poll or by the chairman. A demand for a poll 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.

#### **10.15 No casting vote for chairman**

If there is an equality of votes, either on a show of hands or on a poll, the chairman of the general meeting is not entitled to a casting vote, in addition to any votes to which the chairman is entitled as a Member or proxy or attorney or Representative.

#### **10.16 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 chairman 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 chairman 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.

#### **10.17 Poll**

If a poll is effectively demanded:

- (a) it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is a resolution of the meeting at which the poll was demanded;
- (b) on the election of a chairman 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.

#### **10.18 Entitlement to vote**

Subject to any rights or restrictions for the time being attached to any class or classes of shares and to this Constitution:

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

A Member is not entitled to vote at a general meeting in respect of shares which are the subject of a current Restriction Agreement for so long as any breach of that agreement subsists.

#### **10.19 Voting on a poll for partly paid shares**

Subject to article 10.22 and the terms on which shares are issued, if a Member holds partly paid shares, the number of votes the Member has in respect of those shares on a poll is determined as follows:

$$\frac{A \times B}{C} = D$$

where:

A is the number of those shares held by the Member;

B is the amount paid on each of those shares excluding any amount:

- (a) paid or credited as paid in advance of a call; and

- (b) credited as paid on those shares to the extent that it exceeds the value (ascertained at the time of issue of those shares) of the consideration received for the issue of those shares;

C is the issue price of each of those shares; and

D is the number of votes attached to those shares.

#### **10.20 Fractions disregarded for a poll**

On the application of article 10.19, any fraction which arises is to be disregarded.

#### **10.21 Joint shareholders' vote**

If a share is held jointly and more than one Member votes in respect of that share, only the vote of the Member whose name appears first in the Register counts.

#### **10.22 Effect of unpaid call**

A Member is not entitled at a general meeting to cast a vote attached to a share on which a call is due and payable and has not been paid.

#### **10.23 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 Member is mentally incapacitated;
- (c) the Member revokes the appointment or authority;
- (d) the Member revokes the authority under which the appointment was made by a third party; or
- (e) the Member transfers the share in respect of which the appointment or authority was given.

#### **10.24 Objection to voting qualification**

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

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

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

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## **11 The Directors**

### **11.1 Number of Directors**

Unless otherwise determined by the Company in general meeting, the number of Directors is to be not less than 4 and to not exceed 5.

The Directors in office at the time of adoption of this Constitution continue in office subject to this Constitution.

### **11.2 Change of number of Directors**

The Company in general meeting may by resolution increase or reduce the minimum or maximum number of Directors, and may also determine the rotation in which the increased or reduced number is to retire from office.

### **11.3 Retirement and election of Directors**

At each annual general meeting of the Company there must be an election of Directors. The Directors who must retire from office (but are eligible to stand for re-election) at the annual general meeting are as follows:

- (a) a Director must not hold office without re-election:
  - (i) past the third annual general meeting following the Director's appointment or last election; or
  - (ii) for more than three years,which ever is the longer;
- (b) each Director who was appointed by the Directors under article 11.7; and
- (c) if none of (a) or (b) is applicable, the Director who has served office longest without re-election. If there are two or more such Directors who have been in office an equal length of time, then in default of agreement, the director to retire will be determined by lot.

This article does not apply to one Managing Director nominated by the Directors who is exempt from retirement by rotation in accordance with article 12.10.

### **11.4 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.

### **11.5 Director elected at general meeting**

The Company may, at a general meeting at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.

### **11.6 Eligibility for election as Director**

Except for:

- (a) a person who is eligible for election or re-election under article 11.3, 11.4 or 11.7; or
- (b) a person recommended for election by the Directors,

a person is not eligible for election as a Director at a general meeting of the Company unless a consent to nomination signed by the person has been lodged at the Registered Office at least:

- (c) in the case of a person recommended for election by the Directors, 30 Business Days before the general meeting; and
- (d) in any other case, 35 Business Days before the general meeting,

but, in each case, no more than 90 Business Days before the meeting,

- (e) the Board has determined prior to the relevant general meeting that the nominee meets the criteria, including the Independence Criteria if relevant, published by the Company in its corporate governance reporting from time to time.

#### **11.7 Casual vacancy or additional Director**

- (a) The Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed the maximum number determined in accordance with article 11.1.
- (b) 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. This provision does not apply to one Managing Director nominated by the Directors under article 12.10.

#### **11.8 Remuneration of Directors**

The Directors are to be remunerated for their services as Directors as follows:

- (a) subject to the Stapling Provisions, the amount of the remuneration of the Directors is a yearly sum not exceeding A\$1,000,000 or any greater sum from time to time determined by the Company in general meeting. The notice convening the meeting must include any proposal to increase the Directors' remuneration and specify both the amount of any increase and the new yearly sum proposed for determination;
- (b) the amount of the remuneration of the Directors is to be divided among them in the proportion and manner they agree or, in default of agreement, among them equally;
- (c) the remuneration is to be provided wholly in cash unless the Directors, with the agreement of the Director concerned, determine that part is to be satisfied in the form of non-cash benefits, including the issue or purchase of shares in the Company or the grant of options to subscribe for such shares. The sum determined by the Company in general meeting under article 11.8(a) does not include remuneration in the form of share, option or other equity plans approved separately by the Company in general meeting;

- (d) in making a determination under paragraph (c), the Directors may fix the value of any non-cash benefit; and
- (e) the Directors' remuneration accrues from day to day, except for any non-cash benefit which is taken to accrue at the time the benefit is provided, subject to the terms on which the benefit is provided.

This article does not apply to the remuneration of the Managing Director or any other Director appointed under article 12.8.

### **11.9 Superannuation contributions**

If required by law, the Company may make contributions to a fund for the purpose of making provision for or obtaining superannuation benefits for a Director.

### **11.10 Additional or special duties**

If a Director at the request of the Directors performs additional or special duties for the Company, the Company may remunerate that Director as determined by the Directors and that remuneration may be either in addition to or in substitution for that Director's remuneration under article 11.8.

### **11.11 Retirement benefit**

Subject to the Listing Rules and Corporations Act, the Company may pay a former Director, or the personal representative of a Director who dies in office, a retirement benefit in recognition of past services of an amount determined by the Directors. The Company may also enter into a contract with a Director providing for payment of a retirement benefit. A retirement benefit paid under this article is not remuneration to which article 11.8 applies.

### **11.12 Expenses**

A Director is entitled to be reimbursed out of the funds of the Company such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company.

### **11.13 Director's interests**

Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of auditor;
- (b) 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;
- (c) enter into any contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or Directors or persons dependent on or connected with them;

- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (f) 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;
- (g) sign or participate in the execution of a document by or on behalf of the Company;
- (h) 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; and
- (i) exercise the voting power conferred by securities in any entity held by the Company, as they determine including in circumstances where a Director may be interested in the exercise, such as a resolution appointing a Director as an officer of the entity or providing for the payment of remuneration to officers of the entity.

A reference to the Company in this article 11.13 is also a reference to each related body corporate of the Company.

#### **11.14 Vacation of office of Director**

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 the law relating to mental health;
- (b) resigns from the office by notice in writing to the Company;
- (c) is not present personally or by proxy or Alternate Director at meetings of the Directors for a continuous period of six months without leave of absence from the Directors;
- (d) is removed from office by resolution under section 203D of the Corporations Act, but without depriving the Director of any compensation or damages payable to the Director in respect of the termination of the Director's appointment as a Director or of an appointment terminating with that appointment; or
- (e) is an Independent Director and ceases to meet the Independence Criteria.

#### **11.15 Removal of Directors**

- (a) The Company may at a special general meeting called for that purpose remove a Director provided notice of any such meeting shall be served upon the Director concerned not less than 14 days before the meeting and he or she shall be entitled to be heard at that meeting.

- (b) A Director can only be removed at a special general meeting by a resolution of Ordinary Shares. Any vacancy created by that removal may be filled at the meeting by the election of another Director in his or her place or, in the absence of any such election, by the Directors.

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## **12 Powers and duties of Directors**

### **12.1 Directors to manage Company**

The business of the Company is to be managed by the Directors, who may exercise all such powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

### **12.2 Specific powers of Directors**

Without limiting the generality of article 12.1, 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.

### **12.3 Appointment of attorney**

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.

### **12.4 Provisions in power of attorney**

A power of attorney granted under article 12.3 may contain such provisions for the protection and convenience of persons dealing with the attorney as 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 vested in the attorney.

### **12.5 Signing of cheques**

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

### **12.6 Committees**

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

### **12.7 Powers delegated to Committees**

A Committee to which any powers have been delegated under article 12.6 must exercise those powers in accordance with any directions of the Directors.

## **12.8 Appointment of Managing and Executive Directors**

The Directors may appoint an employee of the Company or one of its subsidiaries to the office of managing director or executive director of the Company, to hold office as Director for the period determined at the time of appointment, but not to exceed the term of employment of the employee.

The Directors may, subject to the terms of any employment contract between the relevant Director and the Company or subsidiary, at any time remove or dismiss any Managing Director or Executive Director from employment with that company, in which event the appointment as a Director will automatically cease.

## **12.9 Ceasing to be a Managing or Executive Director**

Subject to article 12.10, a Managing Director or Executive Director appointed under article 12.8 is subject to re-election as director in accordance with article 11.3 and article 11.4. If re-elected, their term as Director ends when their employment contract with the Company or its subsidiary ceases.

## **12.10 One Managing Director exempt**

One Managing Director, nominated by the Directors, is, while holding that office, exempt from retirement by rotation under article 11.3 or article 11.4.

## **12.11 Remuneration of Managing and Executive Directors**

The remuneration of a Managing Director or an Executive Director may be fixed by the Directors and may be by way of salary or commission or participation in profits or by all or any of those modes, but may not be by a commission on or percentage of operating revenue.

## **12.12 Powers of Managing and Executive Directors**

The Directors may:

- (a) confer on a Managing Director or an Executive Director such of the powers exercisable by them, on such terms and conditions and with such restrictions, as they think fit; and
- (b) withdraw or vary any of the powers conferred on a Managing Director or an Executive Director.

## **12.13 Delegation of Directors' powers**

The Directors may delegate any of their powers to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit, and may revoke, withdraw, alter or vary the delegation of any of those powers.

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

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## **13 Proceedings of Directors**

### **13.1 Directors' meetings**

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

### **13.2 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.

### **13.3 Use of technology for Directors' meetings**

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

### **13.4 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.

### **13.5 Alternate Director or proxy and voting**

A person who is present at a meeting of Directors as an Alternate Director or 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 an Alternate Director or proxy and, if that person is also a Director, has one vote as a Director in that capacity.

### **13.6 Chairman of Directors**

The Directors may elect one of their number as chairman of their meetings and may also determine the period for which the person elected as chairman is to hold office.

### **13.7 Absence of chairman at Directors' meeting**

If a Directors' meeting is held and:

- (a) a chairman has not been elected under article 13.6; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be a chairman of the meeting.

### **13.8 Appointment of Alternate Director**

Subject to the Corporations Act, a Director may appoint a person approved by a majority of the other Directors to be an Alternate Director in the Director's place during such period as the Director thinks fit.

### **13.9 Independent Director's appointment of Alternate Director**

An Independent Director must not appoint a person to act as an Alternate Director unless that person meets the Independence Criteria.

### **13.10 Alternate Director and meetings**

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not participate in a meeting, the Alternate Director is entitled to participate and vote in the appointor's place.

### **13.11 Alternate Director's powers**

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

### **13.12 Alternate Director responsible for own acts and defaults**

While acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the appointor; and
- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

### **13.13 Alternate Director and remuneration**

An Alternate Director is not entitled to receive from the Company any remuneration or benefit under article 11.9 or 11.12.

### **13.14 Termination of appointment of Alternate Director**

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director for any reason.

### **13.15 Appointment or termination in writing**

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment and delivered to the Company.

### **13.16 Alternate Director and number of Directors**

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

### **13.17 Director attending and voting by proxy**

A Director may participate in 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 a proxy for 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.

### **13.18 Quorum for Directors' meeting**

At a meeting of Directors, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is as determined by the Directors and, unless so determined, is two.

### **13.19 Continuing Directors may act**

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by article 11.1, 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 to convene a general meeting.

### **13.20 Chairman of Committee**

The members of a Committee may elect one of their number as chairman of their meetings. If a meeting of a Committee is held and:

- (a) a chairman has not been elected; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be chairman of the meeting.

### **13.21 Meetings of Committee**

A Committee may meet and adjourn as it thinks proper.

### **13.22 Determination of questions**

Questions arising at a meeting of a Committee are to be determined by a majority of votes of the members of the Committee present and voting.

If there are an equal number of votes for and against a question, the chairman of the meeting has a casting vote, unless only two members of the Committee are present and entitled to vote on the question.

### **13.23 Circulating resolutions**

The Directors may pass a resolution without a Directors' meeting being held if all of the Directors 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 the Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs.

## **13.24 Validity of acts of Directors**

All acts done at a meeting of the Directors or of a Committee, 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.

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## **14 Secretary**

### **14.1 Appointment of Secretary**

The Company must have at least one Secretary who is to be appointed by the Directors.

### **14.2 Suspension and removal of Secretary**

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

### **14.3 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. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

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## **15 Seals**

### **15.1 Safe custody of common seals**

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

### **15.2 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 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.

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## **16 Inspection of records**

### **16.1 Inspection by Members**

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors).

### **16.2 Right of a Member to inspect**

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

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## **17 Dividends and reserves**

### **17.1 Payment of dividend**

Subject to the Corporations Act, this Constitution and the rights of any person entitled to shares with special rights to dividend, the Directors may determine that a dividend is payable, fix the amount and the time for payment and authorise the payment or crediting by the Company to, or at the direction of, each Member entitled to that dividend.

### **17.2 No interest on dividends**

Interest is not payable by the Company on a dividend.

### **17.3 Reserves and profits carried forward**

The Directors may:

- (a) before paying any dividend, set aside out of the profits of the Company such sums as they think proper as a reserve, to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied; and
- (b) carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

Pending application, any sum set aside as a reserve may, at the discretion of the Directors, be used in the business of the Company or be invested as the Directors think fit.

### **17.4 Calculation and apportionment of dividends**

Subject to the rights of any persons entitled to shares with special rights as to dividend and to the terms of issue of any shares to the contrary, the profits of the Company are divisible among the Members so that, on each occasion on which a dividend is paid:

- (a) the same sum is paid on each share on which all amounts payable have been paid; and

- (b) the sum paid on a share on which all amounts payable have not been paid is the proportion of the sum referred to in paragraph (a) that the amount paid on the shares bears to the total of the amounts paid and payable on the share.

To determine the amount paid on a share, exclude any amount:

- (c) paid or credited as paid in advance of a call; and
- (d) credited as paid on a share to the extent that it exceeds the value (ascertained at the time of issue of the share) of the consideration received for the issue of the share.

All dividends are to be apportioned and paid proportionately to the amounts paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.

#### **17.5 Deductions from dividends**

The Directors may deduct from any dividend payable to, or at the direction of, a Member any sums presently payable by that Member to the Company on account of calls or otherwise in relation to shares in the Company.

#### **17.6 Distribution of specific assets**

When resolving to pay a dividend, the Directors may:

- (a) resolve that the dividend be satisfied either wholly or partly by the distribution of specific assets to some or all of the persons entitled to the dividend, including fully paid shares in or debentures of the Company or fully paid shares in or debentures of any other body corporate; and
- (b) direct that the dividend payable in respect of any particular shares be satisfied wholly or partly by such a distribution and that the dividend payable in respect of other shares be paid in cash.

#### **17.7 Resolution of distribution difficulties**

If a difficulty arises in regard to a distribution under article 17.6, the Directors may:

- (a) settle the matter as they consider expedient;
- (b) fix the value for distribution of the specific assets or any part of those assets;
- (c) determine that cash payments will be made to, or at the direction of, any Members on the basis of the value so fixed in order to adjust the rights of all parties; and
- (d) vest any such specific assets in trustees as the Directors consider expedient.

If a distribution of specific assets to, or at the direction of, a particular Member or Members is illegal or, in the Directors' opinion, impracticable the Directors may

make a cash payment to the Member or Members on the basis of the cash amount of the dividend instead of the distribution of specific assets.

### **17.8 Payments in respect of shares**

A dividend, interest or other money payable in cash in respect of shares may be paid using any payment method chosen by the Company, including:

- (a) by cheque sent through the post directed to the address in the Register of the holder or, in the case of joint holders, to the address of the joint holder first named in the Register;
- (b) by cheque sent through the post directed to such other address as the holder or joint holder in writing directs; or
- (c) by some other method of direct credit determined by the Directors to the holder or holders shown on the Register or to such person or place directed by them.

### **17.9 Unsuccessful payments**

- (a) Cheques that are not presented within 6 months of issue may be cancelled where a cheque which is cancelled was drawn in favour of a Member the money is to be held by the Company for the Member or paid by the Company in accordance with the legislation relating to unclaimed money unless the Company in its discretion decides to reinvest the money in Ordinary Shares in which event the provisions of article 17.11 will apply.
- (b) Where payment is attempted to be made to a Member by electronic transfer of funds or any other means and the transfer is unsuccessful, the money may be held for the Member as a non-interest bearing deposit until it is claimed or required to be dealt with in accordance with applicable laws relating to unclaimed money.

### **17.10 Effectual receipt from one joint holder**

Any one of two or more joint holders may give an effectual receipt for any dividend, interest or other money payable in respect of the shares held by them as joint holders.

### **17.11 Election to reinvest dividend**

Subject to the Listing Rules, the Directors may grant to Members or any class of Members the right to elect to reinvest cash dividends paid by the Company by subscribing for shares in the Company on such terms and conditions as the Directors think fit.

### **17.12 Election to accept shares instead of dividends**

Subject to the Listing Rules, the Directors may determine in respect of any dividend which it is proposed to pay on any shares of the Company that holders of the shares may elect:

- (a) to forego the right to share in the proposed dividend or part of such proposed dividend; and

- (b) to receive instead an issue of shares credited as fully paid on such terms as the Directors think fit.

### **17.13 Unclaimed dividends**

Unclaimed dividends may be invested by the Directors as they think fit for the benefit of the Company until claimed or until required to be dealt with in accordance with any law relating to unclaimed moneys.

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## **18 Capitalisation of profits**

### **18.1 Capitalisation of reserves and profits**

The Directors:

- (a) may resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Members; and
- (b) may, but need not, resolve to apply the sum in any of the ways mentioned in article 18.2, for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

### **18.2 Applying a sum for the benefit of Members**

The ways in which a sum may be applied for the benefit of Members under article 18.1 are:

- (a) in paying up any amounts unpaid on shares held by Members;
- (b) in paying up in full unissued shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

### **18.3 Implementing the resolution**

The Directors may do all things necessary to give effect to the resolution under article 18.1 and, in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

- (a) make cash payments in cases where shares or debentures become issuable in fractions;
- (b) authorise any person to make, on behalf of all or any of the Members entitled to any further shares or debentures on the capitalisation, an agreement with the Company providing for:
  - (i) the issue to them, credited as fully paid up, of any further shares or debentures; or
  - (ii) the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing

shares by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement so made is effective and binding on all the Members concerned;

- (c) fix the value of specified assets; or
- (d) vest property in trustees.

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## **19 Service of documents**

### **19.1 Document includes notice**

In this Part 19, a reference to a document includes a notice and a notification by electronic means.

### **19.2 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; or
- (c) by sending it to a fax number or electronic address or by other electronic means nominated by the Member.

### **19.3 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 given and received on the Business Day after the date of its posting.

### **19.4 Fax or other electronic means**

A document sent or given by fax or other electronic means:

- (a) is taken to be effected by properly addressing and transmitting the fax or other electronic transmission; and
- (b) is taken to have been given and received on the day after the date of its transmission.

### **19.5 Evidence of service**

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

## **19.6 Joint holders**

A document may be given by the Company to the joint holders of a share by giving it to the joint holder first named in the Register in respect of the share.

## **19.7 Persons entitled to shares**

A person who by operation of law, transfer or other means whatsoever becomes entitled to any share is absolutely bound by every document given in accordance with this Part 19 to the person from whom that person derives title prior to registration of that person's title in the Register.

## **19.8 Service on the Company**

A document required under this Constitution or the Corporations Act to be given to the Company must be given in writing (which includes a fax), or in such other manner as the Directors determine. The Document must bear the actual, facsimile or electronic signature of the Member or a duly authorised office or representative of the Member unless the Directors dispense with this requirement. Service is only effective at the time of receipt.

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# **20 Winding up**

## **20.1 Distribution of assets**

If the Company is wound up, the liquidator may, with the sanction of a Special Resolution of the Company, divide among the Members in kind the whole or any part of the property of the Company and may for that purpose set such value as the liquidator considers fair on any property to be so divided and may determine how the division is to be carried out as between the Members or different classes of Members.

## **20.2 Powers of liquidator to vest property**

The liquidator may, with the sanction of a Special Resolution of the Company, vest the whole or any part of any such property in trustees on such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member is compelled to accept any shares or other securities in respect of which there is any liability.

## **20.3 Shares issued on special terms**

Articles 20.1 and 20.2 do not prejudice or affect the rights of a Member holding shares issued on special terms and conditions.

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# **21 Indemnity and insurance**

## **21.1 Indemnity**

To the maximum extent permitted by law, the Company may indemnify any current or former Director or Secretary or officer of the Company or a subsidiary of the Company out of the property of the Company against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs);

- (b) 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; and
- (c) legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Company or a subsidiary, if that expenditure has been approved in accordance with the Company's policy,

except to the extent that:

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

## **21.2 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 or officer of the Company or of a subsidiary 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 law to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by law.

## **21.3 Contract**

The Company may enter into an agreement with a person referred to in articles 21.1 and 21.2 with respect to the matters covered by those articles. An agreement entered into pursuant to this article may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

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# **22 Restricted Securities**

## **22.1 Disposal during Escrow Period**

- (a) Restricted Securities cannot be disposed of during the Escrow Period except as permitted by the Listing Rules or ASX.
- (b) The Company must not acknowledge a disposal (including by registering a transfer) of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.

## **22.2 Breach of Restriction Agreement or Listing Rules**

During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the holder of the Restricted Securities is not entitled to any dividend or distribution, or voting rights, in respect of the Restricted Securities.

### **22.3 Interpretation - Restricted Securities**

In this article 22, the expressions “disposed of”, “disposed”, “Escrow Period” and “Restricted Securities” have the same meaning as in the Listing Rules.

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## **23 Small Holdings**

### **23.1 Application of Part**

This Part 23 applies while the shares are Officially Quoted.

### **23.2 Company’s right to sell Small Holdings**

Subject to the provisions of this, the Company may in its discretion from time to time sell or redeem any shares held by a Member that is a Small Holder without request by the Small Holder.

### **23.3 Definitions**

In this Part 23:

**Divestment Notice** means a notice given under article 23.4 to a Small Holder or a New Small Holder;

**Market Value** in relation to a Share means the closing price on SEATS of the Share;

**New Small Holder** is a Member who is the holder or a joint holder of a New Small Holding;

**New Small Holding** means a holding of Shares created after the date on which article 23 came into effect by the transfer of a parcel of Shares the aggregate Market Value of which at the time a proper transfer was initiated or a paper based transfer was lodged, was less than a marketable parcel of Shares as provided under the Listing Rules;

**Relevant Period** means the period specified in a Divestment Notice under article 23.5;

**Relevant Shares** are the Shares specified in a Divestment Notice;

**Shares** for the purposes of this Part 23 are shares in the Company all of the same class;

**Small Holder** is a Member who is the holder or a joint holder of a Small Holding; and

**Small Holding** means a holding of Shares the aggregate Market Value of which at the relevant date is less than a marketable parcel of Shares as provided under the Listing Rules.

### **23.4 Divestment Notice**

If the Directors determine that a Member is a Small Holder or a New Small Holder the Company may give the Member a Divestment Notice to notify the Member:

- (a) that the Member is a Small Holder or a New Small Holder, the number of Shares making up and the Market Value of the Small Holding or New Small Holding and the date on which the Market Value was determined;
- (b) that the Company intends to sell the Relevant Shares in accordance with this Part 23 after the end of the Relevant Period specified in the Divestment Notice;
- (c) if the Member is a Small Holder, that the Member may at any time before the end of the Relevant Period notify the Company in writing that the Member desires to retain the Relevant Shares and that if the Member does so the Company will not be entitled to sell the Relevant Shares under that Divestment Notice; and
- (d) after the end of the Relevant Period the Company may for the purpose of selling the Relevant Shares that are in a CS Facility holding initiate a holding adjustment to move those Relevant Shares from that CS Facility holding to an Issuer Sponsored Holding or certificated holding.

If the Operating Rules of a CS Facility apply to the Relevant Shares, the Divestment Notice must comply with those Operating Rules.

### **23.5 Relevant Period**

For a Divestment Notice given to a Small Holder, the Relevant Period must be at least six weeks from the date the Divestment Notice was given. For a Divestment Notice given to a New Small Holder, the Relevant Period must be at least seven days from the date the Divestment Notice was given.

### **23.6 Company can sell Relevant Shares**

At the end of the Relevant Period the Company is entitled to sell on-market or in any other way determined by the Directors:

- (a) the Relevant Shares of a Member who is a Small Holder, unless that Member has notified the Company in writing before the end of the Relevant Period that the Member desires to retain the Relevant Shares, in which event the Company must not sell those Relevant Shares under that Divestment Notice; and
- (b) the Relevant Shares of a Member who is a New Small Holder.

### **23.7 No obligation to sell**

The Company is not bound to sell any Relevant Shares which it is entitled to sell under this Part 23 but unless the Relevant Shares are sold within six weeks after the end of the Relevant Period the Company's right to sell the Relevant Shares under the Divestment Notice relating to those Shares lapses and it must notify the Member to whom the Divestment Notice was given accordingly.

### **23.8 Company as Member's attorney**

To effect the sale and transfer by the Company of Relevant Shares of a Member, the Member appoints the Company and each Director and Secretary jointly and severally as the Member's attorney in the Member's name and on the Member's

behalf to do all acts and things which the Company considers necessary or appropriate to effect the sale or transfer of the Relevant Shares and, in particular:

- (a) to initiate a holding adjustment to move the Relevant Shares from a CS Facility holding to an Issuer Sponsored Holding or a certificated holding; and
- (b) to execute on behalf of the Member all deeds instruments or other documents necessary to transfer the Relevant Shares and to deliver any such deeds, instruments or other documents to the purchaser.

### **23.9 Conclusive evidence**

A statement in writing by or on behalf of the Company under this Part 23 is (in the absence of manifest error) binding on and conclusive against a Member. In particular, a statement that the Relevant Shares specified in the statement have been sold in accordance with this Part is conclusive against all persons claiming to be entitled to the Relevant Shares and discharges the purchaser from all liability in respect of the Relevant Shares.

### **23.10 Registering the purchaser**

The Company must register the purchaser of Relevant Shares as the holder of the Relevant Shares transferred to the purchaser under this article. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Shares transferred to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Company under this Part.

### **23.11 Payment of proceeds**

Subject to article 23.12, where:

- (a) Relevant Shares of a Member are sold by the Company on behalf of the Member under this article; and
- (b) the certificate for the Relevant Shares (unless the Company is satisfied that the certificate has been lost or destroyed or the Relevant Shares are Uncertificated Securities) has been received by the Company,

the Company must, within 60 days of the completion of the sale, send the proceeds of sale to the Member entitled to those proceeds by sending a cheque payable to the Member through the post to the address of the Member shown in the Register, or in the case of joint holders, to the address shown in the Register as the address of the Member whose name first appears in the Register. Payment of any money under this article is at the risk of the Member to whom it is sent.

### **23.12 Costs**

In the case of a sale of the Relevant Shares of a New Small Holder in accordance with this Part, the Company is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Company. In any other case, the Company or a purchaser must bear the costs of sale of the Relevant Shares. The costs of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gains of the Member) payable by the Company in connection with the sale and transfer of the Relevant Shares.

### **23.13 Remedy limited to damages**

The remedy of a Member to whom this article applies, in respect of the sale of the Relevant Shares of that Member is expressly limited to a right of action in damages against the Company to the exclusion of any other right, remedy or relief against any other person.

### **23.14 Dividends and voting suspended**

Unless the Directors determine otherwise, where a Divestment Notice is given to a New Small Holder in accordance with this Part, then despite any other provision in this Constitution, the rights to receive payment of dividends and to vote attached to the Relevant Shares of that Member are suspended until the Relevant Shares are transferred to a new holder or that Member ceases to be a New Small Holder. Any dividends that would, but for this article, have been paid to that Member must be held by the Company and paid to that Member within 60 days after the earlier of:

- (a) the date the Relevant Shares of that Member are transferred; and
- (b) the date that the Relevant Shares of that Member cease to be subject to a Divestment Notice.

### **23.15 Twelve month limit**

If it is a requirement of the Listing Rules, the Company must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by article 23.16).

### **23.16 Effect of takeover bid**

From the date of the announcement of a takeover bid for the Shares until the close of the offers made under the takeover bid, the Company's powers under this Part to sell Relevant Shares of a Member cease. After the close of the offers under the takeover bid, the Company may give a Divestment Notice to a Member who is a Small Holder or a New Small Holder, despite article 23.15 and the fact that it may be less than 12 months since the Company gave a Divestment Notice to that Member.

# Macquarie Atlas Roads Limited Constitution

## Schedule 1 - Rights attaching to preference shares

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### 1 Terms of preference shares

The Company may issue preference shares under article 3.3 of the Constitution on the following terms:

- (a) each preference share confers on the holder a right to receive a preferential dividend at the rate and on the basis decided by the Directors under the terms of issue;
- (b) in addition to the preferential dividend, each preference share may participate with the ordinary shares in profits if, and to the extent that, the Directors decide under the terms of issue;
- (c) the preferential dividend is cumulative unless, and to the extent that, the Directors decide otherwise under the terms of issue;
- (d) each preference share confers on its holder:
  - (i) the right to the preferential dividend in priority to the payment of any dividend on any other class of shares; and
  - (ii) the right in a winding up or on redemption to payment in cash in priority to any other class of shares of:
    - (A) the amount of any dividend accrued but unpaid on the share at the date of winding up or the date of redemption; and
    - (B) any amount paid on the share;
- (e) unless otherwise decided by the Directors under the terms of issue, a preference share does not confer on its holder any right to participate in the profits or property of the Company except as set out in this schedule;
- (f) to the extent that the Directors decide under the terms of issue, a preference share may confer a right to a bonus issue or capitalisation of profits in favour of holders of those shares only;
- (g) a preference share does not entitle its holder to vote at any general meeting of the Company except:
  - (i) on a proposal:
    - (A) to reduce the share capital of the Company;
    - (B) that affects rights attached to the share;

- (C) to wind up the Company; or
  - (D) for the disposal of the whole of the property, business and undertaking of the Company;
  - (ii) on a resolution to approve the terms of a buy back agreement;
  - (iii) during a period in which a dividend or part of a dividend on the share is in arrears;
  - (iv) during the winding up of the Company; and
  - (v) in any other circumstance the Directors determine at the time of issue; and
- (h) each preference share confers on its holder the same rights as those conferred by the Constitution upon the holders of ordinary shares in relation to receiving notices of general meetings, reports, balance sheets and accounts and of attending and being heard at all general meetings of the Company.

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## **2 Foreign Currency**

Where any amount is payable by the Company to the holder of a preference share in a currency other than Australian dollars, and the amount is not paid when due or the Company has commenced winding up, the holder may give notice to the Company requiring payment of an amount in Australian dollars equal to the foreign currency amount calculated by applying the reference rate on the date of payment for the sale of the currency in which the payment is to be made for Australian dollars. Reference rate means the rate applicable in the market and at the time determined by the Directors before allotment of those preference shares and specified in the terms of issue for those preference shares.

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## **3 Conversion to ordinary shares**

A preference share which, in accordance with its terms of issue, may be converted into an ordinary share will, at the time of conversion and without any further act, have the same rights as a fully paid ordinary share and rank equally with other fully paid ordinary shares on issue. This is subject to the terms of issue of the preference share in relation to entitlement to ordinary dividends paid after conversion. In addition, the terms of issue of the preference share may provide for the issue of additional ordinary shares on conversion as determined by the Directors.

# Macquarie Atlas Roads Limited Constitution

## Schedule 2 - Stapling Provisions

The following provisions take effect on and from the Stapling Commencement Date if determined by the Issuer and, if so determined, apply unless and until they cease to apply in accordance with the relevant Constituent Document.

On and from the Stapling Commencement Date:

- (a) the Stapling Provisions apply and the relevant Constituent Document is to be read subject to the Stapling Provisions; and
- (b) subject to the articles of the Issuer's Constitution titled "Replaceable rules do not apply", "Official Quotation" and "Application of Listing Rules" in the relevant Constituent Document, the Stapling Provisions prevail over all other provisions of the relevant Constituent Document including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules or any other law.

The Stapling Provisions apply to the Issuer in respect of its respective Stapled Entity and its Attached Securities. Unless the contrary intention appears, in this schedule a reference to a clause is a reference to a clause of this schedule.

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## 1 Definitions and Interpretation

### 1.1 Definitions

Unless the contrary intention appears, in this schedule capitalised terms not defined have the same meaning as in the Constitution.

**Accession Deed** means the deed of that name between each Issuer and:

- (a) the responsible entity of any new trust; or
- (b) any issuer of a New Attached Security,

by which that person accedes to the Co-operation Deed.

**Application Price** means:

- (a) in respect of a Share, the application price for the Share;
- (b) in respect of any Other Attached Security, the application price for the Other Attached Security; and
- (c) in respect of a Stapled Security, the application price for a Stapled Security calculated in accordance with this schedule.

**Approved Valuer** means any person, independent of the Issuer, who is duly qualified to conduct a valuation.

**Company** means Macquarie Atlas Roads Limited.

**ASIC** means the Australian Securities and Investments Commission or any replacement or successor authority.

**Attached Securities** means any Securities an identical number of which are from time to time Stapled together to form a Stapled Security but does not include any Unstapled Security.

**Aust Share** means an ordinary share in the capital of the Company.

**Bermuda Share** means an ordinary share in the capital of MQA Bermuda.

**Constituent Documents** means the constituent documents of a Stapled Entity and at the Stapling Commencement Date means the Constitution and the MQA Bermuda Bye-Laws.

**Constitution** means the constitution of the Company and includes any amendment or replacement of it.

**Co-operation Deed** means the deed of that name between the Company and MQA Bermuda, and as amended from time to time.

**Corporate Action** means any issues, bonus and rights issues, placements and redemptions and buy-backs of an Attached Security.

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

**Defaulted Attached Security** means a partly paid Attached Security on which an instalment is due and payable but unpaid or in respect of which, a valid call has been made but has not paid in the time specified in the call.

**Defaulted Stapled Security** means a Stapled Security where one or more Attached Securities is a Defaulted Attached Security.

**Designated Foreign Investor** means a Foreign Investor in respect of whom the Issuer has made a determination in accordance with clause 9(b) of this schedule.

**Encumbrance** means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement;
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

**First Notice** has the meaning given in clause 5.3(a) of this schedule.

**Foreign Investor** means an Investor whose address on the Register is in a place other than Australia, and such other jurisdictions (if any) as the Issuer may determine.

**Group** means the Stapled Entities and any Subsidiary of a Stapled Entity.

**Intra-Group Loan** means any of the actions set out in clause 12.6 of this schedule.

**Investor** means a person entered in the Register as a holder of a Stapled Security.

**Issuer:**

- (a) in the context of the Constitution, means the Company;
- (b) in the context of the MQA Bermuda Bye-Laws, means MQA Bermuda; and
- (c) in the context of the Constituent Document of any other Attached Security, means the issuer of the Attached Security.

**Listed** means being admitted to the official list of ASX as defined in the Listing Rules and **Listing** has a corresponding meaning.

**MQA Bermuda** means Macquarie Atlas Roads International Limited, a company incorporated in Bermuda.

**MQA Bermuda Bye-Laws** means the bye-laws of MQA Bermuda and includes any amendment or replacement of it.

**New Attached Security** has the meaning given in clause 7(a) of this schedule.

**Officially Quoted** means quotation on the official list of the ASX, including when quotation is suspended for a continuous period of not more than 60 days, all times during that period of suspension.

**Other Attached Security** means in respect of:

- (a) a Share, an identical number of each Attached Security other than a Share; and
- (b) any New Attached Security, an identical number of each Attached Security other than a New Attached Security.

**Other Issuer** means:

- (a) in respect of the Company, each Issuer other than the Company;
- (b) in respect of MQA Bermuda, each Issuer other than MQA Bermuda; and
- (c) in respect of the issuer of any New Attached Security, each Issuer other than the issuer of the New Attached Security.

**Register** means the register of Investors kept by the Stapled Entities under paragraph 6 and the Corporations Act.

**Registered** means to be recorded in the Register.

**Registrar** means the person appointed to maintain the Register.

**Reorganisation** means the consolidation, division or conversion of the Attached Securities in the ratio determined by the Issuer from time to time. **Reorganise** is to be construed accordingly.

**Restapling** has the meaning given in clause 8.3 of this schedule.

**Reserve Price** has the meaning given in clause 5.7(h) of this schedule.

**Restricted Securities** has the meaning given in the Listing Rules.

**Sale Consideration** means the average price (net of transaction costs including applicable brokerage, stamp duty and other taxes or charges) at which those Stapled Securities held by the Sale Nominee are sold under the Sale Facility, multiplied by the number of Stapled Securities held and sold by the Sale Nominee for the relevant Designated Foreign Investor.

**Sale Facility** means the facility under which Designated Foreign Investors are required to transfer their existing Stapled Securities to the Sale Nominee on the basis that the Sale Nominee is entered in the Register in respect of those Stapled Securities, and will receive the New Attached Securities pursuant to the Stapling and sell the resultant Stapled Securities for cash to pay the Sale Consideration to the relevant Designated Foreign Investor.

**Sale Nominee** means a financial services licensee appointed by the Issuer to carry out the role described in clauses 9(c) and (d) of this schedule.

**Sale Record Date** means the date determined by the Issuers as being the record date for the transaction under which the New Attached Securities are to be Stapled.

**Security** means any right or interest in a managed investment scheme, unit, share, note, debenture or any right or interest or option to acquire a share, note or debenture.

**Small Holding** means a holding of securities which comprises less than a marketable parcel as provided in the Listing Rules.

**Stapled Entity** means an Australian or overseas company, trust, corporation or managed investment scheme whose Securities are Attached Securities and who has executed the Accession Deed and at the Stapling Commencement Date means the Company and MQA Bermuda.

**Stapled Security** means the stapled security created by the Stapling together of the Attached Securities.

**Stapled Security Price** has the meaning given in clause 4.1(a) of this schedule.

**Stapling** means the linking together of Securities so that one Attached Security may not be transferred or otherwise dealt with without the Other Attached Securities and so that the Attached Securities are quoted on ASX jointly as a “Stapled Security” or such other term as ASX permits. “**Stapled**” has a corresponding meaning.

**Stapling Commencement Date** means the most recent date on which the Issuer determines that the Stapling of Attached Securities commences.

**Stapling Matter** has the meaning given in clause 2.3 of this schedule.

**Stapled Security** means the stapled security created by the Stapling together of the Attached Securities.

**Stapled Security Price** has the meaning given in clause 4.1(a) of this schedule.

**Subsidiary** of an entity means a company which is a subsidiary of the first entity within the meaning of Part 1.2 Div 6 of the Corporations Act or another entity which is controlled by the first entity within the meaning of control under section 50AA of the Corporations Act.

**Trading Day** has the same meaning as in the Listing Rules.

**Transaction Documents** means all regulatory, structuring, operational, finance and ancillary documents required to effect and maintain the listing of the Stapled Entities and the official quotation of the Stapled Securities and to achieve the investment objectives of the Group from time to time, and any amending or supplemental agreements to those documents and any other document that the Issuer and the Other Issuers consider necessary or desirable for or in connection with the Listing of the Stapled Entities and the Official Quotation of the Stapled Securities and the achievement of the investment objectives of the Group from time to time and includes, without limitation, the Co-operation Deed.

**Transfer** has the meaning given in clause 7(d) of this schedule.

**Transferee** has the meaning given in clause 5.7(f) of this schedule.

**Unstapled Security** means a Security which is no longer Stapled.

**Unstapling** means the process that results in the Attached Securities no longer being Stapled to each other. **Unstapled** has a corresponding meaning.

**Unstapling Event** means one or more of the following events:

- (a) a special resolution of the members of each Stapled Entity is passed to Unstaple the Stapled Securities;
- (b) Stapling becomes unlawful or prohibited under the Listing Rules; or
- (c) a winding-up is commenced in respect of a Stapled Entity.

## 1.2 Interpretation

Unless the contrary intention appears, the interpretation provisions in clause 1.2 of the Constitution apply to this schedule.

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## 2 Stapling - general intention

### 2.1 Stapled Securities - general intention

The Attached Securities are intended to be Stapled to form a Stapled Security from the Stapling Commencement Date. Subject to clause 8 of this schedule it is intended that:

- (a) the holders of one Attached Security will be identical to the holders of each Other Attached Security;
- (b) as far as the law permits, the Attached Securities shall be treated as one security;
- (c) the number of each Attached Security on issue at any time must equal the number of each Other Attached Security on issue;
- (d) no transfer of an Attached Security is to occur without each Other Attached Security being transferred at the same time from the same transferor to the same transferee; and
- (e) no Attached Security is to be issued unless each Other Attached Security is issued at the same time to the same person.

## **2.2 Transaction Documents**

Without limiting the Constituent Documents, the Issuer is authorised to enter into the Transaction Documents and to perform its obligations under the Transaction Documents.

## **2.3 Stapling matters**

- (a) The rights and obligations attaching to each Attached Security are set out in the relevant Constituent Document.
- (b) Without limiting the Constituent Documents or the Corporations Act, each Investor by subscribing for, taking a transfer of, or otherwise acquiring a Stapled Security will be taken to have consented to each provision in the Constituent Documents, including without limitation:
  - (i) the Stapling of the Attached Securities;
  - (ii) any Reorganisation of the Attached Securities (subject to an Ordinary Resolution if required by the Constituent Document);
  - (iii) the disposal of any Defaulted Stapled Securities;
  - (iv) the disposal of any Small Holding of Stapled Securities;
  - (v) the restrictions on Stapled Securities that are Restricted Securities;
  - (vi) the Stapling of New Attached Securities to the Stapled Securities;
  - (vii) the Investor becoming a member of any new Stapled Entity and being bound by the Constituent Documents for any New Attached Security;
  - (viii) the Unstapling of one or more Attached Securities;
  - (ix) the Restapling of an Unstapled Security;
  - (x) the Unstapling of the Stapled Securities; and

- (xi) the disposal of Stapled Securities of a Designated Foreign Investor in accordance with clause 9 of this schedule;

(each a “**Stapling Matter**”).

- (c) To effect any Stapling Matter, each Investor irrevocably appoints the Issuer as the Investor’s:
  - (i) agent and attorney in the Investor’s name and on the Investor’s behalf to do all acts and things and execute all documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect any Stapling Matter; and
  - (ii) proxy to vote at any meeting in favour of any resolution to effect a Stapling Matter.
- (d) Without limiting clause 2.3(c) above or any provision of a relevant Constituent Document, to effect the Stapling of a New Attached Security to the Stapled Securities under clause 7 of this schedule, each Investor irrevocably appoints the Issuer as the Investor’s agent and attorney in the Investor’s name and on the Investor’s behalf to:
  - (i) agree to obtain any New Attached Security;
  - (ii) apply any distributions, redemption proceeds or other payments to obtain a New Attached Security;
  - (iii) where a New Attached Security comprises shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme;
  - (iv) to do all acts and things and execute all applications, transfers, withdrawals and any other documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect the Transfer of the New Attached Security to the Investor under clause 7 of this schedule.
- (e) Without limiting clause 2.3(c) above, to effect the disposal of Stapled Securities held by or on behalf of a Designated Foreign Investor under clause 9, each Designated Foreign Investor irrevocably appoints the Issuer as that Investor’s agent and attorney in the Investor’s name and on the Investor’s behalf to:
  - (i) receive and apply the Amounts referred to in clause 9(c)(i) in the manner contemplated in clause 9 of this schedule;
  - (ii) execute applications or transfers in relation to the Transfer of any New Attached Security;
  - (iii) execute transfers of any Stapled Securities which are to be the subject of the Sale Facility; and

- (iv) do all acts and things and execute any other documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect the disposal of the Stapled Securities of the Designated Foreign Investor under clause 9 of this schedule.
- (f) The Issuer may:
  - (i) appoint (and revoke the appointment of) one or more substitute attorneys to exercise one or more of the powers given to the Issuer in relation to any Stapling Matter; and
  - (ii) do all acts and things and execute all documents under this clause 2.3 without needing further authority or approval from an Investor and may do so even if it has an interest in the outcome of such exercise.
- (g) Each Investor acknowledges and recognises that the exercise of the powers given to the Issuer under clauses 2.3(e), 2.3(f), 9 and 10 of this schedule may cause individual Investors considerable disadvantage (including possible adverse financial and taxation consequences) but each Investor acknowledges that such a result is necessary to enable the requirements of clause 9 of this schedule (Designated Foreign Investor) to be met.
- (h) To the maximum extent permitted by law, the Issuer has no liability to any Investor or any Stapled Entity, and a Stapled Entity has no liability to any Investor, for any loss or disadvantage incurred by an Investor as a result, whether directly or indirectly, of the Issuer exercising its powers in relation to any Stapling Matter.

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## **3 Dealings in Stapled Securities**

### **3.1 Stapling**

- (a) Subject to clause 7 of this schedule, on and from the Stapling Commencement Date:
  - (i) each Attached Security must be Stapled to each Other Attached Security to form a Stapled Security;
  - (ii) the Issuer must not:
    - (A) offer an Attached Security for subscription or sale unless an offer is made at the same time and to the same person for each Other Attached Security for issue or sale;
    - (B) offer an Attached Security for subscription or sale unless the terms of that offer require each offeree to subscribe for or buy each Other Attached Security;
    - (C) accept an application for an Attached Security if the applicant does not at the same time apply for the Other Attached Securities or if the Other Attached Securities

will not be issued to the applicant at the same time as the issue of the Attached Securities to the applicant;

- (D) issue or sell an Attached Security to any person unless each Other Attached Security is also issued or sold to the same person at the same time;
  - (E) issue any rights or options to acquire an Attached Security unless corresponding rights or options to acquire each Other Attached Security are issued at the same time and to the same person;
  - (F) without the prior written consent of each Other Issuer, issue any Security or class of Security other than an Attached Security or any right or option to acquire any such Attached Security; and
  - (G) permit a reinvestment by Investors in an Attached Security unless at the same time the Investor acquires each Other Attached Security which when issued or acquired are Stapled to the Attached Security. The Issuer may make provisions governing the amount of the reinvested dividends/distributions to be used to subscribe for or acquire the Attached Security and the amount to be used to subscribe for or acquire the Other Attached Securities having regard to the application price of the Attached Securities.
- (b) Each Attached Security issued after the Stapling Commencement Date must be Stapled to each Other Attached Security immediately upon the date of issue of each Attached Security.

### 3.2 Dealings in Attached Securities

- (a) **(No Unstapling)** On and from the Stapling Commencement Date, the Issuer must not:
- (i) do any act, matter or thing (including registering any transfer of any Attached Security); or
  - (ii) refrain from doing any act, matter or thing,
- if it would result directly or indirectly in any Attached Security no longer being Stapled to form a Stapled Security, other than in accordance with clause 8 of this schedule.
- (b) **(Attached Securities)** Subject to clause 8 of this schedule, on and from the Stapling Commencement Date, the Issuer must not:
- (i) cancel, buy-back or redeem an Attached Security unless at the same time there is a corresponding cancellation, buy-back or redemption of each Other Attached Security;
  - (ii) implement a Reorganisation Proposal involving an Attached Security unless at the same time there is a corresponding

implementation of a Reorganisation Proposal involving each Other Attached Security; or

- (iii) register any transfer of an Attached Security to any person unless each Other Attached Security is also transferred to the Same Person at the same time in a single instrument of transfer of Stapled Securities.
- (c) **(Exercise options)** The Issuer must not permit an Investor to exercise any rights or options to acquire an Attached Security unless the Investor exercises the corresponding rights or options to acquire each Other Attached Security at the same time.
- (d) **(Request for holding lock)** The Issuer must not request any applicable CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of an Attached Security from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be, unless a corresponding request is made in respect of each Other Attached Security.
- (e) **(Disposal)** The Issuer must not dispose of a Defaulted Attached Security unless at the same time each Other Attached Security is also disposed of in the same manner and to the same person.
- (f) **(Small Holdings)** The Issuer must not dispose of a Small Holding of an Attached Security unless at the same time the Small Holding of each Other Attached Security is also disposed of in the same manner and to the same person. A Small Holding must be disposed of in accordance with the Listing Rules and the Constituent Documents.
- (g) **(Designated Foreign Investors)** The Issuer must not dispose of, or cause the disposal of, an Attached Security of a Designated Foreign Investor unless at the same time each Other Attached Security of that Designated Foreign Investor is also disposed of in the same manner and to the same person.
- (h) **(Compliance with law)** The Issuer is not obliged to effect a buy-back, cancellation, redemption, transfer or issue or other Corporate Action in a manner inconsistent with any constitutional, contractual or fiduciary obligation or law by which it is bound, or if it does not have any necessary consent or approval.

### 3.3 Consistency with the Constituent Documents

The Issuer must use every reasonable endeavour to procure that each Attached Security is dealt with under the Constituent Document of their respective Stapled Entity in a manner consistent with the provisions relating to Stapled Securities in the Constituent Documents of each other Stapled Entity.

### 3.4 Joint quotation as Stapled Securities

Until all Attached Securities are Unstapled in accordance with provisions of this schedule, the Issuer must use reasonable endeavours to ensure that each Stapled Security which is Officially Quoted continues to be jointly Officially Quoted as a Stapled Security.

### 3.5 Joint certificates or joint holding statements

Subject to the Corporations Act, the Issuer may procure that joint certificates or joint holding statements are issued to evidence the holding of Stapled Securities comprising Attached Securities and Other Attached Securities.

### 3.6 Stapling and separate entities

Notwithstanding any other provision of this schedule each Stapled Entity will remain as separate legal entities and will be separately admitted to the official list of ASX notwithstanding that the Attached Securities are jointly quoted on ASX as Stapled Securities.

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## 4 Allocation of Application Price

### 4.1 Apportionment of Application Price

(a) Unless otherwise agreed between the Issuers, the Application Price for a Stapled Security (“**Stapled Security Price**”) will be allocated between the Application Price of the Attached Securities as follows:

(i) first, to the Application Price of any Attached Security that is an interest in a trust, being an amount which reflects the net assets (adjusted for the net market value of its investments) of the Stapled Entity which is a trust immediately prior to the issue of the Stapled Security. If there is more than one Stapled Entity which is a trust, then such amounts to be allocated between those trusts in the ratio that the net assets (adjusted for the net market value of its investments) of each relevant trust immediately prior to the issue or acquisition of the Stapled Security bears to the amount of the aggregate net assets (adjusted for the net market value of their investments) of those trusts at the end of the relevant period immediately prior to the issue of the Stapled Security;

(ii) second, to the Application Price of any Attached Security not covered by paragraph (i), being the lesser of:

(A) any balance remaining after the allocation in paragraph (i); or

(B) an amount which reflects the net assets (adjusted for the net market value of their investments) of the relevant Stapled Entities immediately prior to the issue of the Stapled Security;

such amounts to be allocated between the relevant Stapled Entities in the ratio that the net assets (adjusted for the net market value of its investments) of each relevant Stapled Entity at the end of the relevant period immediately prior to the issue of the Stapled Security bears to the amount of the aggregate net assets (adjusted for the net market value of their investments) of those Stapled Entities at the end of the relevant period immediately prior to the issue of the Stapled Security.

- (b) Where an option to acquire a Stapled Security is issued after the Stapling Commencement Date, the allocation of the issue price of the option must be determined in the same manner as under clause 4.1(a).
- (c) The allocation of the Application Price for a Stapled Security under this clause 4.1 must be consistent for each Stapled Security issued or transferred to each Investor at the same time.

#### **4.2 Application Price if reinvestment applies**

- (a) If the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the money representing the fraction will be held for future reinvestment in the Stapled Entities at the next time that reinvestment is to occur, in such proportions as the Issuers may determine on behalf of the relevant Investor.
- (b) Whenever money is held on behalf of an Investor for future reinvestment the money so held may in the discretion of the Issuer be aggregated and on each occasion on which the aggregated amount reaches the Application Price of a Stapled Security be applied in the subscription or transfer of a Stapled Security for the Investor.

#### **4.3 Redemption or buy back**

In the case of a redemption or buy back of Stapled Securities, the allocation of the price between Stapled Securities is to be based on the respective fair values of the Attached Securities as determined by agreement between the Issuer and any Other Issuer immediately prior to the redemption or buy back of the Stapled Security.

#### **4.4 Price consistent**

Each allocation determined under clause 4 of this schedule must be consistent for each Attached Security issued, redeemed, bought back or sold to or from each Investor at the same time.

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### **5 Calls and disposal**

#### **5.1 Payment of Application Price by instalments**

The Issuer may determine at any time in consultation with each Issuer of Other Attached Securities that any Stapled Securities to be offered for sale or subscription is to be offered on terms that the Application Price is payable by instalments of such amounts and at such times as the Issuers determine (including by a single instalment).

#### **5.2 Variation or waiver of terms and conditions**

Subject to the Corporations Act, where Stapled Securities are offered for sale or subscription on terms and conditions determined and set out in accordance with article 3.1 of the Constitution, those terms and conditions may be varied or compliance with them waived only with the consent of the Issuer. The variation or waiver must not take effect during the currency of the offering document pursuant to which the Stapled Securities were offered for sale or subscription.

### 5.3 Notice of instalments

- (a) Subject to the Listing Rules, Investors holding partly paid Attached Securities must be given at least 30 Business Days' notice (but not more than 40 Business Days' notice) of the time and date each instalment is due to be paid ("**the First Notice**").
- (b) The First Notice must contain such other information as is required by the Listing Rules and at least 4 Business Days before the date each instalment is due to be paid, a second notice must be sent to all new Investors and those Investors whose holding has changed since the First Notice which must include any changes that have occurred in the information given in the First Notice because of a change in the holding.

### 5.4 Payment of instalments

- (a) The payment of an instalment in respect of an Attached Security may be revoked or postponed by the Issuer.
- (b) Subject to the Listing Rules an instalment shall be deemed to be due on the date determined by the Issuer.
- (c) Subject to the Listing Rules the non-receipt of a notice that an instalment is due by, or the accidental omission to give a notice that an instalment is due to an Investor, shall not invalidate the instalment being due.
- (d) Subject to the Corporations Act, the Listing Rules and clause 5.2 of this schedule any liability of an Investor in respect of any monies unpaid on an Investors' partly paid Attached Securities may be extinguished in full or in part by the Issuer.
- (e) Subject to the Listing Rules any instalment which, by the terms of issue of the Attached Security, becomes payable on issue of the partly paid Attached Security or at any date fixed by or in accordance with such terms of issue shall be deemed to be an instalment of which the Investors have received notice in accordance with clause 5.3 of this schedule. In the case of non-payment, all the provisions of this schedule as to payment of interest, disposal or otherwise shall apply as if such notice had been given.

### 5.5 Failure to pay instalments

- (a) If an Investor does not pay an instalment on a partly paid Attached Security by its due time for payment then interest is payable by the Investor on the unpaid amount from (and including) the date payment was due to (but excluding) the time of payment at a rate per annum equal to BBSW plus 3%. Interest is calculated daily. Accrued interest is payable monthly. Accrued unpaid interest will be added to the amount owing and will itself bear interest at a rate per annum equal to BBSW plus 3% until paid in full. Subject to clause 5.2 of this schedule, payment of that interest may be waived in whole or part.
- (b) If an Investor fails to pay in full any instalment due on any partly paid Attached Security on or by the day specified for payment, subject to clause 5.3 of this schedule and during such time as the instalment or any part of the instalment remains unpaid, a notice may be given to that Investor requiring payment of so much of the instalment as is unpaid,

any interest owing under clause 5.5(a) and all reasonable expenses incurred by the Issuer as a result of the non-payment.

- (c) The notice must specify a further time and day (not earlier than 10 days from the date of the notice) on or by which the payment as required by the notice is to be made.
- (d) The notice must also state that in the event of non payment on or by that specified time and day, the Defaulted Stapled Securities will be liable to be sold.

## **5.6 If requirements of any notice not complied with**

If the requirements of any notice issued under clause 5.5 of this schedule are not complied with:

- (a) any partly paid Attached Security in respect of which the notice has been given (together with the Other Attached Securities) may at any time after the date specified in the notice for payment of the amount required by the notice (and before payment of the instalment and any interest and expenses owing), be disposed of by the Issuer so determining; and
- (b) subject to the Listing Rules, the Corporations Act and this schedule, all voting rights, entitlements to the distribution of income and other rights in connection with any partly paid Attached Security and the Other Attached Securities in respect of which the notice has been given are suspended until reinstated by the Issuer.

## **5.7 Disposal of Defaulted Attached Securities**

- (a) If any Defaulted Attached Security is offered for sale pursuant to this clause 5.7 then the Issuer must procure that each Other Attached Security is also offered for sale with the result that the whole Stapled Security is offered for sale.
- (b) For the avoidance of doubt Attached Securities may be sold pursuant to this clause 5 even if they are fully paid in circumstances where there is default in payment of a call on a Defaulted Attached Security.
- (c) A Defaulted Attached Security (together with the Other Attached Securities) may be disposed of by the Issuer or their agent, at a price determined by the Issuer and in accordance with any applicable ASIC relief.
- (d) Any offer of Defaulted Attached Securities which are to be sold pursuant to clause 5.7(c) must be accompanied by a contemporaneous and corresponding offer of the Other Attached Securities, which offer is capable of acceptance only if the recipient acquires an identical number of Defaulted Attached Securities and the Other Attached Securities.
- (e) Subject to the Listing Rules and the conditions of any applicable ASIC relief<sup>1</sup>, the Issuer or their agent may sell or otherwise dispose of Defaulted Stapled Securities:

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<sup>1</sup> ASIC Instrument of Relief 05/26.

- (i) in the ordinary course of trading on ASX; or
  - (ii) by private treaty or public auction.
- (f) The sale of Defaulted Stapled Securities will be on the basis that the person to whom the Defaulted Stapled Securities are sold (“**Transferee**”) is not liable to pay the outstanding call (but may be liable for all future calls). The Issuer may assign its rights under this clause 5 to a person who underwrites the payment of the call.
- (g) At any time before a sale or disposition of Defaulted Stapled Securities the Issuer may cancel the sale or disposition upon such terms as the Issuer thinks fit.
- (h) Without limiting clause 5.7(c) above, the Issuer may set a reserve price for a Defaulted Stapled Security at any auction subject to and in accordance with any applicable ASIC Relief (“**Reserve Price**”).
- (i) If the Issuer or their agent are unable to sell the Defaulted Stapled Securities for a price not less than the Reserve Price then the Issuer may sell or otherwise dispose of the Defaulted Stapled Securities. The Issuer is not obliged to offer the Defaulted Stapled Securities that have not been sold at auction to Investors before disposing of the Defaulted Stapled Securities.

## **5.8 Evidence of enforcement**

A statement signed by a duly authorised officer of the Issuer that a Defaulted Stapled Security has been duly disposed of on a date stated therein is conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the Defaulted Stapled Security.

## **5.9 Consideration for sold Defaulted Stapled Securities**

- (a) Where a Defaulted Stapled Security is sold, the Issuer nominated by each Other Issuer by agreement may:
- (i) receive the consideration, if any, given for a Defaulted Stapled Security; and
  - (ii) execute a transfer of such Defaulted Stapled Security in favour of the Transferee.
- (b) Where a Defaulted Stapled Security is offered for sale under this clause 5, the obligations of the Issuer are subject to the requirements of any applicable law, the Listing Rules, any consent or other approval from any necessary authority and any other terms of the relevant Constituent Document.
- (c) The Issuer must then Register the Transferee as holder of that Stapled Security. On registration the Transferee is not obliged to ensure that any part of the money which the person has paid for the Stapled Security is paid to the former holder of the Stapled Security nor shall the person’s title to that Stapled Security be affected by any irregularity or invalidity in the proceedings in relation to the enforcement of lien or sale of that Stapled Security.

## **5.10 Deductions from consideration for Defaulted Attached Securities**

- (a) The proceeds of the sale of a Defaulted Stapled Security must be applied to pay:
  - (i) first, the expenses incurred by the relevant Issuer, its agents and assignees in respect of the sale;
  - (ii) then, any expenses necessarily incurred in respect of the enforcement of the Issuer's rights;
  - (iii) then, the calls on the Attached Securities that are due and unpaid; and
  - (iv) then, any unpaid interest on the call and any other amounts payable.
- (b) The Issuer may retain the amounts so deducted, but the balance remaining (if any) must be paid to the Investor whose Stapled Securities were sold. If there is a certificate that relates to the Attached Security or the Other Attached Security, the balance does not have to be paid until the Investor delivers the certificate to the relevant Stapled Entity.

## **5.11 Holder of Defaulted Stapled Securities**

- (a) The holder of a Defaulted Stapled Security which has been sold under this clause 5 ceases to be an Investor and ceases to hold a right or interest in the Stapled Entities and in particular ceases to be a member of each Stapled Entity that is a company or a managed investment scheme.
- (b) The former Investor has no claims or demands against the Issuer in respect of a Defaulted Stapled Security that has been sold but remains liable to pay to the Issuer or any assignee of the Issuer all monies which at the date of sale were payable by the former Investor to the Issuer in respect of the sold Defaulted Stapled Security (including interest owing under clause 5.5 of this schedule and expenses).
- (c) The former Investor's liability ceases if and when the Issuer or their assignee (if any) receive payment in full of all such money and, if applicable, interest in respect of the sold Defaulted Stapled Security.

## **5.12 Liability of holder of Defaulted Stapled Securities to underwriter**

Where:

- (a) the Issuer has appointed an underwriter to underwrite the payment of a call in respect of any Stapled Securities;
- (b) in discharging its obligations, the underwriter has purchased Stapled Securities at a public auction or otherwise as contemplated by the relevant underwriting agreement at a price which is more than the Market Price of a Stapled Security (in respect of which the relevant call has been paid); and
- (c) the Issuer is liable or required to pay the underwriter in respect of each Stapled Security purchased in accordance with paragraph (b) of this clause an amount equal to the difference between the Market Price of a

Stapled Security (in respect of which the relevant call has been paid) and the price paid by the underwriter for the Stapled Security,

then the former holder of the Stapled Securities that were disposed of to the underwriter is liable to the Issuer in respect of the relevant Defaulted Stapled Securities and may be sued for:

- (i) all monies payable by the Issuer to the underwriter as contemplated by paragraph (c) of this clause;
- (ii) interest (as provided under this schedule); and
- (iii) all costs incurred by the Issuer in procuring payment from the former Investor.

For the purposes of this clause, the *Market Price of a Stapled Security* (in respect of which the relevant call has been paid) is the weighted average price at which such Stapled Securities traded on the ASX over the five Business Days immediately preceding the day of public auction, or, if there is no such price, then the last sale price of the Stapled Security on the ASX prior to that date.

### **5.13 Assignment of right of action**

The Issuer must ensure that where the Issuer is liable to the underwriter as contemplated by clause 5.12, the Issuer's liability to the underwriter may be satisfied by the assignment of the Issuer's right of action against the former Investor in full satisfaction of such liability of the Issuer to the underwriter.

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## **6 Single Register**

Subject to the Corporations Act, a single Register may be kept in which details of the holders of the Attached Securities and the Other Attached Securities are recorded.

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## **7 Power to add New Attached Securities**

- (a) Subject to clause 7(b) of this schedule, the Corporations Act and the Listing Rules, the Issuer may at any time determine that a Security is an Attached Security ("**New Attached Security**") and cause it to be Stapled to the Stapled Securities. A determination under this clause may be made on such terms and conditions as the Issuer considers appropriate.
- (b) A determination that a Security is a New Attached Security may only be made if:
  - (i) the New Attached Security is Officially Quoted or the ASX has indicated in writing that it will grant permission for the New Attached Security to be Officially Quoted;
  - (ii) ASX has indicated in writing that it will approve the addition of the New Attached Security to the Stapled Securities;
  - (iii) each Other Issuer (excluding the issuer of the New Attached Security) has agreed:

- (A) to the Stapling of the New Attached Security to the Stapled Security; and
  - (B) that the Stapling of the New Attached Security is in the best interest of Investors as a whole and is consistent with the then investment objectives of the Group; and
  - (iv) the Constituent Documents of the New Attached Security will have provisions giving effect to the Stapling (including provisions in substantially the form of this schedule);
  - (v) the issuer of the New Attached Security has agreed to enter into the Accession Deed;
  - (vi) where the New Attached Security is partly-paid, or approval from Investors is required to the transaction, approval of the members of each Stapled Entity has been obtained; and
  - (vii) the number of New Attached Securities to be allocated is identical to the number of Stapled Securities on issue.
- (c) The Issuer has power to do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Stapling of the New Attached Securities to the Stapled Security under this clause 7.
  - (d) A New Attached Security may be transferred to an Investor by any means and in any manner, including but not limited to any combination of issue, sale, reduction of capital, distribution in kind or transfer (“**Transfer**”).
  - (e) A transfer of a New Attached Security made under this clause 7 shall be Registered in the Register as of the date title is transferred.
  - (f) It is not necessary for the Issuer to receive a transfer, instrument or certificate (if any) for a New Attached Security in order for that Issuer to Register the transfer of that New Attached Security. Such transfer shall be evidenced by, and shall have full effect from, its Registration by the relevant Issuer in the Register.

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## **8 Unstapling**

### **8.1 Procedure for Unstapling**

Subject to this clause 8, from the Stapling Commencement Date each Attached Security will remain Stapled to each other Attached Security for so long as the Stapled Securities remain on issue.

### **8.2 Unstapling an Attached Security**

- (a) Subject to this clause 8.2(a), the Corporations Act, the Listing Rules and the relevant Constituent Documents, the Issuer may determine that one or more Attached Securities are to be Unstapled from the Stapled Security.

- (b) A determination under clause 8.2(a) may only be made:
  - (i) if the Stapled Securities are Officially Quoted, only if ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security or Securities from the Stapled Security and the remaining Attached Securities will remain Officially Quoted as a Stapled Security; and
  - (ii) if the Unstapling is approved by the holders of the Attached Security to be Unstapled by Ordinary Resolution; and
  - (iii) if each Other Issuer has agreed:
    - (A) to the Unstapling of an Attached Security from the Stapled Security; and
    - (B) that the Unstapling of the Attached Security from the Stapled Security is not contrary to the interests of Investors as a whole and is consistent with the investment objectives of the Group; and
  - (iv) if the Stapling Provisions will terminate in respect of the Attached Security which is to be Unstapled.
- (c) After the Unstapling, the references to the Unstapled Security will be removed from the Register.

### **8.3 Restapling**

If an Issuer determines that its Attached Securities are to be Unstapled under clause 8.2(a), this does not prevent the Issuer of the Unstapled Security subsequently determining that the Stapling Provisions should recommence in respect of that Unstapled Security (“**Restapling**”).

### **8.4 Unstapling the Stapled Securities**

- (a) Subject to clause 8.4(b), the Corporations Act, the Listing Rules and the relevant Constituent Document, the Issuer must determine that an Attached Security will be Unstapled on the occurrence of an Unstapling Event affecting that Attached Security.
- (b) A determination under clause 8.4(a) may only be made if:
  - (i) ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security; and
  - (ii) each Other Issuer has agreed:
    - (A) to the Unstapling of the Attached Security; and
    - (B) that the Unstapling of the Attached Security is not contrary to the interest of Investors as a whole.
- (c) On and from any date determined under clause 8.4(a), the Issuer must procure that the Attached Security is Unstapled and that the Stapling Provisions cease to have effect in respect of that Attached Security.

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## 9 Designated Foreign Investors

- (a) Without limiting clause 8(c) of this schedule, to enable the Issuer to give effect to the Stapling of New Attached Securities to the Stapled Securities under clause 8, the provisions of this clause 9 apply.
- (b) Subject to the Corporations Act as modified by any applicable ASIC Relief, the Issuer may determine that a Foreign Investor is a Designated Foreign Investor for the purposes of the Transfer of a New Attached Security where the Issuer reasonably considers that it would be unreasonable to Transfer a New Attached Security to a Foreign Investor, having regard to:
  - (i) the number of Foreign Investors in the foreign place;
  - (ii) the number and the value of New Attached Securities that may be Transferred to Foreign Investors in the foreign place; and
  - (iii) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to the Transfer of the New Attached Securities in the foreign place.
- (c) Despite anything to the contrary contained in the Constituent Documents, each Foreign Investor who is or becomes a Designated Foreign Investor consents and directs:
  - (i) the Issuer to pay any distributions, redemption proceeds or other payments in respect of its Attached Security which are to be used to obtain a New Attached Security (“**Amounts**”) to the Sale Nominee;
  - (ii) the Sale Nominee to apply those Amounts to obtain a New Attached Security;
  - (iii) subject to clause 9(d) below, the Sale Nominee to then sell any Stapled Security to which the New Attached Security is Stapled; and
  - (iv) the Sale Nominee to pay the Sale Consideration to the relevant Designated Foreign Investor as soon as practicable after the sale of the relevant Stapled Security.
- (d) If a New Attached Security is to be Stapled to an existing Stapled Security, the Designated Foreign Investor agrees to transfer each existing Stapled Security they hold free of any Encumbrance to the Sale Nominee on or before the Sale Record Date so that the Sale Nominee:
  - (i) is entered in the Register in respect of that Stapled Security as of the date title is transferred on the Sale Record Date;
  - (ii) will receive the New Attached Security pursuant to the Stapling of the New Attached Security; and
  - (iii) will sell the resultant Stapled Security for cash to pay the Sale Consideration to the Designated Foreign Investor.

- (e) In respect of its Attached Securities, the Issuer:
- (i) must procure that each Designated Foreign Investor is paid the Sale Consideration to which that Designated Foreign Investor is entitled as soon as practicable after the sale of the relevant Stapled Security;
  - (ii) may take all steps to ensure that the Stapled Security held by the Designated Foreign Investor and to which a New Attached Security is to be Stapled, is transferred to the Sale Nominee before the Sale Record Date; and
  - (iii) need not receive any transfer, instrument or certificate for existing Stapled Securities in order for the Issuer to Register the transfer of the existing Stapled Securities to the Sale Nominee. The transfer will be evidenced by, and has full effect from, its Registration by the relevant Issuer in the Register.
- (f) Unless otherwise agreed between the Manager and the Other Issuers, the amount received for a Unit upon sale of a Stapled Security under clause 9(d)(iii) is the amount received on the sale of the Stapled Security less the fair value for the Other Attached Securities, as determined by the Manager.

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## **10 Duties and obligations of Parties**

### **10.1 Duties in relation to Stapling**

Despite any provision of the Constituent Documents, or any rule of law (but subject to the Corporations Act as modified by any applicable ASIC Relief)<sup>2</sup> while Stapling applies, in exercising any power or discretion, the Issuer may have regard to the interests of Investors as a whole and not only to the interests of the holders of the relevant Attached Securities considered separately.

### **10.2 Reference to power or discretion**

References in the Constituent Documents to the exercise of any powers or discretion includes the carrying out of the Issuer's functions and duties and identifying the Investor's rights and interests.

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## **11 Meetings of Investors**

### **11.1 Meetings**

While Stapling applies, meetings of holders of Attached Securities may be held in conjunction with meetings of holders of the Other Attached Securities. Subject to the Corporations Act, the Issuer may make such rules for the conduct of such meetings as the Issuer determines.

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<sup>2</sup> Case by case relief is usually sought from ASIC when stapling is proposed.

## **11.2 Representatives form while Stapling applies**

Subject to the Corporations Act, the form of proxy used to appoint a proxy to vote on behalf of an Investor in respect of an Attached Security may be the same form as they use to appoint a proxy in respect of the Other Attached Securities which they hold.

## **11.3 Other attendees**

The auditor of each Stapled Entity and the representatives of the Issuer may attend and speak at any meeting of Investors, or invite any other person to attend and speak at the meeting.

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## **12 General**

### **12.1 Interests**

- (a) A reference to the “Company” in article 11.13 (“Director’s Interests”) of the Constitution is also a reference to each Stapled Entity.
- (b) A reference to the “Company” in Bye-Law 61 (“Director’s Interests”) of the MQA Bermuda Bye-Laws is also a reference to each Stapled Entity.

### **12.2 Apportionment of fees**

The Issuer may agree with any Other Issuer to apportion fees payable under any Stapled Entity’s, or any Stapled Entity’s wholly owned subsidiary’s, constitution between the Stapled Entities as a whole. In default of any agreement, fees must be apportioned between the Stapled Entities in accordance with the proportion their net asset value (calculated in accordance with their respective constitutions) bears to the combined net asset value of all Stapled Entities.

### **12.3 Agreements as to allocation between Stapled Entities**

An Issuer may with all Other Issuers agree:

- (a) any allocation of assets, property, liability, expenses or remuneration between the Stapled Entities; and
- (b) any other matter between the Stapled Entities that the Issuers consider to be necessary or appropriate in connection with the Stapling.

### **12.4 Small Holdings**

A reference to a “Small Holding” in each Constituent Document is taken to be a reference a small holding of Stapled Securities.

### **12.5 Financial assistance**

Without limiting clause 12.2 of this schedule the Issuer may enter into loan arrangements (including Intra-Group Loans) with Other Issuers for the purpose of allocating capital raised under issues of Stapled Securities to the extent that this is required.

## 12.6 Intra-Group Loans

Without limiting the Constituent Documents, the Issuer may enter into any agreement, document or arrangement with any Other Issuer, or do any other act, matter or thing at the request of any Other Issuer, in respect of any of the following:

- (a) lending money or providing financial accommodation from one Stapled Entity (or any of its Subsidiaries) to any other Stapled Entity (or any of its Subsidiaries) (including, for the avoidance of doubt, the lending of money to or from any entity jointly owned by any of the Stapled Entities);
- (b) guaranteeing any loan or other financing facility or financial accommodation of any Stapled Entity or Subsidiary, including providing any security or indemnity to any person providing the loan facility or financial accommodation;
- (c) entering into any covenant, undertaking, restraint, or pledge at the request of the Other Issuer including, without limitation, a negative pledge on the obtaining of financial accommodation or the provision of any guarantee or Security in connection with any financial accommodation;
- (d) issuing redeemable preference shares or any other form of Securities to the Other Issuer;
- (e) paying any costs or expenses incurred by any other Stapled Entity (or any of its Subsidiaries);
- (f) entering into any joint borrowing or joint financial accommodation with any Other Issuer or Subsidiary and providing any guarantee, security, indemnities and undertakings in connection with the joint borrowing or other joint financial accommodation; and
- (g) guaranteeing the obligations of or providing an indemnity or undertaking to a third party in respect of the obligations of any Stapled Entity or any Subsidiary.

## 12.7 Notice to other Stapled Entities

On or before commencement of a winding up of a Stapled Entity, the Issuer must give each Other Stapled Entity written notice that the Stapled Entity is to be wound up.


# Macquarie Atlas Roads Limited Constitution

## Constitution

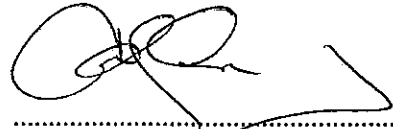
Each of the undersigned, being a person specified in the application for registration of the Company as a person who consents to become a member of the Company, agrees to the terms of this Constitution.

Name Trust Company Limited  
Address Level 4, 35 Clarence Street, Sydney NSW 2000  
Date 15 December 2009

**SIGNED** by JOHN ANDREW NEWBY )  
as attorney for **TRUST COMPANY** )  
**LIMITED** as custodian for Macquarie )  
Infrastructure Investment Management )  
Limited in its capacity as responsible )  
entity of Macquarie Infrastructure Trust )  
(II) under power of attorney dated 25 )  
July 2007 in the presence of: )

  
..... )  
Signature of witness )

ALEEN CHAHROURA  
..... )  
Name of witness (block letters)

  
..... )

By executing this application the attorney states that the attorney has received no notice of revocation of the power of attorney

