

# ASX ANNOUNCEMENT

27 September 2024

## Notice of 2024 Annual General Meeting

Macmahon Holdings Limited (ASX: MAH) (**Macmahon** or **Company**) releases the following documents below attached to this announcement in respect of its 2024 Annual General Meeting (**AGM**) being held on Tuesday, 29 October 2024 at 9:00am AWST.

- Notice of Access Letter
- Sample Proxy Form
- Notice of 2024 Annual General Meeting (**Notice**)

The AGM will be conducted as a hybrid meeting with Shareholders able to attend and participate in person at 15 Hudswell Road, Perth Airport WA 6105 or online through the Computershare Meeting Platform (**Platform**) at <https://meetnow.global/MDHG46Q>. A recording of the AGM will be available on Macmahon's website following conclusion of the AGM.

Full details of Macmahon's 2024 AGM are contained in the Notice which Shareholders should read in its entirety. The Notice is also available from Macmahon's website at <https://www.macmahon.com.au/investor-hub/asx-announcements/>.

Shareholders will, depending on their communication preferences recorded with Computershare Investor Services (Macmahon's share registry), receive by post or email some or all these documents, or instructions on how to electronically access these documents.

Macmahon believes that the best way for Shareholders to receive share registry communications (including meeting documentation and annual reports) is electronically. To update your communication preference for digital delivery, log into Computershare's website at <https://www.investorcentre.com/au>.

The Notice is important and should be read in its entirety before voting.

Macmahon encourages all Shareholders to participate in the 2024 AGM by attending the AGM in person or online and voting during the AGM or appointing a proxy to attend and/or vote on your behalf prior to the AGM.

Full details about the AGM, including attendance and voting, are contained in the Notice.

\*\*\* ENDS \*\*\*

This announcement was authorised for release by Michael Finnegan, Chief Executive Officer and Managing Director of Macmahon.



# ASX ANNOUNCEMENT

27 September 2024

For further information, please contact:

Donald James  
Chief Commercial Officer

[investors@macmahon.com.au](mailto:investors@macmahon.com.au)  
+61 8 9232 1705

## **About Macmahon**

*Macmahon is an ASX listed company offering the complete package of mining and civil infrastructure services throughout Australia and Southeast Asia.*

*Macmahon's extensive experience in surface mining, underground mining and civil infrastructure has established the Company as the contractor of choice for resources, non-resources, public infrastructure and renewables projects across a range of locations and sectors.*

*Macmahon is focused on developing strong respectful relationships with its clients whereby both parties work in an open, flexible and transparent way to ensure mutually beneficial outcomes whilst also minimising risks for both parties.*

Visit [www.macmahon.com.au](http://www.macmahon.com.au) for more information.



Macmahon Holdings Limited  
ACN 007 634 406

15 Hudswell Road  
Perth Airport WA 6105  
Australia

PO Box 198  
Cannington WA 6987  
Australia

(+61) 08 9232 1000  
info@macmahon.com.au  
macmahon.com.au

27 September 2024

Dear Shareholder,

## MACMAHON HOLDINGS LIMITED – 2024 ANNUAL GENERAL MEETING OF SHAREHOLDERS

Macmahon Holdings Limited (ASX: MAH) (**Macmahon** or **Company**) is pleased to invite you to attend its 2024 Annual General Meeting of Shareholders (**AGM**). The AGM will be held at 9:00am (AWST) on Tuesday, 29 October 2024, and conducted as a hybrid meeting with Shareholders able to attend and participate in person at 15 Hudswell Road, Perth Airport WA 6105 or online through the Computershare Meeting Platform (**Platform**) at <https://meetnow.global/MDHG46Q>.

In accordance with provisions of the *Corporations Act 2001* (Cth), the Company will not be sending hard copies of the Notice of AGM (**Notice**) to Shareholders unless a Shareholder has requested to receive documents from the Company in physical form. The Notice can be viewed and downloaded from the Company's website at <https://www.macmahon.com.au/investor-hub/asx-announcements/>.

To attend the AGM online, you can connect to the Platform through your internet-enabled computer, tablet or smartphone at <https://meetnow.global/MDHG46Q>. Online attendance registration will open 30 minutes before the AGM's commencement time. Full details for access to the AGM through the Platform are available in the Notice.

Shareholders who elect to attend the AGM online through the Platform will be able to view proceedings, ask questions via an audio link, submit text questions and/or make text comments, and vote at the relevant time during the AGM.

Your personalised proxy form is enclosed for your convenience. If you would like to vote by proxy instead of attending the AGM in person or online, please ensure that your proxy form is completed in accordance with the instructions on that form and returned before 9:00am (AWST) on Sunday, 27 October 2024.

Shareholders can lodge a proxy vote online at [www.investorvote.com.au](http://www.investorvote.com.au) or return completed proxy forms by:

- Post: Computershare Investor Services Pty Limited, GPO Box 242, Melbourne VIC 3001; or
- Fax: 1800 783 447 (within Australia) or +61 3 9473 2555 (outside Australia).

Even if you intend to attend the AGM in person, we encourage you to submit a proxy so that your vote will be counted if for any reason you are unable to attend.



Shareholders can and are encouraged to submit questions about the management of the Company, including the 2024 Annual Report including the Directors' and Remuneration Reports, in advance of the AGM by emailing [cosec@macmahon.com.au](mailto:cosec@macmahon.com.au) by no later than 9:00am (AWST) on Friday, 25 October 2024. Any questions to the Company's auditor must be received by no later than 5:00pm (AWST) on Tuesday, 22 October 2024.

All voting on resolutions to be considered by Shareholders at the AGM will be conducted by way of a poll.

The Company will update Shareholders through the ASX Market Announcements Platform at [www.asx.com.au](http://www.asx.com.au) and on the Company's website at <https://www.macmahon.com.au/investor-hub/asx-announcements/> if the above arrangements for the AGM change prior to the commencement of the AGM.

We encourage you to read the Company's 2024 Annual Report prior to the AGM. The 2024 Annual Report can be accessed on the Company's website at <https://www.macmahon.com.au/investor-hub/reports-and-presentations/>.

The Notice is an important document and should be read in its entirety. If you are in doubt as to how to vote you should seek advice from an accountant, solicitor or other professional adviser before voting.


Further information about the AGM is contained in the Notice. If you have any difficulties accessing the Notice, voting before the AGM, or attending the AGM, please contact Computershare on 1300 787 930 (within Australia) or +61 3 9415 4000 (outside Australia).


Your directors and the management of Macmahon welcome your attendance at the AGM and look forward to providing an update on Macmahon's activities.

Yours sincerely,

**Hamish Tyrwhitt**  
Chair

## Need assistance?

 **Phone:**  
1300 787 930 (within Australia)  
+61 3 9415 4000 (outside Australia)

 **Online:**  
[www.investorcentre.com/contact](http://www.investorcentre.com/contact)



## YOUR VOTE IS IMPORTANT

For your proxy appointment to be effective it must be received by **9:00am (AWST) on Sunday, 27 October 2024.**

# Proxy Form

## How to Vote on Items of Business

All your securities will be voted in accordance with your directions.

### APPOINTMENT OF PROXY

**Voting 100% of your holding:** Direct your proxy how to vote by marking one of the boxes opposite each item of business. If you do not mark a box your proxy may vote or abstain as they choose (to the extent permitted by law). If you mark more than one box on an item your vote will be invalid on that item.

**Voting a portion of your holding:** Indicate a portion of your voting rights by inserting the percentage or number of securities you wish to vote in the For, Against or Abstain box or boxes. The sum of the votes cast must not exceed your voting entitlement or 100%.

**Appointing a second proxy:** You are entitled to appoint up to two proxies to attend the meeting and vote on a poll. If you appoint two proxies you must specify the percentage of votes or number of securities for each proxy, otherwise each proxy may exercise half of the votes. When appointing a second proxy write both names and the percentage of votes or number of securities for each in Step 1 overleaf.

**A proxy need not be a securityholder of the Company.**

### SIGNING INSTRUCTIONS FOR POSTAL FORMS

**Individual:** Where the holding is in one name, the securityholder must sign.

**Joint Holding:** Where the holding is in more than one name, all of the securityholders should sign.

**Power of Attorney:** If you have not already lodged the Power of Attorney with the registry, please attach a certified photocopy of the Power of Attorney to this form when you return it.

**Companies:** Where the company has a Sole Director who is also the Sole Company Secretary, this form must be signed by that person. If the company (pursuant to section 204A of the Corporations Act 2001) does not have a Company Secretary, a Sole Director can also sign alone. Otherwise this form must be signed by a Director jointly with either another Director or a Company Secretary. Please sign in the appropriate place to indicate the office held. Delete titles as applicable.

### PARTICIPATING IN THE MEETING

#### Corporate Representative

If a representative of a corporate securityholder or proxy is to participate in the meeting you will need to provide the appropriate "Appointment of Corporate Representative". A form may be obtained from Computershare or online at [www.investorcentre.com/au](http://www.investorcentre.com/au) and select "Printable Forms".

## Lodge your Proxy Form:

**XX**

### Online:

Lodge your vote online at [www.investorvote.com.au](http://www.investorvote.com.au) using your secure access information or use your mobile device to scan the personalised QR code.

Your secure access information is



**Control Number: 134048**

For Intermediary Online subscribers (custodians) go to [www.intermediaryonline.com](http://www.intermediaryonline.com)

### By Mail:

Computershare Investor Services Pty Limited  
GPO Box 242  
Melbourne VIC 3001  
Australia

### By Fax:

1800 783 447 within Australia or  
+61 3 9473 2555 outside Australia



**PLEASE NOTE:** For security reasons it is important that you keep your SRN/HIN confidential.

You may elect to receive meeting-related documents, or request a particular one, in electronic or physical form and may elect not to receive annual reports. To do so, contact Computershare.

**Change of address.** If incorrect, mark this box and make the correction in the space to the left. Securityholders sponsored by a broker (reference number commences with 'X') should advise your broker of any changes.

# Proxy Form

Please mark  to indicate your directions

## Step 1 Appoint a Proxy to Vote on Your Behalf

XX

I/We being a member/s of Macmahon Holdings Limited hereby appoint

the Chair of the Meeting **OR**

**PLEASE NOTE:** Leave this box blank if you have selected the Chair of the Meeting. Do not insert your own name(s).

or failing the individual or body corporate named, or if no individual or body corporate is named, the Chair of the Meeting, as my/our proxy to act generally at the meeting on my/our behalf and to vote in accordance with the following directions (or if no directions have been given, and to the extent permitted by law, as the proxy sees fit) at the Annual General Meeting of Macmahon Holdings Limited to be held at 15 Hudswell Road, Perth Airport, WA 6105 and as a virtual meeting on Tuesday, 29 October 2024 at 9:00am (AWST) and at any adjournment or postponement of that meeting.

**Chair authorised to exercise undirected proxies on remuneration related resolutions:** Where I/we have appointed the Chair of the Meeting as my/our proxy (or the Chair becomes my/our proxy by default), I/we expressly authorise the Chair to exercise my/our proxy on Resolution 1 (except where I/we have indicated a different voting intention in step 2) even though Resolution 1 is connected directly or indirectly with the remuneration of a member of key management personnel, which includes the Chair.

**Important Note:** If the Chair of the Meeting is (or becomes) your proxy you can direct the Chair to vote for or against or abstain from voting on Resolution 1 by marking the appropriate box in step 2.

## Step 2 Items of Business

**PLEASE NOTE:** If you mark the **Abstain** box for an item, you are directing your proxy not to vote on your behalf on a show of hands or a poll and your votes will not be counted in computing the required majority.

	For	Against	Abstain
Resolution 1 Adoption of Remuneration Report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resolution 2 Election of Mr Dharmendra Chandran as a Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resolution 3 Election of Mr Grahame White as a Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resolution 4 Amendments to the Company's Constitution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resolution 5 Amendments to the Company's Constitution - virtual only general meetings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resolution 6 Financial Assistance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The Chair of the Meeting intends to vote undirected proxies in favour of each item of business. In exceptional circumstances, the Chair of the Meeting may change his/her voting intention on any resolution, in which case an ASX announcement will be made.

## Step 3 Signature of Securityholder(s) *This section must be completed.*

Individual or Securityholder 1  Securityholder 2  Securityholder 3  / /  
 Sole Director & Sole Company Secretary Director Director/Company Secretary Date

**Update your communication details** (Optional)

Mobile Number  Email Address   
 By providing your email address, you consent to receive future Notice of Meeting & Proxy communications electronically





## Macmahon Holdings Limited ACN 007 634 406

### Notice of Annual General Meeting

Notice is given that the Annual General Meeting of Shareholders of Macmahon Holdings Limited will be held on **Tuesday, 29 October 2024 at 9:00am (AWST)**.

The Meeting will be conducted as a hybrid meeting with Shareholders able to attend and participate in person at 15 Hudswell Road, Perth Airport WA 6105 or online through the Computershare Meeting Platform at <https://meetnow.global/MDHG46Q>. Registration for the Platform will open 30 minutes before the Meeting's commencement time.

Copies of the presentation to be made at the Meeting will be released to the ASX on the morning of the Meeting. A recording of the Meeting will be available on Macmahon's website following the conclusion of the Meeting.

Attached to, and forming part of, this Notice is an Explanatory Statement that provides Shareholders with background information and reasons for the Resolutions. The information contained in this Notice is presented in accordance with regulatory requirements of the Corporations Act and the ASX Listing Rules, as applicable.

Terms that are used in this Notice have the same meaning as defined in section 2 of the Explanatory Statement.

**This Notice is an important document and should be read in its entirety.**

### **Ordinary Business**

Resolutions 1 to 3 are proposed as ordinary resolutions and therefore require a simple majority of the votes cast by Shareholders present and eligible to vote (in person, by proxy, by attorney or, in the case of a corporate Shareholder, by a corporate representative).

The vote on Resolution 1 is advisory only and does not bind the Directors or the Company.

### **Financial and Other Reports**

To consider the Company's Financial Report, Directors' Report and Auditor's Report for the year ended 30 June 2024.

### **Resolution 1 – Adoption of Remuneration Report**

To consider and, if thought fit, to pass the following Resolution as an ordinary resolution:

*“That for the purposes of section 250R(2) of the Corporations Act and for all other purposes, the*

*Company's Remuneration Report (which forms part of the Directors' Report) for the year ended 30 June 2024 be adopted."*

### **Voting Exclusion Statement**

To the extent required by section 250R of the Corporations Act, a vote must not be cast (in any capacity) on Resolution 1 by or on behalf of any of the following persons:

- (a) a member of the KMP details of whose remuneration is included in the Remuneration Report; or
- (b) a closely related party of such a member.

However, a person (the "voter") may cast a vote on Resolution 1 as a proxy if the vote is not cast on behalf of a person described in (a) or (b) above and either:

- (c) the voter is appointed as a proxy in writing that specifies the way the proxy is to vote on the Resolution; or
- (d) the voter is the Chair and the appointment of the Chair as proxy:
  - (i) does not specify the way the proxy is to vote on the Resolution; and
  - (ii) expressly authorises the Chair to exercise the proxy even if the Resolution is connected directly or indirectly with the remuneration of a member of the KMP for the Company.

### **Resolution 2 – Election of Mr Dharmendra Chandran as a Director**

To consider, and if thought fit, to pass the following Resolution as an ordinary resolution:

*"That Mr Dharmendra Chandran, a Director appointed by the Board to fill a casual vacancy during the year, who retires from the office of Director in accordance with rule 3.6(a) of the Company's Constitution, and being eligible, offers himself for election, be elected as a Director of the Company."*

### **Resolution 3 – Election of Mr Grahame White as a Director**

To consider, and if thought fit, to pass the following Resolution as an ordinary resolution:

*"That Mr Grahame White, a Director appointed by the Board to fill a casual vacancy during the year, who retires from the office of Director in accordance with rule 3.6(a) of the Company's Constitution, and being eligible, offers himself for election, be elected as a Director of the Company."*

### **Special Business**

Resolutions 4, 5 and 6 are special resolutions and therefore require approval of at least 75% of the votes cast by Shareholders present and eligible to vote (in person, by proxy, by attorney or, in the case of a corporate Shareholder, by a corporate representative).

### **Resolution 4 – Amendments to the Company's Constitution**

To consider and, if thought fit, to pass the following Resolution as a special resolution:

*"That the Company's constitution be amended in the manner described in the Explanatory Statement and as indicated in mark-up in the document set out in **Annexure B** of the Explanatory Statement, with effect from the close of the Meeting."*

### **Resolution 5 – Amendments to the Company's Constitution - virtual only general meetings**

To consider and, if thought fit, to pass the following Resolution as a special resolution:

*"That, subject to Resolution 4 being passed as a special resolution, the Company's constitution be amended in the manner set out in the Explanatory Statement to allow virtual only general meetings, with effect from the close of the Meeting."*

### **Resolution 6 – Financial Assistance**

To consider and, if thought fit, to pass the following Resolution as a special resolution:



*“That, in accordance with section 260B(2) of the Corporations Act 2001 (Cth), approval is given for the provision of financial assistance proposed to be given by:*

- (a) *Decmil Group Limited (ACN 111 210 390) (**Decmil**);*
- (b) *Decmil Australia Pty Ltd (ACN 116 776 991) and Decmil Southern Pty Ltd (ACN 005 412 466); and*
- (c) *any other subsidiary of Decmil which grants financial assistance under or in connection with the Acquisition (as defined below) for the purposes of section 260A of the Corporations Act,*

*(the **Acquired Companies**),*

*to assist the acquisition by the Company of 100% of the issued ordinary shares and redeemable convertible preference shares in Decmil by way of scheme of arrangement (the **Acquisition**), and all elements of that transaction and any other transactions that may constitute financial assistance by the Acquired Companies for the purposes of section 260A of the Corporations Act in connection with the Acquisition, as described in the Explanatory Statement.”*

## **Other Business**

To transact any other business that may be brought forward in accordance with the Company's Constitution or the law.

### **Farewell and Thank You**

The Board formally records its thanks and gratitude to Ms Denise McComish, who resigns as a Director of the Company at the conclusion of the Meeting, for her service to the Company. Ms McComish has served as a Director since March 2021. The Board formally extends to Ms McComish its very best wishes for the future.

## **Notes**

### **Determination of Shareholders' Right to Vote**

The Company has determined that all persons or entities who are registered holders of Shares as at 9:00am (AWST) on Sunday, 27 October 2024 will be entitled to vote at the Meeting.

### **Attending the Meeting in Person**

Shareholders and proxyholders can attend and participate in the Meeting (including asking questions and casting votes during the Meeting) in person at the offices of Macmahon at 15 Hudswell Road, Perth Airport WA 6105.

### **Attending the Meeting Online through the Platform**

To attend the Meeting online, you can connect to the Platform through your internet-enabled computer, tablet or smartphone at <https://meetnow.global/MDHG46Q>. Online registration will open 30 minutes before the Meeting's commencement time.

For ease of registration, please have your SRN/HIN and registered postcode or country code ready. Proxyholders will need to contact Computershare prior to the meeting to obtain their login details.

To participate in the Meeting online through the Platform, please follow the instructions below.

- (a) Click on 'Join Meeting Now'.
- (b) Enter your SRN/HIN. Proxyholders will need to contact Computershare on +61 3 9415 4024 prior to the Meeting to obtain their login details.

- (c) Enter your postcode registered to your holding if you are an Australian securityholder. If you are an overseas securityholder, select the country of your registered holding from the drop-down list.
- (d) Accept the Terms and Conditions and click on 'Continue'.

Shareholders who elect to attend the Meeting online through the Platform will be able to view the proceedings, ask questions via audio link, submit text questions and/or make text comments, and vote at the relevant time during the Meeting.

When the Chair declares the poll open, Shareholders select the 'Vote' icon and the voting options will appear on your screen. To vote, select your voting direction. A tick will appear to confirm receipt of your vote. To change your vote, select 'Click here to change your vote' and press a different option to override

If the above arrangements with respect to the Meeting change, Shareholders will be updated via the ASX Market Announcements Platform at [www.asx.com.au](http://www.asx.com.au) and on the Company's website at <https://www.macmahon.com.au/investor-hub/asx-announcements/> prior to the commencement of the Meeting.

### **Voting Prior to the Meeting**

Shareholders who are unable to attend the Meeting in person or online are encouraged to return a completed Proxy Form or lodge a proxy vote online at [www.investorvote.com.au](http://www.investorvote.com.au) prior to the Meeting.

Even if you intend to attend the Meeting in person, we encourage you to submit a proxy so that your vote will be counted if for any reason you are unable to attend.

### **Voting by Proxy**

A Shareholder entitled to vote at the Meeting may appoint a proxy. A proxy need not be a Shareholder.

A Shareholder entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise, but where the proportion or number is not specified, each proxy may exercise half of the votes.

Sections 250BB and 250BC of the Corporations Act apply to voting by proxy. The effect of these sections is that if proxies vote, they must cast all directed proxies as directed, and any directed proxies that are not voted will automatically default to the Chair, who must vote the proxies as directed.

If a Shareholder appoints the Chair as a proxy and does not direct the Chair how to vote, the Shareholder is authorising the Chair to cast an undirected vote on all proposed Resolutions. The Chair intends to vote all undirected proxies on, and in favour of, all Resolutions set out in this Notice.

Even if you intend to attend the Meeting in person, we encourage you to submit a proxy so that your vote will be counted if for any reason you are unable to attend.

### **Lodgement of Proxy Documents**

The following addresses are specified for the purposes of receipt of completed Proxy Forms and any authorities under which Proxy Forms are signed (or certified copies of those authorities).

**By Facsimile:** (within Australia) 1800 783 447 or (outside Australia) +61 3 9473 2555

**By Post:** Computershare Investor Services Pty Limited, GPO Box 242 Melbourne VIC 3001

**Online:** A proxy can be appointed electronically by visiting [www.investorvote.com.au](http://www.investorvote.com.au) and following the instructions provided

For Intermediary Online subscribers only (custodians) please visit [www.intermediaryonline.com](http://www.intermediaryonline.com) to submit your voting instructions.

To be effective, a Proxy Form, and any power of attorney under which the Proxy Form is signed (or a

certified copy of the power of attorney), must be received by the Company including through the above channels at least 48 hours before the commencement of the Meeting – that is, by no later than 9:00am (AWST) on Sunday, 27 October 2024.

The Proxy Form provides further details on appointing proxies and lodging the Proxy Form.

### **Bodies Corporate**

A body corporate may appoint an individual as its representative to exercise all or any of the powers the body may exercise (either as a Shareholder or as a proxy) at the Meeting in accordance with section 250D of the Corporations Act. The appointment may be a standing one. Unless the appointment states otherwise, the representative may exercise all of the powers that the appointing body could exercise at the Meeting or in voting on a Resolution. The form of appointment, including any authority under which it is signed, must be received by Computershare by no later than the commencement of the Meeting, unless it has previously been given to the Company.

### **Voting Prohibition by Proxies – Remuneration of Key Management Personnel**

To the extent required by section 250BD of the Corporations Act, a person appointed as a proxy must not vote based on that appointment, on Resolution 1 if the person is either a member of the Company's KMP or a closely related party of such a member and the appointment does not specify the way the proxy is to vote on the relevant Resolution. However, the proxy may vote if the proxy is the Chair and the appointment expressly authorises the Chair to exercise the proxy even if the relevant Resolution is connected directly or indirectly with the remuneration of a member of a KMP.

If the Chair is appointed as a Shareholder's proxy and the Shareholder has not specified the way the Chair is to vote on Resolution 1, by signing and returning the Proxy Form (including via an online facility), the Shareholder is taken to have given the Chair express authorisation to vote the proxy in accordance with the Chair's intention, even though the relevant Resolution is connected directly or indirectly with the remuneration of a KMP.

### **All Resolutions by Poll**

All voting on Resolutions set out in this Notice will be conducted by way of a poll.

By order of the Board



**Maha Char**  
**General Counsel and Company Secretary**  
**27 September 2024**

# **Explanatory Statement**

## **1. Introduction**

This Explanatory Statement has been prepared for the information of Shareholders in connection with the business to be conducted at the 2024 Annual General Meeting of Macmahon Holdings Limited (ACN 007 634 406).

This Explanatory Statement forms part of, and should be read in conjunction with, the Notice.

## **2. Glossary**

The following terms and abbreviations used in this Explanatory Statement (and the Notice to which it forms a part of), have the following meanings.

<b>“Acquisition”</b>	The acquisition of 100% of the issued ordinary shares and redeemable convertible preference shares in Decmil by way of arrangement, as previously announced by the Company to the ASX (and being the holding company of the Acquired Companies).
<b>“Acquired Companies”</b>	Decmil and any of its subsidiaries which grant financial assistance under or in connection with the Acquisition for the purposes of section 260A of the Corporations Act.
<b>“AGM”</b>	An annual general meeting of the Company.
<b>“AMC”</b>	Amman Mineral Contractors (Singapore) Pte. Ltd., a company established in the Republic of Singapore.
<b>“ASX”</b>	ASX Limited (ACN 008 624 691) and where the context requires, means the Australian Securities Exchange operated by ASX Limited.
<b>“ASX Listing Rules”</b> <b>“Listing Rules”</b>	or The official listing rules of the ASX, as amended from time to time.
<b>“AWST”</b>	Australian Western Standard Time.
<b>“Board”</b>	The board of Directors of the Company.
<b>“Chair”</b>	Chair of the Meeting.
<b>“Closely related party”</b>	As defined in the Corporations Act, and includes a spouse or child, a child of a spouse, a dependant, or a member of family who may influence or be influenced.
<b>“Company”</b> or <b>“Macmahon”</b>	Macmahon Holdings Limited (ACN 007 634 406).
<b>“Computershare”</b>	Computershare Investor Services Pty Limited, the Company’s share registry.
<b>“Constitution”</b>	The constitution of Macmahon.
<b>“Corporations Act”</b>	The <i>Corporations Act 2001</i> (Cth), as amended from time to time.
<b>“Court”</b>	As defined in the Corporations Act and including the Federal Court of Australia and the Supreme Court of any State or Territory of Australia.
<b>“Decmil”</b>	Decmil Group Limited (ACN 111 210 390)
<b>“Director”</b>	A director of the Company.
<b>“Equity Securities”</b>	Has the same meaning as in the Listing Rules.

<b>“Facility Agreement”</b>	The syndicated facility agreement dated 2 December 2020 (as amended) between, among others, the Company and The Hongkong and Shanghai Banking Corporation Limited, Sydney Branch as mandated lead arranger.
<b>“KMP”</b>	The Company’s key management personnel, as defined in the Australian Accounting Standards Board’s <i>AASB Standard 124 Related Party Disclosures</i> .
<b>“Meeting”</b>	The 2024 annual general meeting of the Company notified to Shareholders by this Notice.
<b>“Notice”</b>	This notice of meeting incorporating the Explanatory Statement.
<b>“Plan”</b>	The Company’s Executive Share Ownership Plan, as summarised in the Explanatory Statement.
<b>“Platform”</b>	The Computershare Meeting Platform through which Shareholders who are not able to attend the Meeting in person can participate in the Meeting.
<b>“Remuneration Report”</b>	The remuneration report of the Company contained in its Directors’ Report for the year ended 30 June 2024.
<b>“Resolution”</b>	A resolution contained in the Notice.
<b>“Shareholder”</b>	A person registered as the holder of Shares in the register of members of the Company.
<b>“Shares”</b>	Fully paid ordinary shares in the issued capital of the Company.

### 3. 2024 Annual Report

The Corporations Act and the Company’s Constitution require that:

- the reports of the Company’s Directors and auditor; and
- the annual financial report, including the financial statements of the Company for the year ended 30 June 2024,

be laid before the Meeting. A copy of the Company’s 2024 Annual Report and the 2024 Sustainability Report are available from the Company’s website at <https://www.macmahon.com.au/investor-hub/reports-and-presentations/>.

Neither the Corporations Act nor the Constitution requires a vote of Shareholders on the reports or statements. However, at the Meeting, Shareholders will be given an opportunity to ask questions about, or make comments on, the management of the Company.

A reasonable opportunity will also be given to Shareholders at the Meeting to ask the Company’s auditor (or their representative) questions relevant to the conduct of the audit, the preparation and content of the auditor’s report, the accounting policies adopted by the Company in relation to the preparation of the financial statements, and the independence of the auditor in relation to the conduct of the audit. The Company will also allow a reasonable opportunity for the Company’s auditor (or their representative) to answer written questions submitted to the auditor regarding the content of the auditor’s report or the conduct of the audit of the financial report, provided such questions are received by the Company by no later than 5:00pm (AWST) on Tuesday, 22 October 2024.

Questions (other than those addressed to the auditor as discussed above) may also be submitted by Shareholders in advance of the Meeting by sending an email to the Company Secretary at [cosec@macmahon.com.au](mailto:cosec@macmahon.com.au) by 9:00am (AWST) on Friday, 25 October 2024. It may not be possible to respond to all questions asked at the Meeting or submitted in advance of the Meeting, but the Company will do its best to address matters raised.

Please note that individual responses to submitted questions will not be sent to Shareholders.

#### 4. Resolutions to be Considered by Shareholders

##### Resolution 1 – Adoption of Remuneration Report

The Remuneration Report is set out on pages 51-65 of the Company's 2024 Annual Report.

Section 250R(2) of the Corporations Act requires that a resolution be put to a vote at the Meeting that the Remuneration Report be adopted. While the vote on Resolution 1 is advisory only and does not bind the Directors or the Company, the Board will take into consideration the outcome of Resolution 1 when assessing the remuneration policy for KMP in the future.

In accordance with Division 9 of Part 2G.2 of the Corporations Act, if 25% or more of the votes cast are voted against the adoption of the Remuneration Report at two consecutive AGMs, Shareholders will be required to vote at the second of those AGMs on a resolution (**spill resolution**) that another meeting be held within 90 days, at which all of the Company's Directors (not including the Managing Director) must stand for re-election.

At the Company's 2023 AGM, the votes cast against the 2023 Remuneration Report represented less than 25% of the total votes cast. A contingent spill resolution is therefore not required at this Meeting.

A member of KMP details of whose remuneration is included in the Remuneration Report, and their closely related parties, are prohibited from voting on Resolution 1, except in the circumstances described in the voting exclusion statement set out in the Notice.

A reasonable opportunity will be given to Shareholders at the Meeting to ask questions about, or make comments on, the Remuneration Report.

**Directors' recommendation:** *The Board recommends that Shareholders vote in favour of Resolution 1.*

##### Resolution 2 – Election of Mr Dharmendra Chandran as a Director

Mr Dharmendra Chandran was appointed as a Non-Executive Director on 1 February 2024 (see ASX release dated 1 February 2024). As a new Director, and as recommended by the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations, the Company carried out background checks on Mr Chandran prior to his appointment, none of which revealed any material information of concern. Mr Chandran has confirmed to the Company that he will have sufficient time to fulfill his responsibilities as a Non-Executive Director.

Mr Chandran was appointed by the Board to fill a casual vacancy during the year pursuant to rule 3.3 of the Constitution, and accordingly will automatically retire as a Director in accordance with rules 3.3(a) and 3.6(a) of the Constitution and ASX Listing Rule 14.4 at the conclusion of the Meeting if not elected by Shareholders. Mr Chandran, being eligible, offers himself for election as a Director.

Mr Chandran is an experienced executive and non-executive director with a background in professional services and human resource management within the financial services and, resources and industrial sectors, in Australia and Asia.

He has significant experience in the contract mining, and civil and construction sectors, including as the former Group Chief Human Resources and Corporate Services Officer for mining and civil contractor Leighton Holdings, and further experience in human resource management through his previous role as Chief People Officer of the ABC, and his current role as Chief People Officer of Toll Group. Mr Chandran is a Non-Executive Director of the Committee for Economic Development of Australia.

Mr Chandran holds a Bachelor of Commerce majoring in Marketing, a Bachelor of Laws and a Master of Commerce majoring in Organisation and Management, all from the University of New South Wales. He is a member of the Australian Institute of Company Directors.

As at the date of this Notice, Mr Chandran has been a Director of the Company for approximately seven months, is Chair of the Board's Remuneration and Culture Committee, and a member of the Nomination Committee.

After appropriate consideration, including the Company's board skills matrix, his performance, contributions to the Company, and the current and future needs of the Board and the Company, the

Board's members (excluding Mr Chandran) unanimously resolved that Mr Chandran's mix of skills and experience, including his extensive experience in the professional services and resources industries, is of obvious and ongoing benefit to the Board.

Mr Chandran is considered by the Board to be independent, on the basis that he does not undertake any executive role with the Company and is not subject to any business, interest or other relationship that could or could be perceived to materially interfere with the exercise of his objective and independent judgement or his ability to act directly in the best interests of the Company's Shareholders.

**Directors' recommendation:** *The Board (with Mr Chandran abstaining) recommends that Shareholders vote in favour of Resolution 2.*

### **Resolution 3 – Election of Mr Grahame White as a Director**

Mr Grahame White was appointed as a Non-Executive Director with effect from 1 February 2024 (see ASX release dated 31 January 2024). As a new Director, and as recommended by the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations, the Company carried out background checks on Mr White prior to his appointment, none of which revealed any material information of concern. Mr White has confirmed to the Company that he will have sufficient time to fulfill his responsibilities as a Non-Executive Director.

Mr White was appointed by the Board to fill a casual vacancy during the year pursuant to rule 3.3 of the Constitution, and accordingly will automatically retire as a Director in accordance with rules 3.3(a) and 3.6(a) of the Constitution and ASX Listing Rule 14.4 at the conclusion of the Meeting if not elected by Shareholders. Mr White, being eligible, offers himself for election as a Director.

Mr White is an experienced executive and non-executive director with a background in the construction, energy and resources sectors in Australia and Asia.

Mr White brings a wealth of experience in engineering, mining and resources, infrastructure and civil contracting, strategy, project technical and commercial analysis, and project development and operations management. During his career, he has spearheaded business development across Hong Kong, Singapore, Thailand, Vietnam, Philippines, China, and Malaysia in the infrastructure and civil contracting sector.

He is currently a Non-Executive Director of Metals X Limited.

As at the date of this Notice, Mr White has been a Director of the Company for approximately seven months and is a member of the Board's Audit & Risk Committee and the Nomination Committee.

After appropriate consideration, and considering the Company's board skills matrix, his performance, contributions to the Company, and the current and future needs of the Board and the Company, the Board's members (excluding Mr White) unanimously resolved that Mr White's mix of skills and experience, including his extensive experience in the resources and construction industries, is of obvious and ongoing benefit to the Board.

Mr White is considered by the Board to be independent, on the basis that he does not undertake any executive role with the Company and is not subject to any business, interest or other relationship that could or could be perceived to materially interfere with the exercise of his objective and independent judgement or his ability to act directly in the best interests of the Company's Shareholders.

**Directors' recommendation:** *The Board (with Mr White abstaining) recommends that Shareholders vote in favour of Resolution 3.*

### **Resolution 4 – Amendments to the Company's Constitution**

The Company has undertaken a review of its Constitution and determined that it is appropriate to make amendments to the current Constitution to reflect developments in relation to the Corporations Act, the Listing Rules, corporate governance principles and general corporate and commercial practice for ASX listed companies.

Under section 136(2) of the Corporations Act, amendments to the Company's Constitution may only be

made by a special resolution of shareholders. Therefore, Resolution 4 must be passed by at least 75% of the votes cast by Shareholders entitled to vote on the Resolution.

Many of the proposed amendments are minor or administrative in nature. The principal proposed amendments, and the intended purpose and effect of those proposed amendments, are set out in **Annexure A** to this Explanatory Memorandum.

A copy of the current Constitution marked to show the changes being proposed by Resolution 4 is set out in **Annexure B** to this Explanatory Memorandum. The changes proposed in Resolution 4 are marked in blue text (insertions) and red text (deletions).

**Directors' recommendation:** *The Board unanimously recommends that Shareholders vote in favour of Resolution 4.*

### **Resolution 5 – Amendments to the Company's Constitution - virtual only general meetings**

Under section 249R(c) of the Corporations Act, a company may hold a meeting of its members using virtual meeting technology only (that is, with no physical venue) if this is required or permitted by the company's constitution expressly.

The Board considers that it is appropriate for the Company's Constitution to expressly authorise the holding of virtual general meetings. This express power (if approved) will be included as a replacement of rule 13.8 of the Constitution, and will read as follows:

#### **13.8 Technology**

*Subject to any applicable law, the Board may choose to conduct a meeting of members using any technology or instantaneous communication device (including where the meeting is held solely by way of virtual meeting technology) that:*

- (a) provides a reasonable opportunity for all members, validly appointed representatives and proxies and any other persons with rights to attend and participate in the meeting, to exercise their rights to speak, ask questions and vote at the meeting; and*
- (b) has a suitable level of security to verify the identity of members entitled to attend and vote and otherwise ensure the integrity of the voting on the business of the meeting,*

*and participation in such a meeting will constitute presence as if in person at such a meeting.*

*In the event that a meeting takes place solely through the use of virtual meeting technology, the meeting is deemed to have taken place at the Company's registered office, or such other place specified by the Act or the Board.*

As with hybrid meetings, the technology used in wholly virtual meetings must give shareholders a reasonable opportunity to participate, including by allowing them to exercise their rights to speak, ask questions and vote at the meeting. The technology must also have a suitable level of security to verify the identity of members entitled to attend and vote and otherwise ensure the integrity of the voting on the business of the meeting.

The Company has no present intention to move from hybrid to virtual-only meetings. However, the Board considers the proposed amendments are in the best interests of Shareholders as they provide the Company with future flexibility to hold virtual meetings if the Board is of the view that circumstances exist where this would be beneficial and in the interests of Shareholders.

Under section 136(2) of the Corporations Act, amendments to the Company's Constitution may only be made by a special resolution of shareholders. Therefore, Resolution 5 must be passed by at least 75% of the votes cast by Shareholders entitled to vote on the Resolution.

This Resolution is conditional on Resolution 4 being passed as a special resolution.

**Directors' recommendation:** *The Board unanimously recommends that Shareholders vote in favour of Resolution 5.*



## Resolution 6 – Financial assistance

### The proposed resolution

Resolution 6 seeks the approval of the Company's Shareholders, pursuant to section 260B(2) of the Corporations Act, for financial assistance which is to be provided by:

- (a) Decmil Group Limited (ACN 111 210 390) (**Decmil**);
- (b) Decmil Australia Pty Ltd (ACN 116 776 991) and Decmil Southern Pty Ltd (ACN 005 412 466); and
- (c) any other subsidiary of Decmil which grants financial assistance under or in connection with the Acquisition (as defined below) for the purposes of section 260A of the Corporations Act,  
(each an **Acquired Company**),

to assist the acquisition by the Company of all of the issued shares and redeemable convertible preference shares in the Acquired Companies or the holding company of the relevant Acquired Company (the **Acquired Company Shares**).

Approval is sought by special resolution, which requires at least 75% of the votes that are cast on the resolution to be in favour of the resolution.

### Background

Pursuant to a Scheme Implementation Deed dated 16 April 2024 between the Company and Decmil, the Company acquired (directly or indirectly) the Acquired Company Shares (the **Acquisition**). The Acquisition became effective on 6 August 2024 and the Acquisition occurred on the Implementation Date, being 15 August 2024.

In order to fund part of the cash consideration for the Acquisition, the Company utilised existing facilities available under the syndicated facility agreement dated 2 December 2020 (as amended) between, among others, the Company and The Hongkong and Shanghai Banking Corporation Limited, Sydney Branch as mandated lead arranger (**Facility Agreement**). Under the Facility Agreement, the lenders agree to provide financial accommodation (the **Facilities**) to the Company and certain other subsidiaries (the **Borrowers**) from time to time.

Under the terms of the Facility Agreement, the Company is required to ensure that each of the Acquired Companies gives:

- (a) a guarantee and indemnity to the lenders to guarantee all amounts (the **Guaranteed Money**) owing under or in relation to the Facility Agreement (the **Guarantee**); and
- (b) security over all of its assets and undertaking in favour of the Lender to secure the Guaranteed Money (the **Security**).

In addition to executing the Guarantee and granting the Security, each Acquired Company may, or may be required to:

- (a) execute, or accede or consent to, any instrument referred to in, or incidental or related to, the "Finance Documents" (as defined in the Facility Agreement, and including any document to be entered into at any time for the purpose of amending, varying, replacing, restating, novating or supplementing such instruments) (the **Finance Documents**);
- (b) subordinate its intercompany claims;
- (c) make available directly or indirectly its cash flows or other resources in order to enable the Company or other subsidiaries of the Company (the Company and its subsidiaries together the **Group**) to comply with their obligations under the Finance Documents; and
- (d) provide additional support (which may include incurring additional obligations, giving new guarantees or new security interests) in connection with the Finance Documents, including in connection with any refinancing of amounts owing under or in respect of the Finance Documents.

Execution by the Acquired Companies of the Guarantee and Security, and entry into any of the other transactions listed or contemplated above (together, the **Financial Assistance**) will have the effect of each Acquired Company financially assisting in the acquisition of their own shares for the purposes of the Corporations Act.

### Why shareholder approval is required

Under section 260A(1) of the Corporations Act, a company may financially assist a person to acquire shares in it or its holding company only in certain limited circumstances, including where the assistance is approved by shareholders under section 260B.

Under section 260B(1) of the Corporations Act, shareholder approval must be given by the shareholders of the company at a general meeting by either:

- (a) a special resolution, with no votes being cast in favour of the resolution by the person acquiring the shares (or units of shares) or by their associates; or
- (b) a resolution agreed to, at a general meeting, by all ordinary shareholders.

In addition, because the Acquired Companies became subsidiaries of a listed holding corporation (the Company) immediately after the Acquisition, the financial assistance must also be approved by a special resolution passed at a general meeting of the Company under section 260B(2) of the Corporations Act.

The giving of the Financial Assistance has been, or will be, approved by a unanimous resolution of each of the Acquired Companies in accordance with section 260B(1) of the Corporations Act. Accordingly, it is proposed that the Financial Assistance now be approved by special resolution of the shareholders of the Company.

#### Effect of the Financial Assistance

The Company is already itself liable for amounts payable under the Facility Agreement and has provided security over its assets to secure the amounts due under the Facility Agreement, so the giving of the Financial Assistance is unlikely to adversely affect the Company or the Acquired Companies, except that the operations of the Acquired Companies will be restricted by the representations and undertakings given by them under the Facility Agreement.

The Guarantees and Security to be given by the Acquired Companies will be on substantially the same terms as the Guarantees and Security already given by the Company and certain other subsidiaries of the Company to secure the Guaranteed Money.

The substantial effect of the Financial Assistance on the Acquired Companies will be that each of them will have guaranteed the amounts payable under the Finance Documents, and granted one or more security interests over all of their assets and undertakings to secure all obligations under the Finance Documents.

The principal advantage to the Company (and, indirectly, the Acquired Companies) is to ensure that the Company and its subsidiaries continue to have the benefit of the Facilities and comply with their obligations under the Facility Agreement.

Other advantages to the Acquired Companies include that they:

- (a) may benefit from the working capital facilities provided under the Finance Documents;
- (b) may benefit from repayment of their existing indebtedness from funds drawn under the Facility Agreement; and
- (c) will be able to draw on the capital resources and management expertise of the Group, while retaining existing expertise and knowledge in the industry in which they operate.

On the other hand, the disadvantages of the Financial Assistance for the Acquired Companies include that:

- (a) they will become liable for all amounts outstanding under the Finance Documents;
- (b) if an event of a default was to occur under the Facility Agreement, the Lender may require immediate repayment of all amounts outstanding under the Finance Documents and enforce the Security granted by the Acquired Companies. This may result in a winding up or the appointment of a receiver and a sale of their assets, which could result in a lower return than could have been achieved had those assets been sold in the ordinary course of business; and
- (c) their assets will be subject to the Security, and their operations and ability to independently obtain finance from other sources may be restricted by the Security and the undertakings, representations and warranties given under the Finance Documents.

The Directors of the Company have considered the giving of the Financial Assistance and are of the opinion that there are reasonable grounds to believe that it is in the best interests and for the commercial benefit of the Company and each Acquired Company.

#### Notice to ASIC

A copy of this Notice of AGM was lodged with the ASIC before being sent to the shareholders of the Company, as required by section 260B(5) of the Corporations Act.

#### Disclosure

The Directors of the Company consider that the Explanatory Statement contains all information known to the Company that would be material to the decision of the Company's Shareholders on how to vote on the financial assistance resolution set out in Resolution 6, other than information which would be unreasonable to include because it had previously been disclosed to shareholders.

***Directors' recommendation:*** *The Board unanimously recommends that Shareholders vote in favour of Resolution 6.*

## **Annexure A – Summary of proposed amendments to the current Constitution**

### **1. Definitions and interpretation (rule 1 and throughout)**

Various defined terms and references used in the Constitution have been updated to reflect the amendments, current terminology and the current Corporations Act and Listing Rules.

For consistency with the Listing Rules, the definition of a Director's "Remuneration" has been clarified to include any fees sacrificed for other benefits, but exclude:

- (a) reimbursement of genuine out of pocket expenses;
- (b) genuine special exertion fees paid in accordance with the Constitution; and
- (c) securities issued under Listing Rules 10.11 or 10.14 with the approval of members.

### **2. Director election at each annual general meeting (rule 3.4)**

Consistently with the Listing Rules, the proposed amendments provide that there must be an election of Directors at each annual general meeting. This may be satisfied by an election of a new Director, a Board appointed Director or a Director appointed to fill a casual vacancy, or a Director retiring due to the tenure limitation described in rule 3.7(b). If no such person is available, the requirement may be satisfied by an election of any Director who wishes to retire and stand for re-election, or otherwise the longest serving Director without re-election. If there are two or more Directors who have been in office for the longest and for an equal time without re-election, and the Directors cannot agree who shall be elected to retire, the Director to retire will be determined by lot.

### **3. Indemnity and insurance (rule 11)**

The Company's practice is to enter into deeds of access, insurance and indemnity with its officers. This is common practice among ASX listed entities to ensure that each such indemnity best meets the needs of the Company and the relevant officer at the time it is agreed. Therefore, the additional indemnities provided to officers by the current Constitution are not required. The proposed amendments remove the requirement for that indemnity from the Constitution, and instead provide that the Company *may* indemnify each officer in the way provided for in the Constitution.

### **4. Board meetings and resolutions (rule 12)**

The proposed amendments allow notices of Board meetings to be given in any means generally agreed as being acceptable to the Board and, noting that the Company currently has, and may in the future have, Directors who are based overseas, require notices to be given to each Director, regardless of whether they are in Australia or not. The proposed amendments also allow a majority of (rather than all) Directors to pass a written resolution, provided all Directors were given a reasonable opportunity to consider and vote on the proposed resolution.

### **5. Conduct of general meetings (rules 13.4, 13.9, 14.3, 14.4, 16.3 and 17)**

Provisions have been inserted or amended to facilitate the efficient and orderly conduct of general meetings and to improve corporate governance. These provisions:

- (a) permit the chair of the meeting to allow further time to obtain quorum at a general meeting if no quorum is reached within the allocated time (15 minutes after the time appointed), before the meeting is dissolved or adjourned;
- (b) permit the Directors or the chair of the meeting to withdraw from consideration any resolution that is set out in the notice of meeting (other than those items of business requisitioned by members or required by law);
- (c) permit the chair of the meeting to adjourn the meeting where technical difficulties occur, or continue to hold the meeting notwithstanding the technical difficulties;
- (d) remove the chair's entitlement to a casting vote at a general meeting in accordance with corporate governance best practice;

- (e) specify the process for electing the chair of the general meeting: where the chair of the Board is not present or is unwilling to chair the general meeting, the updated provisions permit the Directors to elect one of the Directors present to act as the chair of the meeting, failing which members shall elect one of the Directors to chair the meeting or, if no Director present is willing to act, choose a member to chair the meeting;
- (f) provides that resolutions at a meeting of members must be determined by a poll unless the chair of the meeting determines, subject to applicable laws, that a resolution will be decided on a show of hands, in which case a poll may be demanded in accordance with the Constitution and the Corporations Act; and
- (g) expressly provide the chair of the meeting with discretion as to when to disclose the results of a poll (noting that, pursuant to the Listing Rules, the results of the general meeting will be announced to the ASX immediately after the meeting).

#### **6. Lodgment of proxy forms and powers of attorney (rule 15)**

The Corporations Act allows for electronic lodgement of proxy appointments. To ensure the Company takes full advantage of this flexibility, the proposed amendments expressly provide that a proxy appointment is valid if it is in accordance with the Corporations Act or in any form (including electronic) and received at a time that the Directors (or chair of the meeting) accepts. The proposed amendments also expressly provide that:

- (a) the appointment of a proxy or attorney is not revoked by the appointor attending and taking part in the meeting, but if the appointor votes on a resolution, the proxy or attorney is not entitled to vote as the appointor's proxy or attorney on the resolution; and
- (b) a member can revoke the appointment of a proxy or attorney at any time by notifying the Company in writing.

#### **7. Clarification and correction of proxy, attorney and corporate representative documentation (rule 15.10)**

Amendments are proposed to provide greater flexibility for the Directors in dealing with proxy, attorney and representative appointments which are incomplete, unclear or not properly executed.

The proposed amendments clarify that if the name or office of the proxy, attorney or representative is not filled in or is unclear, then the proxy, attorney or representative of the member is the person specified by the Company in the instrument or form of proxy or, if no person is specified, the chair of the meeting.

New provisions have also been introduced to allow the Directors to:

- (a) return the instrument or form for proper execution or authentication (and extend the time for lodgement of the completed appointment); and
- (b) seek clarification of instructions and amend the appointment to reflect this clarification.

These provisions will allow the Directors to count votes purported to be cast by members via proxy, attorney or representative, where they otherwise may have been disregarded due to procedural irregularities.

#### **8. Direct voting (rule 16.6)**

The ASX Corporate Governance Council has encouraged ASX listed entities to consider ways to facilitate member participation in meetings of members. Direct voting enables members to vote on resolutions to be considered at a meeting without the need to attend the meeting or to appoint a proxy (or other representative). A direct vote would usually be submitted before the meeting, in any form approved by the relevant board of directors, such as by fax, post or electronically.

The proposed amendments include a new rule 16.6 of the Constitution to address direct voting, should the Board decide to implement such a measure in the future. Rule 16.6 empowers the Board to determine the appropriate procedures for the implementation of direct voting, including as to the form, method and time requirements applicable. Such procedures are, however, subject to the terms of the Constitution, which stipulates certain requirements that will apply. To a significant extent, these

requirements replicate the equivalent requirements that apply under the Constitution and the Corporations Act to proxy appointments by, for example, stipulating deadlines by which direct votes must be received to be valid, and the manner in which direct votes must be executed or authenticated.

Rule 16.6 includes rules regarding the interaction between multiple direct votes by a member and between direct votes that have been lodged with the Company and other forms of voting appointments (including proxy appointments). The rule also provides that a direct vote will not be revoked by the member's presence at the relevant general meeting, unless the member informs the Company (or its registry) before the meeting starts that the member wishes to vote in person on any resolution at the meeting.

#### **9. Issue of shares at the discretion of Board (rule 22.1)**

The revised rule 22.1 clarifies the Board's ability to issue securities. It expressly provides that any shares or other securities may be issued by the Company (including redeemable shares) with preferred, deferred or other special rights, obligations or restrictions. These can relate to dividends, voting, return of share capital, payment of calls, rights of conversion, rights of redemption (whether at the option of the holder or of the Company) or otherwise, as and when the Board may determine and on any other terms the Board considers appropriate.

#### **10. Administrative fees and charges (rules 23.2 and 29.1)**

The proposed amendments allow the Company to charge a fee for performing various administrative tasks such as those relating to registering transfer forms (including paper-based transfer forms), and issuing certificates and transmission receipts, where a charge is permitted by the Listing Rules.

#### **11. Dividends and distributions (rule 27)**

The proposed amendments reflect expressly that the Corporations Act contemplates that dividends can be "declared" as well as "determined", with different consequences as to when the debt owed by the Company arises.

Amendments are also proposed to provide the Board with flexibility in the method for payment of dividends, including by direct credit to a nominated bank account.

If members do not nominate a bank account into which a dividend can be paid, the Company may hold the amount of the dividend entitlement in an account until the member nominates a valid bank account into which the dividend can be transferred.

It is also proposed to expressly allow the Directors to cancel, reduce or defer the payment of a dividend if they decide, before the payment date, that it is appropriate to do so. This is to ensure that the Company retains flexibility to react to unforeseen circumstances.

#### **12. Restricted securities (rule 29.4)**

Amendments to the Listing Rules which came into effect in December 2019 include new requirements for listed entities' constitutions relating to restricted securities. It is proposed that rule 29.4 of the current Constitution be amended to align with these requirements.

Restricted securities are securities which are subject to escrow requirements, meaning they are restricted from being traded for a period of time. Whether securities are treated as restricted securities is determined on a case-by-case basis. They may be held by certain persons who acquired them as part of their participation in a fundraising, such as seed capitalists, professional advisers or employees, or can be securities that ASX determines should be treated as restricted securities.

The updated Listing Rules require listed entities to include specific wording in their constituent documents regarding treatment of restricted securities – that they be subject to mandatory escrow restrictions, must be held on the issuer sponsored sub register, and be subject to a holding lock. The changes to rule 29.4 are being made for completeness only to align with the requirements of the Listing Rules and to provide for flexibility going forward.

#### **13. Sale of small parcels (rule 31)**

The current Constitution permits the Company to dispose of shares of a member who holds less than a marketable parcel of shares (generally a parcel worth less than A\$500) in certain circumstances.

The proposed amendments allow the Company greater flexibility in the manner that it may sell shares constituting less than a marketable parcel. Under the proposed amendments, the shares may be sold on-market or in any other way determined by the Company, and the proceeds may be pooled together such that an average price is paid to members on all shares sold, less reasonable expenses (unless the expenses are to be borne by the Company).

The proposed amendments also expressly provide that the sale by the Company of shares under the small parcel rules of the Constitution extinguishes:

- (a) all interests in those shares of the former member; and
- (b) all claims against the Company in respect of those shares by that member, including all dividends determined to be paid in respect of those shares and not actually paid.

This is to reduce the risk of subsequent claims and to make clear that the Company can dispose of unclaimed dividends as permitted by the Constitution.

The proposed amendments also modernise these rules by removing the requirement to circulate the intention to sell small parcels in a newspaper. Any sale will be notified to relevant Shareholders and announced on the ASX in accordance with the Listing Rules.

#### **14. Notices (rule 34)**

In line with the amendments made to the Corporations Act allowing documents to be provided electronically to members, the proposed amendments allow notices to be given to a member by notifying the member by electronic means that a notice is available and how the member may access the notice. This would permit, for example, notices to be made available via the Company's website.

#### **15. Unclaimed money (rule 35(b))**

The proposed amendments clarify the obligations and rights of the Company in the case of unclaimed dividends or other distributions, expressly allowing the Company to invest any unclaimed dividends or other distributions until such amounts are claimed or required to be dealt with in accordance with any law relating to unclaimed moneys.

#### **16. Miscellaneous**

Various other changes have been made to clarify or modernise existing provisions and terminology, or to reflect changes to the Corporations Act, the Listing Rules or corporate governance best practice. These matters are largely self-explanatory and can be reviewed in the mark-up set out in **Annexure B**.

## **Annexure B – Mark up of changes to Constitution**





**MACMAHON**

**CONSTITUTION OF  
MACMAHON HOLDINGS  
LIMITED  
(ACN 007 634 406)**

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# CONSTITUTION OF MACMAHON HOLDINGS LIMITED (ACN 007 634 406)

## 1. PRELIMINARY

### 1.1 Replaceable rules

The replaceable rules referred to in section 141 do not apply to the Company.

### 1.2 Definitions

The following definitions apply in this document.

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

"**Alternate**" means an alternate Director appointed under rule 4.1.

"**Appointor**" in relation to an Alternate, means the Director who appointed the Alternate.

"**ASX**" means ASX Limited (ABN 98 008 624 691).

"**ASX Settlement Rules**" means the operating rules of ASX Settlement Pty Limited (ABN 49 008 504 532) and, to the extent that they are applicable, the operating rules of each of ASX and ASX Clear Pty Limited (ABN 48 001 314 503).

"**Board**" means the Directors acting collectively under this document.

"**Business day**" has the meaning given by the Listing Rules.

"**Called Amount**" in respect of a share means:

- (a) the amount of a call on that share which is due and unpaid; and
- (b) any amount the Board requires a member to pay under rule 25.7.

"**Company**" means the company named at the beginning of this document whatever its name is for the time being.

["Direct Vote" has the meaning given in rule 16.6.](#)

"**Director**" means a person who is, for the time being, a director of the Company including, where appropriate, an Alternate.

~~"**Dividend**" includes bonus.~~

"**Executive Director**" means a Director who is an employee of the Company or a subsidiary or acts in an executive capacity for the Company or a subsidiary under a contract for services and includes a Managing Director.

"**Interest Rate**" means, in respect of each rule in which that term is used:

- (a) the rate for the time being prescribed by the Board in respect of that rule; or
- (b) if no rate is prescribed, 15% each year.

~~"Listed" means admitted to the Official List of ASX.~~

"**Listing Rules**" means the Listing Rules of ASX and any other rules of ASX which are applicable 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 managing director appointed under rule 7.1.

~~"Member" means a person whose name is entered in the Register as the holder of a share.~~

"Minority Member" means any member of the Company who from time to time holds less than a marketable parcel (within the meaning of the Listing Rules).

"**Market Transfer**" means a transfer (within the meaning of Division 3 of Part 7.11) that:

- (a) according to the ASX Settlement Rules, is a proper transfer; or
- (b) is a valid transfer under a computerised or electronic system established or recognised by the Act, the Listing Rules or the ASX Settlement Rules for the purpose of facilitating dealings in shares.

"**Ordinary resolution**~~Resolution~~" means a resolution of members other than a special resolution.

"**Register**" means the register of members kept as required by sections 168 and 169 and includes a computerised or electronic subregister established and administered under the ASX Settlement Rules.

"**Remuneration**" in relation to a Director (other than an Executive Director):

- (a) includes directors' fees, salary, bonuses, fringe benefits and superannuation contributions provided by the Company or a subsidiary to a Director for acting as a director of the Company or a subsidiary (including for attending and participating in any board committee meetings) and any fees sacrificed for other benefits; and
- (b) excludes a payment made as compensation for loss of office or in connection with retirement from office ~~and~~ an indemnity under rule 11 reimbursement of genuine out-of-pocket expenses under rule 10.4, genuine "special exertion" fees paid under rule 10.3, or securities issued under Listing Rule 10.11 or 10.14 with the approval of members.

See sections 168, 169 and the Listing Rules



"**Secretary**" means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this document.

"**Special resolution**" has the meaning given by section 9.

~~"**Unmarketable Parcel**" means a parcel of shares of a single class registered in the same name or the same joint names which is, in aggregate, less than the number that constitutes a marketable parcel of shares of that class under the business rules of ASX.~~

"**Voting Member**" in relation to a general meeting, or meeting of a class of members, means a member who has the right to be present, and to vote on, at least 1 item of business to be considered at the meeting.

### 1.3 Rules for interpreting this document

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests 1 gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word "**agreement**" includes an undertaking or other binding arrangement or understanding, whether or not in writing.



- (g) A power to do something includes a power, exercisable in the like circumstances to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.
- (i) A reference to something being "**written**" or "**in writing**" includes that thing being represented or reproduced in any mode in a visible form.
- (j) Words (other than those defined in rule 1.2) which are defined by the Act have the same meaning in this document.
- (k) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

## 2. LISTING RULES

The following rules apply:

- (a) Notwithstanding anything contained in this document, if the Listing Rules prohibit an act being done, the act shall not be done.
- (b) Nothing contained in this document 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 document to contain a provision and it does not contain such a provision, this document is deemed to contain that provision.
- (e) If the Listing Rules require this document not to contain a provision and it contains such a provision, this document is deemed not to contain that provision.
- (f) If any provision of this document is or becomes inconsistent with the Listing Rules, this document is deemed not to contain that provision to the extent of the inconsistency.

## 3. DIRECTORS

### 3.1 Number of Directors

The Board may from time to time decide the number of Directors (not counting Alternates) but that number must be at least 3.

### 3.2 Qualification

A Director need not be a member of the Company. Neither the auditor of the Company for the time being nor any partner or employee of the auditor is eligible to act as a Director of the Company.

See  
Listing  
Rules 2.1  
condition  
3, 15.11  
and  
appendix  
15A

### 3.3 Appointment by the Board

Replaces sections 201G and 201H

The Board may appoint a person to be a Director at any time except during a general meeting. ~~Any~~With the exception of a Managing Director who is exempt under rule 7.2, any Director so appointed:

~~(a) automatically retires at the next annual general meeting and is eligible for re-election by that general meeting; and~~

~~(b) is not taken into account in deciding the rotation or retirement of Directors or the number of them to retire under rule 3.7 at that general meeting.~~

### 3.4 Election at annual general meeting

At every annual general meeting there must be an election of Directors. This can be satisfied by one or more of the following, so long as any maximum number of Directors for the time being fixed under rule 3.1 is not exceeded:

(a) a person standing for re-election as a Director in accordance with rule 3.3, rule 3.5 or rule 3.7 or;

(b) a person standing for election as a new Director in accordance with rule 3.6; or

(c) if no person or Director is standing for election or re-election in accordance with rules 3.4(a) or 3.4(b), any Director who wishes to retire and stand for re-election. Otherwise, the person (who is not a Managing Director) who has been Director for the longest without re-election must retire and stand for re-election as a Director. As between 2 or more Directors who have been in office for the longest and for an equal time without re-election, the Director to retire shall, in default of agreement between them, be determined by lot.

### 3.5 ~~3.4~~ Appointment by general meeting

Replaces section 201G

Subject to this document, section 201E, and to the number of Directors for the time being fixed under rule 3.1 not being exceeded, the Company may appoint Directors by ~~ordinary resolution~~Ordinary Resolution. A Director appointed to replace one removed from office under rule ~~3.9~~3.10 must retire when the Director replaced would have been required to retire if not removed and is eligible for re-election.

### 3.6 ~~3.5~~ Eligible candidates

The Company in general meeting cannot validly appoint a person as a Director unless:

(a) the person retires under rule 3.3, 3.4(c), 3.5 or ~~3.6~~3.7 and seeks re-election; or

(b) the Board recommends the appointment; or

- (c) at least ~~30 business days~~35 Business Days before the meeting at which the relevant resolution will be considered, the Company receives ~~both~~:
- (i) a nomination of the person by a member (who may be the person);  
~~and~~
  - (ii) a consent to act as a Director signed by the person; and
  - (iii) a Director identification number issued by Australian Business Registry Services, or evidence of an application for a Director identification number that has been lodged with the Australian Business Registry Services.

at its registered office.

The Company must notify members of every candidate for election as a Director at least 7 days before the relevant general meeting.

### 3.7 ~~3.6~~ Retirement of Directors at annual general meetings

At each annual general meeting the following Directors (other than each Alternate ~~Director~~ and the Managing Director) automatically retire and are eligible for re-appointment ~~(and if not re-appointed, that retirement takes effect at the conclusion of that annual general meeting)~~:

- (a) any Director appointed to fill a casual vacancy by the Board since the previous AGM; and  
~~(b) any Director appointed by an extraordinary general meeting since the previous annual general meeting; and~~
- (b) ~~(c)~~ any Director who, if that Director did not retire at that annual general meeting, would have held that office for a period in excess of three (3) years or for a period after the third annual general meeting following his or her appointment, whichever is the longer, without submitting himself or herself for re-election.

### 3.8 ~~3.7~~ Time of retirement

A Director's retirement under rule 3.3 or ~~3.6~~3.7 takes effect at the end of the relevant annual general meeting unless the Director is re-elected at that meeting.

### 3.9 ~~3.8~~ Cessation of Director's appointment

The office of a Director automatically becomes vacant if the person who holds the office:

- (a) becomes an insolvent under administration;
- (b) is not permitted by the Act (or an order made under the Act) to be a director;

- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend Board meetings (either personally or by an Alternate) for a continuous period of 3 months without leave of absence from the Board;
- (e) resigns by notice in writing to the Company;
- (f) is removed from office under rule ~~3.93.10~~; ~~or~~
- (g) ceases to qualify as a Director under rule 3.2; ~~or~~
- (h) has a fixed term appointment which expires.

Rule  
3.93.8(e)  
replaces  
section

### 3.10 ~~3.9~~ Removal from office

Whether or not a Director's appointment was expressed to be for a specified period, subject to section 203D:

- (a) the Company by ~~ordinary resolution~~ Ordinary Resolution; or
- (b) members holding a majority of the issued shares of the Company conferring the right to vote, by writing delivered to the Company,

may remove a Director from office.

### 3.11 ~~3.10~~ Executive Director ceasing to be an employee

Any Executive Director who ceases to be a full time employee of the Company or a related body corporate of the Company ceases to be a Director from that time.

### 3.12 ~~3.11~~ Too few Directors

If the number of Directors is reduced below the minimum required by rule 3.1, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a meeting of members; and
- (c) in emergencies.

## 4. ALTERNATE DIRECTORS

### 4.1 Appointment of Alternates

Subject to rule 3.2, a Director (other than an Alternate) may appoint a person who is approved by the Board (without the vote of the Appointor) to act as Alternate for a specified period or each time the Appointor is unable to attend a Board meeting or act as a Director.

Replaces  
section  
201K

## 4.2 Notice of Board meetings

If the Appointor requests the Company to give the Alternate notice of Board meetings, the Company must do so. Unless the Appointor has requested it, the Company need not give notice of Board meetings to an Alternate.

## 4.3 Obligations and entitlements of Alternates

An Alternate:

- (a) may attend and vote in place of the Appointor at a Board meeting at which the Appointor is not present;
- (b) if also a Director, has a separate right to vote as Alternate;
- (c) if Alternate for more than 1 Appointor, has a separate right to vote in place of each Appointor;
- (d) when acting as Alternate, is an officer of the Company and subject to all the duties, and entitled to exercise all the powers and rights, of the Appointor as a Director; ~~and~~
- (e) when acting as Alternate, any interest of the Appointor shall be treated as an interest of the Alternate in addition to any interest which the Alternate otherwise has; and
- (f) ~~(e)~~ is entitled to reasonable travelling, hotel and other expenses incurred in attending meetings of the Board or of the Company or while otherwise engaged on the business of the Company on the same basis as other Directors but is not entitled to any other remuneration from the Company (but the Appointor may further remunerate the Alternate).

## 4.4 Termination of appointment

The Appointor may revoke the appointment of a person as Alternate whether or not that appointment is for a specified period. If the Appointor ceases to be a Director, any appointment of an Alternate made by the Appointor immediately ceases.

## 4.5 Appointments and revocations in writing

The Appointor must appoint, and revoke the appointment of, any Alternate in writing. The appointment or revocation is not effective until a copy is provided to the Company.

## 5. POWERS OF THE BOARD

### 5.1 Powers generally

Replaces  
section  
198A

Except as otherwise required by the Act, any other applicable law, the Listing Rules or this document, the Board:

- (a) has power to manage the business of the Company; and
- (b) subject to rule 5.3, may exercise every right, power or capacity of the Company ~~to the exclusion of~~which are not, by the law or this Constitution, required to be exercised by the Company in general meeting ~~and the members.~~

## 5.2 Exercise of powers

- (a) A power of the Board can be exercised only:
  - (i) ~~(a)~~ by resolution passed, or treated by rule 12 as passed, at a meeting of the Board; or
  - (ii) ~~(b)~~ in accordance with a delegation of the power under rule 7, 8 or 25.17.
- (b) All acts done by a meeting of the Directors, a committee, or by a person acting as a Director are not invalidated by:
  - (i) a defect in the appointment or continuance in office of a person as a Director, of the person so acting or a member of a committee; or
  - (ii) a person acting as a Director being disqualified or not being entitled to vote,  
if that circumstance was not known by the Directors, committee or person when the act was done.

## 5.3 Sale of main undertaking

The Board must not sell or dispose of the main undertaking of the Company unless the decision is ratified by the Company in general meeting.

## 6. EXECUTING NEGOTIABLE INSTRUMENTS

The Board must decide the manner (including the use of facsimile signatures if thought appropriate) in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company. The Company may execute, accept, or endorse negotiable instruments only in the manner for the time being decided by the Board.

## **7. MANAGING DIRECTOR**

### **7.1 Appointment and power of Managing Director**

The Board may appoint 1 or more Directors to be a Managing Director either for a specified term (but not for life) or without specifying a term.

The Board may delegate any of the powers of the Board to a Managing Director:

- (a) on the terms and subject to any restrictions the Board decides; and
- (b) so as to be concurrent with, or to the exclusion of, the powers of the Board, and may revoke the delegation at any time.

### **7.2 Retirement and removal of Managing Director**

Subject to rule 7.3, a Managing Director is not required to retire under rule ~~3.63.7~~ but (subject to any contract between the Company and that Managing Director) is otherwise subject to the same rules regarding resignation, removal and retirement from office as the other Directors.

### **7.3 Multiple Managing Directors**

If there are 2 or more Managing Directors at the same time:

- (a) the Board may nominate one of them as the Managing Director to be exempted from retirement ~~by rotation~~ under rule ~~3.63.7~~ and may revoke the nomination at any time;
- (b) if a Managing Director has been nominated under rule 7.3(a) and the Board later nominates a different Managing Director under that rule, the one first nominated must retire by rotation at the next annual general meeting unless elected at either of the last 2 annual general meetings; and
- (c) if none of them is the subject of a current nomination under rule 7.3(a), all of them must retire ~~by rotation~~ under rule ~~3.63.7~~.

### **7.4 Termination of appointment of Managing Director**

The appointment of a Managing Director terminates if:

- (a) the Managing Director ceases for any reason to be a Director; or
- (b) the Board removes the Managing Director from the office of Managing Director (which, subject to any contract between the Company and the Managing Director, the Board has power to do),

whether or not the appointment was expressed to be for a specified term.

## **8. DELEGATION OF BOARD POWERS**

### **8.1 Delegation to committee or attorney**

The Board may delegate any of its powers, [other than powers required by law to be dealt with by directors as a board](#):

- (a) to a committee consisting of at least 1 Director which may also include people who are not Directors; or
- (b) to an attorney;

and may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period. This rule is supplemental to section 126(4).

### **8.2 Terms of delegation**

A delegation of powers under rule 8.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

Power exercised in accordance with a delegation of the Board is treated as exercised by the Board.

### **8.3 Powers of attorney**

A power of attorney under rule 8.1 may contain the provisions for the protection and convenience of those who deal with the attorney that the Board thinks appropriate.

### **8.4 Proceedings of committees**

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this document which regulate the meetings and proceedings of the Board.

## **9. DIRECTOR'S DUTIES AND INTERESTS**

### **9.1 Compliance with Act**

Each Director must comply with Divisions 1 and 2 of Part 2D.1.



## **9.2 Scope of Directors' duties**

A Director is not disqualified by reason only of being a Director from:

- (a) holding any office or place of profit or employment other than that of the Company's auditor, or being a member or creditor, of any corporation (including the Company) or partnership other than the auditor; or
- (b) entering into any agreement with the Company.

## **9.3 Declaration of interests**

A Director who:

- (a) is in any way interested in a contract or proposed contract with the Company; or
- (b) holds any office or possesses any property as a result of which duties or interests might be created which are directly or indirectly in conflict with that Director's duties or interests as a Director,

must declare the fact and the nature of the interest, or nature, character and extent of the conflict at the first Board meeting held after the relevant facts come to the Director's knowledge or after appointment as a Director (whichever is later).

## **9.4 Director interested in agreement**

Each Director must comply with section 195 in relation to being present, or voting, at a Board meeting that considers a matter in which the Director has a material personal interest. Subject to section 195:

- (a) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, whether the Company enters into an agreement or proposed agreement in which that Director has an interest;
- (b) the Company may enter into the agreement and the Director may participate in the execution of any relevant document by or on behalf of the Company;
- (c) the Director may be counted in a quorum at a Board meeting that considers, and may vote on, matters involving the agreement; and
- (d) if disclosure under rule 9.3 is made before the agreement is entered into:
  - (i) the Director may retain benefits under the agreement even though the Director has an interest in the agreement; and
  - (ii) the Company cannot avoid the agreement merely because of the existence of the interest.

## 9.5 Agreements with third parties

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure required by rule 9.3; or
- (b) is present at, or counted in the quorum for, a meeting that considers, votes on, or participates in the execution of, that agreement in breach of section 195.

## 9.6 Obligation of secrecy

Every Director and Secretary must keep the transactions and affairs of the Company and the state of its accounts confidential unless required to disclose them:

- (a) in the course of duties as an officer of the Company;
- (b) by the Board or the Company in general meeting; or
- (c) by law or under the Listing Rules.

The Company may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

## 10. DIRECTORS' REMUNERATION

### 10.1 Remuneration of Executive Directors

Subject to any contract with the Company and to the Listing Rules, the Board may fix the remuneration of each Executive Director. That remuneration may consist of salary, bonuses or any other elements but must not be a commission on or percentage of profits or operating revenue.

### 10.2 Remuneration of non-executive Directors

The Directors (other than the Executive Directors and those who are Directors only because they are Alternates) are entitled to be paid, out of the funds of the Company, an amount of Remuneration which:

- (a) does not:
  - (i) in any year exceed in aggregate the amount last fixed by ~~ordinary resolution~~[Ordinary Resolution](#); or
  - (ii) consist of a commission on or percentage of profits or operating revenue; and

- (b) is allocated among them:
  - (i) on an equal basis having regard to the proportion of the relevant year for which each Director held office; or
  - (ii) as otherwise decided by the Board.

### **10.3 Additional Remuneration for extra services**

If a Director, at the request of the Board and for the purposes of the Company, performs extra services or makes special exertions (including going or living away from the Director's usual residential address), the Company may pay that Director a fixed sum set by the Board for doing so. Remuneration under this rule may be either in addition to or in substitution for any remuneration to which that Director is entitled under rule 10.1 or 10.2.

### **10.4 Expenses of Directors**

The Company must pay a Director (in addition to any remuneration) all reasonable expenses (including travelling and accommodation expenses) incurred by the Director:

- (a) in attending meetings of the Company, the Board, or a committee of the Board;
- (b) on the business of the Company; or
- (c) in carrying out duties as a Director.

### **10.5 Directors' retirement benefits**

Subject to section 200B and the Listing Rules, the Company may agree with a Director or person about to become a Director that, when or after the person dies or otherwise ceases to be a Director, the Company will pay a pension or lump sum benefit to:

- (a) that person; or
- (b) after that person's death, any of the surviving spouse, dependants or legal personal representatives of that person.

## **11. OFFICERS' INDEMNITY AND INSURANCE**

### **11.1 Indemnity**

To the maximum extent permitted by law and without limiting the Company's power, the Company may indemnify any current or former officer out of the property of the Company against:

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

~~Subject to section 199A, the Company must, to the extent the person is not otherwise indemnified, indemnify every officer of the Company and its wholly-owned subsidiaries and may indemnify its auditor against a liability:~~

- ~~(a) incurred as officer or auditor to a person other than the Company or a related body corporate (including a liability incurred as a result of appointment or nomination of the Company or a subsidiary as a trustee or as an officer of another corporation) unless the liability arises out of conduct involving a lack of good faith or is a liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H; and~~
- (b) for legal costs and expenses incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal proceedings in which judgement is given in favour of that person, or in which that person is acquitted, or in which the grounds for making a court order sought by ASIC or a liquidator are found by the court not to have been established, or in connection with proceedings for relief to that person under the Act in which the court grants the relief, or of an administrative or investigatory nature, in which the officer becomes involved because of that capacity;
- (c) legal costs incurred in connection with any investigation or inquiry of any nature (including, without limitation, a royal commission) in which the officer becomes involved (including, without limitation, appearing as a witness or producing documents) because of that capacity; and
- (d) ~~(c) for the~~ legal costs and expenses incurred in defending civil or criminal proceedings referred to in 11.1(b), the Company may pay the costs and expenses in advance provided that if the officer of the Company is found to be guilty of the charge or liable to civil penalty under the proceeding, the officer must repay any costs and expenses paid on their behalf by the Company; good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer, if that expenditure has been approved in accordance with the terms of any applicable deed or agreement or any applicable policy of the Company,

except to the extent that:

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

## 11.2 Insurance

~~Subject to section 199B, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.~~

The Company may, to the extent permitted by law:

- (a) purchase and maintain insurance or pay or agree to pay a premium for insurance for any current or former officer against any liability incurred by the officer, including but not limited to a liability for negligence or for reasonable costs and expenses incurred in defending or responding to proceedings, whether civil or criminal and whatever their outcome; and
- (b) bind itself in any contract or deed with any current or former officer to make payments on such terms as the Directors think fit which are not inconsistent with this rule 11.

### **11.3 Former officers**

The indemnity in favour of officers under rule 11.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

## **12. BOARD MEETINGS**

### **12.1 Convening Board meetings**

Replaces  
section 248C

A Director may at any time, and the Secretary must on request from a Director, convene a Board meeting.

### **12.2 Notice of Board meeting**

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually, by any means generally agreed as being acceptable to the Board, to:
  - (i) each Director ~~who is in Australia~~; and
  - (ii) each Alternate in respect of whom the Appointor has given notice under rule 4.2 requiring notice of Board meetings to be given to that Alternate ~~or whose Appointor is not given notice due to being outside Australia; and~~

~~(b) may give that notice orally (including by telephone) or in writing,~~

but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

### **12.3 Use of technology**

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D. A

Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of 2 or more places, at the place where the [chairman](#)[chair](#) of the meeting is located.

#### 12.4 Chairing Board meetings

The Board may elect a Director to chair its meetings and decide the period for which that Director holds that office. If there is no [chairman](#)[chair](#) of Directors or the [chairman](#)[chair](#) is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

#### 12.5 Quorum

Replaces  
section 248F

Unless the Board decides otherwise, the quorum for a Board meeting is 2 Directors and a quorum must be present for the whole meeting. An Alternate who is also a Director or a person who is an Alternate for more than 1 Appointor may only be counted once toward a quorum. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D, the Board must resolve the basis on which Directors are treated as present.

#### 12.6 Majority decisions

Replaces  
section 248G

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. If an equal number of votes is cast for and against a resolution the [chairman](#)[chair](#) has a second or casting vote unless only 2 Directors are entitled to vote; or if the [chairman](#)[chair](#) of the meeting is not entitled to vote, then the matter is decided in the negative.

#### 12.7 Procedural rules

The Board may adjourn and, subject to this document, otherwise regulate its meetings as it decides.

#### 12.8 Written resolution

Replaces  
section 248A

If ~~all~~ the [majority of](#) Directors entitled to receive notice of a Board meeting and to vote on a resolution sign ~~a~~, [or otherwise communicate their approval of, a](#) document containing a statement that they are in favour of the resolution set out in the document, a resolution in those terms is treated as having been passed at a Board meeting at the time when the last Director ~~signs~~ [required to form that majority signs, so long as all Directors were given the document and provided reasonable opportunity to consider and vote on the proposed resolution.](#)

## **12.9 Additional provisions concerning written resolutions**

For the purpose of rule 12.8:

- (a) 2 or more separate documents in identical terms, each of which is signed by 1 or more Directors, are treated as 1 document;
- (b) signature of a document by an Alternate is not required if the Appointor of that Alternate has signed the document;
- (c) signature of a document by the Appointor of an Alternate is not required if that Alternate has signed the document in that capacity; and
- (d) a telex, telegram, facsimile or e-mail message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

## **12.10 Valid proceedings**

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

## **13. MEETINGS OF MEMBERS**

### **13.1 Annual general meeting**

The Company must hold an annual general meeting as required by section 250N.

### **13.2 Calling meetings of members**

- (a) The Board or a Director may at any time; and
- (b) the Board must when required by section 249D or 250N or by order made under section 249G,

convene a meeting of members.

### **13.3 Notice of meeting**

Subject to rule 13.6, at least 28 days' written notice of a meeting of members must be given individually to:

- (a) each member (whether or not the member is entitled to vote at the meeting);

- (b) each Director; and
- (c) to the auditor.

The notice of meeting must comply with sections 249L, [and](#) 250BA ~~and 1109N~~ and may be given in any manner permitted by section 249J(3).

#### **13.4 Withdrawing resolutions**

The Directors or the chair of the meeting may withdraw from consideration by the meeting any resolution that is set out in the notice calling the meeting (other than those requisitioned by members or required by law).

#### **13.5 ~~13.4~~ Postponement or cancellation**

Subject to sections 249D(5) and 250N, the Board may:

- (a) postpone a meeting of members; or
- (b) cancel a meeting of members,

by written notice given individually to each person entitled to be given notice of the meeting.

#### **13.6 ~~13.5~~ Fresh notice**

Replaces  
section  
249M

If a meeting of members is postponed or adjourned for 1 month or more, the Company must give new notice of the resumed meeting.

#### **13.7 ~~13.6~~ Notice to joint holders of shares**

If a share is held jointly, the Company need only give notice of a meeting of members (or of its cancellation or postponement) to the joint holder who is named first in the Register.

#### **13.8 ~~13.7~~ Technology**

See  
section  
249S

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

#### **13.9 Technical difficulties**

If, before or during the general meeting, any technical difficulty occurs such that the members as a whole do not have a reasonable opportunity to participate, the chair may:

- (a) adjourn the meeting until the difficulty is remedied; or
- (b) where a quorum remains present (either at the place at which the chair is present or by technology as contemplated by rule 13.8) and able to



participate, subject to the Act, continue the meeting and transact business, and no member may object to the meeting being held or continuing.

### **13.10 ~~13.8~~ Accidental omission**

- (a) The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of members.
- (b) A person's attendance at a general meeting waives any objection that person may have to:

  - (i) a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
  - (ii) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is first presented.

### **13.11 ~~13.9~~ Class meetings**

Rules 13 to 17 inclusive apply to a separate meeting of a class of members as far as they are capable of application and modified as necessary.

## **14. PROCEEDINGS AT MEETINGS OF MEMBERS**

### **14.1 Member present at meeting**

If a member has appointed a proxy or attorney or (in the case of a member which is a body corporate) a representative to act at a meeting of members, that member is taken to be present at a meeting at which the proxy, attorney or representative is present.

### **14.2 Quorum**

The quorum for a meeting of members is 2 Voting Members. Each individual present may only be counted once toward a quorum. If a member has appointed more than 1 proxy or representative only 1 of them may be counted toward a quorum.

### **14.3 Quorum not present**

Replaces  
section  
249T

If a quorum is not present within 15 minutes after the time for which a meeting of members is called (or any longer period of time as the chair may allow):

- (a) if called as a result of a request of members under section 249D, the meeting is dissolved; and
- (b) in any other case:

- (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
- (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

#### 14.4 Chairing meetings of members

Replaces  
section 249U

(a) If the Board has appointed a Director to chair Board meetings, that Director may also chair meetings of members. ~~if:~~

~~(a) there is no Director who the Board has appointed to chair Board meetings for the time being; or~~

(b) ~~the Director appointed to~~ if there is no chair of the Board ~~meetings is not present at the time for which a~~ , or if at any meeting of members ~~is called or is not willing to chair the meeting,~~ the chair of the Board is not present within 15 minutes after the time appointed for holding such meeting, or is unwilling to act, the Directors present may choose one of their number to act as chair of the meeting of members.

~~the Voting Members present must elect a member present to chair the meeting.~~

(c) If the Directors do not choose a chair under rule 14.4(b), the Voting Members present shall:

(i) choose one of the Directors to be chair of the meeting of members; or

(ii) if no Director present is willing to take the chair of the meeting of members, choose a member to be chair of the meeting of members.

#### 14.5 Attendance at general meetings

See  
section  
249V

- (a) Every member has the right to attend all meetings of members whether or not entitled to vote.
- (b) Every Director has the right to attend and speak at all meetings of members of the Company whether or not a member.
- (c) The auditor has the right to attend any meeting of members of the Company and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

#### 14.6 ~~Members~~Member's rights suspended while call unpaid

If a call on a share is due and unpaid, the holding of that share does not entitle a member to be present, speak, or vote at, or be counted in the quorum for, a meeting of members.

## 14.7 Adjournment

Replaces  
section  
~~294U249~~  
U(4)

The ~~chairman~~chair of a meeting of members at which a quorum is present:

- (a) may, with the consent of the meeting; and
- (b) must, if directed by ~~ordinary resolution~~Ordinary Resolution of the meeting, adjourn it to another time and place.

## 14.8 Business at adjourned meetings

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

## 15. PROXIES, ATTORNEYS AND REPRESENTATIVES

### 15.1 Appointment of Proxies

See Listing  
Rule 14.2

A member may appoint not more than 2 proxies to attend and act for the member at a meeting of members. An appointment of proxy ~~must~~may be made by ~~written~~ notice in writing or by electronic form to the Company:

- (a) that complies with section 250A(1) and the Listing Rules; or
- (b) in any other form and mode that complies with the Listing Rules and is, and is signed or acknowledged by the member in a manner, satisfactory to the Board.

If a member appoints 2 proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of those votes. A proxy may be revoked at any time by notice in writing to the Company.

### 15.2 Member's attorney

A member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of the Company. If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness. An appointment of an attorney may be revoked at any time by notice in writing to the Company.

### 15.3 Deposit of proxy forms and powers of attorney

See Listing  
Rule 6.10.2

An appointment of a proxy or power of attorney is not effective for a particular meeting of members unless:

- (a) in the case of a proxy, the proxy form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

is received by the Company at its registered office ~~or a fax number at that office~~ (or another address specified for the purpose in the relevant notice of meeting) , or received in any form (including electronic) that the Directors prescribe or accept or that the chair of the meeting accepts, at least 48 hours (or such shorter period as the Directors may permit or specified in the Act) before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

#### **15.4 Corporate representatives**

A member that is a body corporate may appoint an individual to act as its representative at meetings of members as permitted by section 250D.

#### **15.5 Standing appointments**

A member may appoint a proxy, attorney or representative to act at a particular meeting of members or make a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a member.

#### **15.6 Suspension of proxy or attorney's powers if member ~~present~~votes**

The appointment of a proxy or attorney is not revoked by the appointor attending and taking part in the meeting of members, but if the appointor votes on a resolution at the meeting, the proxy or attorney is not entitled to vote, and must not vote, as the appointor's proxy or attorney on the resolution. A proxy has no power to act for a member at a meeting at which the member is present by attorney.

~~A proxy or attorney has no power to act for a member at a meeting at which the member is present:~~

~~(a) in the case of an individual, in person; or~~

~~(b) in the case of a body corporate, by representative.~~

~~A proxy has no power to act for a member at a meeting at which the member is present by attorney.~~

#### **15.7 Priority of conflicting appointments of attorney or representative**

If more than 1 attorney or representative appointed by a member is present at a meeting of members and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to paragraph (a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

## 15.8 More than 2 current proxy appointments

An appointment of proxy by a member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that member which would result in there being more than 2 proxies of that member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

## 15.9 Continuing authority

Replaces  
section  
250C(2)

An act done at a meeting of members by a proxy, attorney or representative is valid even if, before the act is done, the appointing member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up;
- (c) revokes the appointment or the authority under which the appointment was made by a third party; or
- (d) transfers the share to which the appointment relates; if the transfer is not registered by the time at which the instrument appointing the proxy, attorney or representative is required to be received under rule 15.3,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

## 15.10 Invalid instruments appointing a proxy, attorney or representative

If the Company receives an instrument or form appointing a proxy, attorney or representative from a member and the Directors consider that it is not properly executed or authenticated, or is incomplete or unclear, then:

- (a) if the name, or the name of the office, of the proxy, attorney or representative is not filled in or is unclear, the proxy, attorney or representative of that member is the person specified by the Company in the instrument or form of proxy or if no person is specified, the chair of that meeting;
- (b) if the instrument or form has not been duly signed or authenticated, the Company may return the instrument or form to the appointing member and request the member sign or authenticate the instrument or form and return it to the Company within a period determined by the Directors (which may be later than the time specified in the notice of meeting for the receipt of proxy appointments); and
- (c) if the instrument or form is otherwise unclear or incomplete, the Company may by oral, written or electronic communication clarify with the member any instruction on the appointment, and complete or amend the contents of any instrument or form to reflect the clarification in the instructions so

received from the member (which may occur later than the time specified in the notice of meeting for the receipt of proxy appointments) and the member appoints the Company as its attorney for this purpose.

## 16. ENTITLEMENT TO VOTE

### 16.1 Determining voting entitlements

See Listing  
Rule 6.10.3

Subject to section 250L(4) and ~~rule 17.2(b)~~ rules 17.2 and 17.3 which apply to a ~~demand for a~~ poll, ~~to decide~~ when deciding, for the purposes of a particular meeting, who are members of the Company and how many shares they hold, the Company ~~must~~ may refer ~~only:~~

~~(a) to the Register as it stood if the convener of the meeting determined a specified time under section 1109N before notice of the meeting was given, to the Register as it stood at that time; or~~

~~(b) otherwise, to the Register as it stood~~ 48 hours before the meeting or at any later time ~~required by the~~ determined by the Company provided (in each case) that the time satisfies any applicable requirements of the ASX Settlement Rules and the Act.

### 16.2 Number of votes

1. Replaces  
section 250E(1)

Subject to ~~section 250A(4)~~ applicable law, rules 14.6, 15, 16.4, ~~16.6~~ 16.7 and 29.4 and terms on which shares are issued:

2. See Listing  
Rule 6.9

- (a) on a show of hands:
- (i) if a member has appointed 2 proxies, neither of those proxies may vote; and
  - (ii) subject to paragraph 16.2(a)(i), every individual present who is a member, or a proxy, attorney or representative of a member, entitled to vote has 1 vote;
- (b) on a poll every member present (and every member who has duly lodged a valid Direct Vote under rule 16.6):
- (i) has 1 vote for every fully paid share held; and
  - (ii) subject to paragraph (c), in respect of each partly paid share held has a fraction of a vote equal to the proportion which the amount paid bears to the total issue price of the share; and
- (c) the Company must not count an amount:
- (i) paid in advance of a call; or
  - (ii) credited on a partly paid share without payment in money or money's worth being made to the Company,

in calculating the fraction of a vote which the holder of a partly paid share has.

### 16.3 Casting vote of ~~chairman~~chair

If an equal number of votes is cast for and against a resolution at a meeting of members, the chair of the meeting is not entitled to a casting vote in addition to their deliberative vote (if any).

~~(a) if the chairman of the meeting is not (or if the chairman were a member and would not be) entitled to vote, the matter is decided in the negative; and~~

~~(b) otherwise, the chairman has a casting vote whether or not the chairman is a member.~~

### 16.4 Votes of joint holders

If more than 1 of the joint holders of a share (including, for the purposes of this rule, joint legal personal representatives of a dead member) are present at a meeting of members and tender a vote in respect of the share, the Company may only count the vote cast by the most senior joint holder who tenders a vote. For this purpose, seniority depends on the order in which the names of the joint holders are listed in the Register.

### 16.5 Votes of transmittees and guardians

Subject to ~~section 1091A~~applicable law, if the Board is satisfied at least 48 hours before the time fixed for a meeting, that a person:

- (a) is entitled to the transmission of a share under rule 30; or
- (b) has power to manage a member's property under a law relating to the management of property of the mentally incapable,

that person may vote as if registered as the holder of the share.

### 16.6 Direct Votes

(a) In this rule 16.6, a "Direct Vote" is a notice of a member's voting intention delivered to the Company by post, fax, electronic or other means approved by the Directors and otherwise in accordance with the Constitution and regulations, rules and procedures made by the Directors in accordance with this rule 16.6.

(b) The Directors may, subject to this Constitution, prescribe regulations, rules and procedures in relation to the giving of Direct Votes (including specifying the form, method and timing of giving a Direct Vote at or for the purposes of a meeting of members in order for the vote to be valid) and for revoking a Direct Vote. Without limitation, such regulations, rules and procedures may permit a member to give a Direct Vote prior to the particular meeting of members. The Directors must specify in the notice of meeting, or in any

document accompanying the notice of meeting or otherwise made available to members for the purpose of the meeting, the form, method and timing of giving a Direct Vote in order for the Direct Vote to be valid.

- (c) If sent by post or fax, a Direct Vote must be signed by the member or by a properly authorised attorney, or if the member is a company, either under seal or by a duly authorised officer or representative.
- (d) If sent or lodged electronically, a Direct Vote is taken to have been signed if it has been signed or authorised by the member in the manner approved by the Directors or specified in the notice of meeting.
- (e) At least 48 hours before the time for holding the particular meeting of members, adjourned meeting or a poll at which a person proposes to cast a vote (or by any other time as the Directors may permit (including the time of the vote where the Directors permit voting to occur electronically in real time) or as specified by the Act), the Company must receive at its registered office or at such other electronic address or by such other electronic means specified for that purpose in the notice of meeting:

  - (i) the Direct Vote; and
  - (ii) if relevant, any power or authority under which the Direct Vote was signed or a certified copy of that power or authority if not already lodged with the Company.
- (f) A Direct Vote is valid if it contains the member's name and address or any applicable identifying notations approved by the Directors or specified in the notice of meeting.
- (g) A Direct Vote by a member is not revoked by the member attending the meeting of members unless the member instructs the Company (or at the Company's instruction, the Company's share registry) prior to the meeting that the member wishes to vote in person on any or all of the resolutions to be put before the meeting, in which case the Direct Vote by the member is revoked.
- (h) A Direct Vote by a member is automatically revoked if the Company receives a further valid Direct Vote from the member.
- (i) A Direct Vote by a member is automatically revoked if, after the Direct Vote is received, the Company receives a valid proxy, attorney or representative appointment in respect of that member for the particular meeting.
- (j) A Direct Vote by a member revokes the authority of a previously provided proxy, power of attorney or representative under rule 15 in respect of that member for the particular meeting.
- (k) A Direct Vote by a member is valid even if prior to the vote being counted:

  - (i) the member becomes of unsound mind or dies;



- (ii) the member wishes to change their vote; or
- (i) where the Direct Vote is given on behalf of the member by an attorney, the appointment of the attorney or the authority under which the appointment was made is revoked.
- (l) if no notice in writing of the relevant event has been received by the Company at its registered office at least 48 hours (or any shorter period as the Directors may permit or specified in the Act) before the commencement of the meeting of members or adjourned meeting to which the Direct Vote relates.
- (m) If the chair of the meeting determines it is appropriate, a Direct Vote by a member on a resolution is taken to be a Direct Vote on the resolution as amended.

## **16.7 ~~16.6~~ Voting restrictions**

If:

- (a) the Act or the Listing Rules require that some members are not to vote on a resolution, or that votes cast by some members be disregarded, in order for the resolution to have an intended effect; and
- (b) the notice of the meeting at which the resolution is proposed states that fact,

the Company must not count any votes purported to be cast by those members. ~~If a proxy purports to vote in a way or in circumstances that contravene section 250A(4), on a show of hands the vote is invalid and the Company must not count it and on a poll rule 17.3(c) applies.~~

## **16.8 ~~16.7~~ Objections to right to vote**

A Voting Member or Director may challenge a person's right to vote at a meeting of members. A challenge:

- (a) may only be made at the meeting; and
- (b) must be decided by the ~~chairman~~chair of the meeting, whose decision is final.

## **17. HOW VOTING IS CARRIED OUT**

### **17.1 Method of voting**

Replaces section 250J(1), (1A)

- (a) A resolution put to the vote at a meeting of members must be determined by a poll unless the chair of the meeting determines, subject to applicable law, that the resolution will be decided on a show of hands ~~unless a poll is demanded under rule 17.2 either before or on declaration of the result of the vote on a show of hands, or where the resolution is to appoint a person to chair the meeting in the circumstances set out in rule 14.4(c).~~

- (b) A declaration by the chair of the meeting that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry recorded in the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the chair of the meeting nor the minutes need state, and it not necessary to prove, the number or proportion of the votes recorded in favour of or against the resolution.

## 17.2 ~~Demands for a poll~~Poll

~~A poll may be demanded on any resolution except a resolution concerning the election of the chairman of a meeting by:~~

- (a) If the chair of the meeting has determined that a resolution at a meeting of members will be decided on a show of hands, a poll may be demanded:

See  
section  
250L

- (i) by members in accordance with the Act (and not otherwise);  
(ii) by the chair of the meeting; or  
(iii) otherwise in accordance with the Act.

- (b) The poll may be demanded:

- (i) ~~(a) at least 5 members entitled to~~before a vote ~~on the resolution is taken;~~ or

~~(b) members entitled to cast at least 5% of the votes that may be cast on the resolution on a poll (worked out as at the midnight before the poll is demanded); or~~

- (ii) before the voting results on a show of hands are declared; or  
(iii) ~~(c) the chairman~~immediately after the voting results on a show of hands are declared.

- (c) The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

## 17.3 When and how polls must be taken

Replaces  
section  
250M

If a resolution is to be determined by a poll ~~is demanded:~~

- (a) ~~if the resolution is~~ for the adjournment of the meeting, the poll must be taken immediately and, ~~subject to rule 17.3(c),~~ in the manner that the ~~chairman~~chair of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, ~~subject to rule 17.3(c),~~ in the manner that the ~~chairman~~chair of the meeting directs;

~~(c) votes which section 250A(4) requires to be cast in a given way must be treated as cast in that way;~~

(c) ~~(d)~~ a person voting who has the right to cast 2 or more votes need not cast all those votes and may cast those votes in different ways; and

(d) ~~(e)~~ the result of the poll is the resolution of the meeting at which the poll was demanded. ~~;~~ and

(e) the result of the poll may be declared in the manner and at the time (whether during the relevant meeting or afterwards) that the chair considers appropriate.

## **18. SECRETARY**

### **18.1 Appointment and removal of secretary**

The Board may appoint 1 or more individuals to be a Secretary of the Company either for a specified term or without specifying a term.

### **18.2 Terms and conditions of office**

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

### **18.3 Removal from office**

Subject to any contract between the Company and the Secretary, the Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

## **19. MINUTES**

### **19.1 Minutes must be kept**

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's members;
- (b) the name of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 8); and
- (d) resolutions passed by Directors without a meeting,

to be kept in accordance with sections 251A and 251AA.

## **19.2 Minutes as evidence**

A minute recorded and signed in accordance with sections 251A and 251AA is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

## **19.3 Inspection of minute books**

The Company must allow members to inspect, and provide copies of the minute books for the meetings of members in accordance with section 251B.

## **20. COMPANY SEALS**

### **20.1 Common seal**

The Board:

- (a) may decide whether or not the Company has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2).

### **20.2 Use of seals**

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123.

### **20.3 Fixing seals to documents**

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by 2 Directors;
- (b) by 1 Director and 1 Secretary; or
- (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

## **21. ACCOUNTS AND AUDIT**

### **21.1 Company must keep accounts**

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited,

and must allow a Director and the auditor to inspect those records at all reasonable times.

## 21.2 Financial reporting

The Board must cause the Company to prepare a financial report and a Directors' report that comply with Part 2M.3 and must report to members in accordance with section 314 no later than the deadline set by section 315.

## 21.3 Audit

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor are regulated by sections ~~324 to 331~~[324AA to 331AL](#) inclusive and sections ~~1278~~[1279](#), 1280 and 1289.

## ~~21.4 Conclusive reports~~

~~Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within 3 months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.~~

## [21.4](#) ~~21.5~~ Inspection of financial records and books

Subject to rule 19.3 and section 247A, a member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by ~~ordinary resolution~~[Ordinary Resolution](#).

## 22. SHARES

### 22.1 Issue at discretion of Board

~~Subject to section 259C and rule 22.3, the Board may, on behalf of the Company, issue, grant options over or otherwise dispose of unissued shares to any person on the terms, with the rights, and at the times that the Board decides.~~

Without affecting any special rights conferred on the holders of any shares, any shares or other securities may be issued by the Company (including redeemable shares) with preferred, deferred or other special rights, obligations or restrictions, whether in regard to dividends, voting, return of share capital, payment of calls, rights of conversion, rights of redemption (whether at the option of the holder or of the Company) or otherwise, as and when the Board may determine and on any other terms the Board considers appropriate provided that the rights attaching to a class other than ordinary shares shall be expressed at the date of issue.

## 22.2 Preference and redeemable preference shares

The Company may issue preference shares (including preference shares that are liable to be redeemed). The rights attached to preference shares are:

- (a) unless other rights have been approved by special resolution of the Company, the rights set out in the schedule; or
- (b) the rights approved by special resolution of the Company as applicable to those shares.

## 22.3 Restrictions on issue

The Company must not issue shares or grant options if the issue or grant would result in a breach of the Listing Rules.

## ~~22.4 Employee Incentive Share Schemes~~

- ~~(a) A general meeting of the Company may, subject to compliance with the provisions of the Corporations Act and the Listing Rules, authorise the Board to establish and maintain one or more employee incentive schemes whereby shares in or options for shares in the capital of the Company are issued to employees of the Company (including directors).~~
- ~~(b) The Board may implement, suspend, terminate or vary the terms and conditions of any such employee incentive share schemes as and when it considers appropriate.~~

## ~~22.5 Brokerage and commissions~~

~~The Company may pay brokerage or commissions to a person in respect of that person or another person agreeing to take up shares in the Company.~~

## 22.4 ~~22.6~~ Surrender of shares

The Board may accept a surrender of shares:

- (a) ~~to~~ by way of compromise of a ~~question as to whether those shares have been validly issued~~ claim; or
- (b) if surrender is otherwise within the Company's powers.

The Company may sell ~~or~~ re-issue or otherwise dispose of surrendered shares in the same way as forfeited shares.

## 23. CERTIFICATES

### 23.1 Uncertificated securities

If the Act, the Listing Rules ~~and~~or ASX Settlement Rules allow the Company not to issue a certificate for particular securities, the Company:

- (a) need not issue a certificate for those securities; and
- (b) may cancel a certificate for them without issuing another certificate,

and rules 23.3 and 23.4 apply only if there is a current certificate for those securities.

### 23.2 Certificated shares

See  
Listing  
Rule 8.14

Unless rule 23.1 applies, the Company must issue a certificate of title to shares that complies with section ~~4087~~1070C and deliver it to the holder of those shares in accordance with section ~~4096~~1071H. The Company must not charge any fee to issue a certificate except where a fee is permitted by the Listing Rules.

### 23.3 Multiple certificates and joint holders

Subject to rule 23.1, if a member requests the Company to issue several certificates each for a part of the shares registered in the member's name, the Company must do so. For this purpose, joint holders of shares are a single member. The Company may issue only 1 certificate that relates to each share registered in the names of 2 or more joint holders and may deliver the certificate to any of those joint holders.

### 23.4 Lost and worn out certificates

Subject to rule 23.1, if a certificate:

- (a) is lost or destroyed and the owner of the relevant securities applies in accordance with section ~~4089~~1072D(~~25~~), the Company must; or
- (b) is defaced or worn out and is produced to the Company, the Company may, issue a new certificate in its place.

## 24. REGISTER

### 24.1 Joint holders

If the Register names 2 or more joint holders of a share, the Company must treat the person named first in the Register in respect of that share as the sole owner of it for all purposes (including the giving of notice) except:

- (a) delivery of certificates (to which rule 23.3 applies);

- (b) right to vote (to which rule 16.4 applies);
- (c) power to give directions as to payment of, or a receipt for, dividends (to which rules 27.7 and 27.8 apply);
- (d) liability for instalments or calls (which subject to section ~~1091C~~1072E(8) is joint and several);
- (e) sale of ~~Unmarketable Parcels~~small parcels under rule 31; and
- (f) transfer.

## **24.2 Non-beneficial holders**

Subject to sections 169(6) and ~~1091C~~1072E, unless otherwise ordered by a court of competent jurisdiction or required by statute, the Company:

- (a) may treat the registered holder of any share as the absolute owner of it; and
- (b) need not recognise any equitable or other claim to or interest in a share by any person except a registered holder.

## **25. PARTLY PAID SHARES**

### **25.1 Fixed instalments**

If a share is issued on terms that some or all of the issue price is payable by instalments, the registered holder of the share must pay every instalment to the Company when due. If the registered holder does not do so, rules 25.7 to 25.16 apply as if the registered holder had failed to pay a call.

### **25.2 Pre-payment of calls**

The Board may:

- (a) accept pre-payment of some or all of the amount unpaid on a share above the sums actually called as a payment in advance of calls;
- (b) agree to payment by the Company of interest at a rate no higher than the Interest Rate on that part of the advance payment which for the time being exceeds the aggregate amount of the calls then made on the shares in respect of which it was paid; and
- (c) unless otherwise agreed between the member and the Company, repay the sum or part of it.

### **25.3 Calls made by Board**

Subject to the terms of issue of a share and to any special resolution passed under section 254N, the Board may:



- (a) make calls on a member for some or all of the money unpaid on a share held by that member;
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call before the due date for payment.

#### **25.4 Notice of call**

See Listing Rule 6.24, appendix 6A, paragraph

The Company must give a member on whom a call has been made written notice of the call:

- (a) within the time limits; and
- (b) in the form,

required by the Listing Rules.

#### **25.5 Classes of shares**

The Board may issue shares on terms as to the amount of calls to be paid and the time for payment of those calls which are different as between the holders of those shares. The Board may make different calls on different classes of shares.

#### **25.6 Obligation to pay calls**

Subject to section ~~1091C~~[1072E](#)(8), a member subject to a call must pay the amount of the call to the payee named in the notice of call no later than the time specified in the notice. Joint holders of a share are jointly and severally liable for calls.

#### **25.7 Called Amounts**

If a call is not paid on or before the day specified for payment, the Board may require the member liable for the call to pay:

- (a) interest on the amount of the call at the Interest Rate from that day until payment is made; and
- (b) all costs and expenses incurred by the Company because payment was not made on that day.

#### **25.8 Proof of call**

If on the hearing of an action for recovery of a Called Amount it is proved that:

- (a) the minute books of the Company record the Board's resolution making the call; and
- (b) notice of the call was given under rule 25.4; and

- (c) the person sued appears in the Register as a holder of the share in respect of which the call was made,

proof of those matters is conclusive proof of the debt.

### **25.9 Forfeiture notice**

At any time until a Called Amount is paid, the Board may give the relevant member a notice which:

- (a) requires the member to pay the Called Amount;
- (b) states the Called Amount at the date of the notice;
- (c) specifies how to calculate the Called Amount when payment is made;
- (d) specifies a date at least 14 days after the date of the notice by which and a place at which payment must be made; and
- (e) states that if payment is not made at that place on or before that date, the share to which the call relates is liable to be forfeited.

### **25.10 Forfeiture**

If the requirements of a notice given under rule 25.9 are not satisfied, the Board may forfeit the share in respect of which that notice was given (and all dividends, interest and other money payable in respect of that share and not actually paid before the forfeiture) by resolution passed before the Called Amount is paid.

### **25.11 Disposal and re-issue of forfeited shares**

See  
Listing  
Rule  
7.39

A share forfeited under rule 25.10 immediately becomes the property of the Company. Subject to the Listing Rules, the Board, on behalf of the Company, may:

- (a) re-issue the share with or without any money paid on it by any former holder credited as paid; or
- (b) sell or otherwise dispose of the share, and execute and register a transfer of it,

to the person and on the terms it decides.

### **25.12 Notice of forfeiture**

The Company must promptly:

- (a) give notice of the forfeiture of a share to the member who held the share immediately before the resolution for forfeiture was passed; and
- (b) enter the forfeiture and its date in the Register.

A written declaration that a share was forfeited on a specified date and notice of forfeiture was given in accordance with this document signed by a Director or Secretary is, in the absence of proof to the contrary, evidence of those facts and of the Company's right to dispose of the share.

### **25.13 Cancellation of forfeiture**

The Board may cancel the forfeiture of a share on any terms at any time before it disposes of that share under rule 25.11.

### **25.14 Effect of forfeiture**

A person who held a share which has been forfeited under rule 25.10 ceases to be a member in respect of that share but remains liable to pay the Called Amount until it is paid in full. The Board may elect not to enforce payment of an amount due to the Company under this rule.

### **25.15 Application of proceeds**

The Company must:

- (a) apply the net proceeds of any re-issue, sale or disposal of a forfeited share under rule 25.11 (after payment of all costs and expenses) to satisfy the Called Amount; and
- (b) subject to the terms of issue of the share, pay any surplus to the person who held the share immediately before forfeiture.

### **25.16 Title of new holder**

The title of the new holder of a forfeited share is not affected by any irregularity in the forfeiture or the re-issue, sale or disposal. The sole remedy of any person previously interested in the share is damages which may be recovered only from the Company. The new holder is not liable for the Called Amount.

### **25.17 Mortgage of uncalled capital**

If the Company grants a mortgage or charge over uncalled capital, the Board may delegate its power to make calls to:

- (a) the person in whose favour the mortgage or charge is granted; or
- (b) a trustee or agent for that person,

on the terms (including power to further delegate) and subject to any restrictions the Board decides. If the Board does so, a call made in accordance with the delegation is treated as made by the Board.

## **26. COMPANY LIENS**

### **26.1 Existence of liens**

Unless the terms of issue provide otherwise, the Company has a first and paramount lien on each share for:

- (a) all unpaid calls or instalments due but unpaid in respect of that share (including money payable under rule 25.7); and
- (b) amounts paid by the Company for which it is indemnified under rule 26.4.

The lien extends to all dividends payable in respect of the share and to proceeds of sale of the share.

### **26.2 Sale under lien**

If:

- (a) the Company has a lien on a share;
- (b) an amount secured by the lien is due and payable;
- (c) the Company has given notice to the member registered as the holder of the share:
  - (i) requiring payment of the amount which is due and payable and secured by the lien;
  - (ii) stating the amount due and payable at the date of the notice;
  - (iii) specifying how to calculate the amount due when payment is made; and
  - (iv) specifying a date (at least 10 ~~business days~~Business Days after the date of the notice) by which and a place at which payment of that amount must be made; and
- (d) the requirements of the notice given under paragraph (c) are not fulfilled,

the Company may sell the share as if it had been forfeited under rule 25.10. Rules 25.11, 25.15 and 25.16 apply, to the extent practical and modified as necessary, as if the amount referred to in paragraph (b) were the Called Amount in respect of that share.

### **26.3 Protection of lien**

The Company may do anything necessary or desirable under the ASX Settlement Rules to protect a lien or other interest in shares to which it is entitled by law or under this document.

## 26.4 Indemnity for payments required to be made by the Company

If the law of any jurisdiction imposes or purports to impose any immediate, future or possible liability on the Company, or empowers or purports to empower any person to require the Company to make any payment, on account of a member or referable to a share held by that member (whether alone or jointly) or a dividend or other amount payable in respect of a share held by that member, the Company:

- (a) is fully indemnified by that member from that liability;
- (b) may recover as a debt due from the member the amount of that liability together with interest at the Interest Rate from the date of payment by the Company to the date of re-payment by the member; and
- (c) subject to rule 29.5, may refuse to register a transfer of any share by that member until the debt has been paid to the Company.

Paragraph (c)  
replaces  
section  
1094D

1072E(3)

Nothing in this document in any way prejudices or affects any right or remedy which the Company has (including any right of set-off) and, as between the Company and the member, any such right or remedy is enforceable by the Company.

## 27. DIVIDENDS

### 27.1 Accumulation of reserves

The Board may:

- (a) set aside out of profits reserves to be applied, in the Board's discretion, for any purpose it decides and use any sum so set aside in the business of the Company or invest it in investments selected by the Board and vary and deal with those investments as it decides; or
- (b) carry forward any amount out of profits which the Board decides not to distribute without transferring that amount to a reserve; or
- (c) do both.

### 27.2 When a debt arises

The Company does not incur a debt merely by fixing the amount or time for payment of a dividend. A debt arises only when the time fixed for payment arrives. ~~The decision to pay a dividend may be revoked by the Board at any time before then.~~ However, where a dividend is declared, the Company incurs a debt at the time of declaring the dividend. The Board may, if it considers it is appropriate, before the payment date of a dividend:

- (a) rescind a decision to pay such dividend;
- (b) reduce the amount of the dividend to be paid; or

(c) defer the payment date of such dividend.

### **27.3 ~~Payment~~Determination of dividends**

Subject to the Act, ~~rules 27.2, 27.4 and 27.9, and the terms of issue of shares,~~ the Board may ~~resolve to pay any dividend it thinks appropriate and fix the~~from time ~~for payment.~~to time:

(a) declare a dividend or determine that a dividend is payable (without declaring a dividend) to members entitled to the dividend; and

(b) fix the amount, the time for payment and the method of payment of any dividend.

### **27.4 Amount of dividend**

Subject to the terms of issue of shares, the Company may pay a dividend on 1 class of shares to the exclusion of another class. Subject to rule 27.5, each share of a class on which the Board resolves to pay a dividend carries the right to participate in a dividend in the same proportion that the amount for the time being paid on the share bears to the total issue price of the share.

### **27.5 Prepayments, payments during dividend period and credits without payment**

For the purposes of rule 27.4:

- (a) an amount paid in advance of calls is not taken into account as part of the amount for the time being paid on a share;
- (b) if an amount was paid on a share during the period to which a dividend relates, the Board may resolve that only the proportion of that amount which is the same as the proportion which the period from the date of payment to the end of the period to which the dividend relates bears to the total period to which the dividend relates, is to count as part of the amount for the time being paid on the share; and
- (c) an amount credited on a partly paid share without payment in money or money's worth being made to the Company is not taken into account as a part of the amount for the time being paid on a share.

### **27.6 Dividends in kind**

The Board may resolve to pay a dividend in cash or satisfy it by distribution of specific assets (including shares or securities of any other corporation), the issue of shares or the grant of options. If the Board satisfies a dividend by distribution of assets, the Board may:

- (a) fix the value of any asset distributed;
- (b) make cash payments to members on the basis of the value fixed so as to adjust the rights of members between themselves; and

- (c) vest an asset in trustees.

## 27.7 Method of payment

- (a) The Board may decide the method of payment of any dividend or other amount in respect of a share. Different methods of payment may apply to different members or groups of members (such as overseas members). Without limiting any other method of payment which the Company may adopt, the Company may:
- (i) ~~The Company may pay any cash dividend, interest or other money payable~~ make any payment in respect of shares by cheque sent, and may distribute assets by sending the certificates or other evidence of title to them, through the post directed to:
- (A) ~~(a)~~ the address of the member (or in the case of a jointly held share, the address of the joint holder named first in the Register); or
- (B) ~~(b)~~ to any other address the member (or in the case of a jointly held share, all the joint holders) directs in writing<sup>7.1</sup>
- and is sent at the member's risk.
- (ii) make any payment in respect of shares by such electronic means or other means approved by the Directors directly to an account (of a type approved by the Directors) nominated in writing by the member or joint holders of a Share.
- (b) If the Directors decide that payments will be made by electronic transfer into an account (of a type approved by the Directors) nominated by a member, but no such account is nominated by the member or an electronic transfer into a nominated account is rejected or refunded, the Company may credit the amount payable to an account of the Company to be held until the member nominates a valid account.
- (c) An amount credited to an account under rule 27.7(b) is to be treated as having been paid to the member or joint holder at the time it is credited to that account. The Company will not be a trustee of the money and no interest will accrue on the money.

## 27.8 Joint holders' receipt

Any one of the joint holders of a share may give an effective receipt for any dividend, interest or other money payable in relation to that share.

## 27.9 Retention of dividends by Company

The Company may retain the dividend payable on a share:

- (a) of which a person seeks to be registered as the holder under rules 30.2 or 30.3, until that person is registered as the holder of that share or transfers it; and
- (b) on which the Company has a lien, to satisfy the liabilities in respect of which the lien exists.

## 27.10 No interest on dividends

No member may claim, and the Company must not pay, interest on a dividend (either in money or kind).

## 28. **SHARE**DIVIDEND REINVESTMENT PLANS

### 28.1 Implementing **share**dividend reinvestment plans

The Company ~~in general meeting may by ordinary resolution authorise the Board to~~may implement one or more of:

- (a) a dividend re-investment plan under which any dividend or other cash payment in respect of a share may, at the election of the member entitled to it, be:
  - (i) retained by the Company and applied in payment for fully paid shares issued under the plan; and
  - (ii) treated as having been paid to the member as a dividend and simultaneously re-paid by the member to the Company to be held by it and applied in accordance with the plan; or
- (b) any other plan under which members may elect that dividends or other cash payments in respect of shares be satisfied by the allotment of further shares, or that issues of further shares be made in place of dividends.

### 28.2 Board obligations and discretions

The Board:

- (a) must do everything necessary or desirable to give effect to a **share**dividend reinvestment plan implemented under rule 28.1 and the rules governing it; and
- (b) may:
  - (i) vary the rules governing; or
  - (ii) suspend or terminate the operation of,



~~(c) a share dividend reinvestment~~ plan implemented under rule 28.1 as it thinks appropriate.

## 29. TRANSFER OF SHARES

### 29.1 Modes of transfer

Subject to this document and to any restrictions attached to a member's shares, a member may transfer a share by:

- (a) a Market Transfer; or
- (b) a written document ~~which:~~ in any usual form or in any other form approved by the Directors.

~~(i) shows the jurisdiction of registration of the Company;~~

~~(ii) relates only to shares of 1 class; and~~

~~(iii) is a sufficient instrument of transfer of marketable securities under sections 1101 or 1102 or in any other form approved by the Board or ASX.~~

The Company must ~~not charge any fee on transfer of a share.~~ register all registrable transfer forms (including paper-based 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.

### 29.2 Market ~~transfers~~ Transfers

The Company:

- (a) may do anything permitted by the Act, the Listing Rules and the ASX Settlement Rules that the Board thinks necessary or desirable in connection with the participation of the Company in a computerised or electronic system established or recognised by the Act, the Listing Rules, or the ASX Settlement Rules for the purpose of facilitating dealings in shares; and
- (b) must comply with obligations imposed on it by the Listing Rules or the ASX Settlement Rules in relation to Market Transfers.

### 29.3 Transfer by written document

Replaces  
section  
~~1091D~~10  
~~72F~~(2)

A document of transfer under rule 29.1(b) must be:

- (a) delivered to the registered office of the Company or the address of the Register last notified to members by the Company;
- (b) accompanied by the certificate (if any) for the shares to be transferred or evidence satisfactory to the Board of its loss or destruction; and

- (c) marked with payment of any stamp duty payable.

Property in and title to a document of transfer that is delivered to the Company (but not the shares to which it relates) passes to the Company on delivery.

#### 29.4 Restricted securities

If any securities of the Company are classified as restricted securities under the Listing Rules, then despite any other provision of this constitution:

- (a) during the escrow period set by the restriction agreement required by ASX in relation to those securities:
- (i) the member who holds the restricted securities may not dispose of ~~them~~, or agree or offer to dispose of, them except as permitted by the Listing Rules or ASX; and
  - (ii) if the securities are in the same class as quoted securities, the member who holds the restricted securities will be taken to have agreed in writing that the restricted securities are to be kept on the Company's issuer sponsored subregister and are to have a holding lock applied for the duration of the escrow period applicable to those securities;
  - (iii) the member who holds the restricted securities will not be entitled to participate in any return of capital on those securities during the escrow period applicable to those securities except as permitted by the Listing Rules or ASX; and
  - (iv) ~~(iii)~~ the Company must not register ~~a~~any transfer of the restricted securities or otherwise acknowledge ~~a~~any disposal of them;
- except as permitted by the Listing Rules or ASX; and
- (b) if there is a breach of the Listing Rules or of the relevant restriction agreement in relation to a restricted security, the holding of that security does not entitle a member:
- (i) to be present, speak or vote at, or be counted in the quorum for, a meeting of members; or
  - (ii) to receive any dividend or other distribution,
- while the breach continues.

In this rule 29.4 "dispose" (and other grammatical forms of it) has the meaning given by the Listing Rules.

## 29.5 Refusal to register transfer

Replaces  
section  
~~1091D~~[1072F](#)(3)

The Board:

- (a) may refuse to register a transfer of shares only if that refusal would not contravene the Listing Rules or the ASX Settlement Rules;
- (b) subject to section 259C, must not register a transfer to a subsidiary of the Company; and
- (c) must not register a transfer if the Act, the Listing Rules or the ASX Settlement Rules forbid registration.

If the Board refuses to register a transfer, the Company must give the lodging party notice of the refusal and the reasons for it within 5 ~~business days~~[Business Days](#) after the date on which the transfer was delivered to it. [Failure to give that notice will not invalidate the Board's decision to refuse to register the transfer.](#)

## 29.6 Transferor remains holder until transfer registered

Replaces  
section  
~~1091D~~[1072F](#)(1)

The transferor of a share remains the holder of it until:

- (a) if the transfer is a Market Transfer, the time the ASX Settlement Rules provide that the transfer takes effect; and
- (b) otherwise, the transfer is registered and the name of the transferee is entered in the Register.

## 29.7 Powers of attorney

The Company may assume, as against a member, that a power of attorney granted by that member that is lodged with or produced or exhibited to the Company remains in force, and may rely on it, until the Company receives express notice in writing at its registered office of:

- (a) the revocation of the power of attorney; or
- (b) the death, dissolution or insolvency of the member.

## 29.8 Proportional Takeover Bids

Schedule 2 applies and forms part of this Constitution.

## 30. TRANSMISSION OF SHARES

### 30.1 Death of joint holder

The Company must recognise only the surviving joint holders as being entitled to shares registered jointly in the names of a deceased member and others. The estate of the deceased joint holder is not released from any liability in respect of the shares.

## 30.2 Death of single holder

The Company must not recognise any one except the legal personal representative of the deceased member as having any title to shares registered in the sole name of a deceased member. If the personal representative gives the Board the documents described in sections ~~1091~~[1071B\(412\)](#) or ~~1091~~[1071B\(713\)](#) or other information that satisfies the Board of the representative's entitlement to be registered as holder of the shares:

- (a) subject to rules 29.5 and 30.4 the Company must register the personal representative as the holder of the shares as soon as practical after receipt of a written and signed notice to the Company from the representative requiring it to do so; and
- (b) whether or not registered as the holder of the shares, the personal representative:
  - (i) may, subject to rule 29, transfer the shares to another person; and
  - (ii) has the same rights as the deceased member.

## 30.3 Transmission of shares on insolvency or mental incapacity

Subject to the Bankruptcy Act 1966, if a person entitled to shares because of the insolvency or mental incapacity of a member gives the Board the information it reasonably requires to establish the person's entitlement to be registered as holder of the shares:

- (a) subject to rules 29.5 and 30.4 the Company must register that person as the holder of the shares as soon as practical after receipt of a written and signed notice to the Company from that person requiring it to do so; and
- (b) whether or not registered as the holder of the shares, that person:
  - (i) may, subject to rule 29, transfer the shares to another person; and
  - (ii) has the same rights as the insolvent or incapable member.

If section ~~1091A~~[1072C](#) applies, this rule is supplemental to it.

## 30.4 Refusal to register holder

The Company has the same right to refuse to register a personal representative or person entitled to shares on the insolvency or mental incapacity of a member as it would have if that person were the transferee named in a transfer signed by a living, solvent, competent member.

## 31. UNMARKETABLE ~~SMALL~~ PARCELS

### 31.1 Board power of sale

The Board may sell ~~a share that is part of an Unmarketable Parcel~~ the shareholdings of Minority Members if it does so in accordance with this rule. This rule may be invoked only once in any twelve month period.

The exercise by the Company of its powers under this rule 31 to sell a Minority Member's shares extinguishes:

- (a) all interests in those shares of the former Minority Member; and
- (b) all claims against the Company in respect of those shares by that Minority Member, including all dividends determined to be paid in respect of those shares and not actually paid.

### 31.2 Notice of proposed sale

Once in any 12 month period, the Board may ~~given~~ give written notice to a ~~member who holds an Unmarketable Parcel~~ Minority Member (Notice):

- (a) stating that it intends to sell the ~~Unmarketable Parcel~~ shareholdings of the Minority Member; and
- (b) specifying a date at least ~~35 business days after~~ 6 weeks from the date the notice is ~~given~~ sent by which the ~~member~~ Minority Member may give the Company written notice that the ~~member~~ Minority Member wishes to retain the holding.

### ~~31.3 Public notice of intention to sell~~

~~Before the sale, the Board must publish a notice in a newspaper circulating generally in the area in which the member's address in the Register is, that states:~~

- ~~(a) the Board intends to sell the Unmarketable Parcel;~~
- ~~(b) the name of the member; and~~
- ~~(c) the number of shares the Board intends to sell.~~

### ~~31.4 Second notice to member~~

~~Before selling an Unmarketable Parcel but after the date specified under rule 31.2(b) the Board must give the holder of the Unmarketable Parcel a second written notice stating:~~

- ~~(a) that it intends to sell the Unmarketable Parcel;~~

~~(b) the date on which it intends to sell it (which must be at least 15 business days after the date of the notice); and~~

~~(c) that the Company will not sell the Unmarketable Parcel if, before it is sold, the member gives the Company a written notice that the member wants to keep the Unmarketable Parcel.~~

### 31.3 ~~31.5~~ **No sale where ~~member~~ Minority Member gives ~~notices~~ notice**

The Company must not sell ~~an Unmarketable Parcel~~ a Minority Member's shareholding if the Company receives a written notice ~~that the member wants to keep it~~ from the Minority Member within the timeframe specified in rule 31.2(b) that the Minority Member wishes to retain the holding.

### 31.4 ~~31.6~~ **Joint holders**

If ~~an Unmarketable Parcel~~ the Minority Member's shareholding is held jointly, the Company must give ~~notice~~ the Notice under ~~rules~~ rule 31.2 ~~and 31.4~~ to each of the joint holders.

### 31.5 ~~31.7~~ **Terms of sale**

A sale of shares under this rule includes all dividends payable on and other rights attaching to them. The Company or the purchaser must pay the costs of the sale. Otherwise, the Board may decide the manner, time and terms of sale.

### 31.6 ~~31.8~~ **Share transfers**

~~For the purpose of giving effect to this rule each Director and Secretary has power to:~~

~~(a) effect a Market Transfer; or~~

~~(b) execute a share transfer under rule 29.3;~~

~~as agent for a member who holds an Unmarketable Parcel.~~

If, before 5.00pm Perth time on the date specified in the Notice, the Company has not received a notice from the Minority Member that it wishes to retain its holding, then the Minority Member is taken to have irrevocably appointed the Company as its agent, and the Company may:

(a) after the time specified in the Notice, and for the purpose of selling the shares constituting less than a marketable parcel that are in a CHES Holding, initiate a holding adjustment to move those shares from that CHES Holding to an Issuer Sponsored Holding or certificated holding;

(b) sell the shares constituting less than a marketable parcel on-market or in any other way determined by the Company;

- (c) deal with the proceeds of sale under rule 31.7 which, for the avoidance of doubt, and to the extent permitted by law, may be pooled together such that an average price is paid on all shares sold less reasonable expenses (unless the expenses are borne by the Company); and
- (d) receive any disclosure document, including a financial services guide, as agent for the Minority Member.

### **31.7** ~~31.9~~ **Application of proceeds**

- (a) The proceeds arising from any sale under rule 31 may, to the extent permitted by law, be pooled together. A person whose proceeds have been so pooled must be paid the amount equal to the number of their shares sold under the sale multiplied by the volume weighted average price of all shares whose proceeds have been allocated to that pool, less:
  - (i) any expenses of those sales permitted to be deducted by this Constitution; and
  - (ii) any Called Amount in respect of that Divested Member's shares.
- (b) The Company must:
  - (i) ~~(a) deduct any Called Amount in respect of the shares sold under this rule from~~ pay the proceeds of any sale ~~and pay the balance~~ or other disposal of shares pursuant to this rule 31 into a separate bank account it opens and maintains for the purpose only;
  - (ii) ~~(b) hold that balance~~ such proceeds in trust for the previous holder of the shares (the "**Divested Member**");
  - (iii) ~~(c) subject to rule 31.7(a),~~ as soon as practical give written notice to the Divested Member stating:
    - (A) ~~(i) what the balance is~~ amount of proceeds that the Company is holding on their behalf; and
    - (B) ~~(ii) that it is holding the balance~~ such amount for the Divested Member while awaiting the Divested Member's instructions and return of the certificate (if any) for the shares sold or evidence of its loss or destruction; and
  - (iv) ~~(d) if the shares sold were certificated, not pay the proceeds of sale out of the trust account until it has received the certificate for them or evidence is satisfied~~ of its loss or destruction; and.
- ~~(e) subject to paragraph (iv), deal with the amount in the account as the Divested Member instructs.~~
- (c) Until the proceeds of a sale of a share sold by the Company are claimed or otherwise disposed of according to law, the Directors may invest or use the

proceeds in any other way for the benefit of the Company. The Company is not required to pay interest on money payable to a Divested Member.

### **31.8 ~~31.10~~ Protections for transferee**

The title of the new holder of a share sold under this rule is not affected by any irregularity in the sale. The sole remedy of any person previously interested in the share is damages which may be recovered only from the Company.

### **31.9 ~~31.11~~ No sale where takeover bid announced**

~~Notwithstanding rule 31.1, the Company may not proceed with the sale of an Unmarketable Parcel where a takeover bid for the Company has been announced, but that sale may recommence after the offers made under the takeover bid have expired.~~

The Company's power to sell under rule 31 lapses where a takeover bid for the Company has been announced, but the procedure may recommence after the close of the offers made under the takeover bid.

### **31.10 Certificate conclusive**

A written statement by a Director or Secretary of the Company that:

- (a) any notice required to be served by or on the Company was or was not served, as the case may be;
- (b) any resolution of Directors required to be made was made; and
- (c) that a share in the Company has been duly sold under this rule 31.

shall be sufficient evidence of the facts therein stated as against all persons claiming to be entitled to such shares and to the right and title of the Company to dispose of the same.

## **32. ALTERATION OF SHARE CAPITAL**

### **32.1 Capitalisation of profits**

The Company may capitalise profits, reserves or other amounts available for distribution to members. Subject to the terms of issue of shares, members are entitled to participate in a capital distribution in the same proportions in which they are entitled to participate in dividends.

### **32.2 Adjustment of capitalised amounts**

The Board may settle any difficulty that arises in regard to a capitalisation of profits as it thinks appropriate and necessary to adjust the rights of members among themselves including:

- (a) fix the value of specific assets;



- (b) issue fractional certificates;
- (c) make cash payments to members on the basis of the value fixed or on the basis that fractional entitlements are disregarded so as to adjust the rights of members between themselves; and
- (d) vest cash or specific assets in trustees.

### 32.3 Conversion of shares

Subject to sections 254G and 254H, the Listing Rules and rules 22.2 and ~~32.5~~[32.4](#), the Company may convert:

- (a) shares into a larger or smaller number of shares;
- (b) an ordinary share into a preference share; and
- (c) a preference share into an ordinary share,

by resolution passed at a meeting of members (but, in the case of a conversion of partly paid shares into a larger number of shares the proportion between the amount paid and the amount unpaid on each share must be the same as before the conversion).

### 32.4 Reduction of capital

Subject to the Listing Rules, the Company may reduce its share capital:

- (a) by reduction of capital in accordance with Division 1 of Part 2J.1;
- (b) by buying back shares in accordance with Division 2 of Part 2J.1;
- (c) in the ways permitted by sections 258E and 258F; or
- (d) in any other way for the time being permitted by the Act.

### 32.5 Variation of rights

If the Company issues different classes of shares, or divides issued shares into different classes, the rights attached to shares in any class may (subject to [the Act](#), [including](#) sections 246C and 246D) be varied or cancelled:

- (a) with the written consent of the holders of a majority of the issued shares of the affected class; or
- (b) by ~~ordinary resolution~~[Ordinary Resolution](#) passed at a meeting of the holders of the issued shares of the affected class.

Subject to the terms of issue of shares, the rights attached to a class of shares are not treated as varied by the issue of further shares of that class.

## **33. WINDING UP**

### **33.1 Distribution of assets generally**

If the Company is wound up, the liquidator may, with the sanction of a special resolution:

- (a) divide the assets of the Company among the members in kind;
- (b) for that purpose fix the value of assets and decide how the division is to be carried out as between the members and different classes of members; and
- (c) vest assets of the Company in trustees on any trusts for the benefit of the members as the liquidator thinks appropriate.

### **33.2 No distribution of liabilities**

The liquidator cannot compel a member to accept marketable securities in respect of which there is a liability as part of a distribution of assets of the Company.

### **33.3 Distribution not in accordance with legal rights**

If the liquidator decides on a division or vesting of assets of the Company under rule 33.1 which does not accord with the legal rights of the contributors, any contributory who would be prejudiced by it may dissent and has ancillary rights as if that decision were a special resolution passed under section 507.

## **34. NOTICES**

### **34.1 Notices by Company**

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
  - (i) delivered personally;
  - (ii) sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; ~~or~~
  - (iii) sent by fax to the fax number (if any) nominated by that person; ~~or~~
  - (iv) sent by electronic message to the electronic address (if any) nominated by that person; ~~or~~ or

(v) notifying the person by an electronic means nominated by that person that:

(A) the notice is available; and

(B) how the person may access the notice.

### **34.2 Overseas members**

A member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

### **34.3 When notice is given**

A notice to a person by the Company is regarded as given and received:

(a) if it is delivered personally or sent by fax or electronic ~~message~~means:

(i) by 5.00 pm (local time in the place of receipt) on a ~~business day~~Business Day - on that day; or

(ii) after 5.00 pm (local time in the place of receipt) on a ~~business day~~Business Day, or on a day that is not a ~~business-day~~Business Day - on the next ~~business-day~~Business Day; and

(b) if it is sent by mail – on the ~~business-day~~Business Day after it was posted.

A certificate in writing signed by a Director or Secretary of the Company stating that a notice was sent is conclusive evidence of service.

### **34.4 Notice to joint holders**

Notice to joint holders of shares must be given to the joint member named first in the Register. Every person who becomes entitled to a share is bound by every notice in respect of that share that was properly given to a person registered as the holder the share before the transfer or transmission of the share was entered in the Register.

### **34.5 Counting days**

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

### **34.6 Certificate of Director or Secretary**

A certificate signed by a Director or Secretary that a notice was given by the Company as set out in the certificate is admissible as evidence, and is conclusive evidence, that the notice was given.

### 34.7 Notices to "lost" members

If:

- (a) on 2 or more consecutive occasions a notice served on a member in accordance with this rule is returned unclaimed or with an indication that the member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a member is not at the address shown in the Register or notified to the Company under rule 34.2,

the Company may give effective notice to that member by exhibiting the notice at the Company's registered office for at least 48 hours. All notices are taken to be served at the commencement of that period, and need not be addressed to the member.

This rule ceases to apply if the member gives the Company notice of a new address.

### 35. UNCLAIMED MONEY

(a) The Company must deal with unclaimed dividends and distributions and unclaimed proceeds of shares sold or reissued under this ~~document~~Constitution in accordance with the law relating to unclaimed money in the Company's jurisdiction of registration.

(b) Subject to paragraph (a), unclaimed dividends, other distributions or unclaimed proceeds of shares sold or reissued under this Constitution 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.

## SCHEDULE 1

### Terms of issue of preference shares

#### 1. Definitions

The following definitions apply in relation to a preference share issued under rule 22.2(a).

"**Dividend Amount**" for any Dividend Period means the amount calculated as  $\frac{DA}{= DR \times N}$   
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where:

DA = Dividend Amount;

DR = Dividend Rate; and

N = number of days in the relevant Dividend Period.

"**Dividend Date**" means a date specified in the Issue Resolution on which a dividend in respect of that preference share is payable.

"**Dividend Period**" means:

- (a) the period that begins on and includes the Issue Date and ends on and includes the day before the first Dividend Date after the Issue Date; and
- (b) the period that begins on and includes each Dividend Date and ends on and includes the day before the next Dividend Date; and
- (c) the period that begins on and includes the last Dividend Date and ends on and includes the day before the Redemption Date.

"**Dividend Rate**" means the rate specified in the Issue Resolution for the calculation of the amount of dividend to be paid on that preference share on any Dividend Date.

"**franked dividend**" has the meaning given to that term by section 160APA of the Tax Act.

"**Issue Date**" means the date on which the share is issued.

"**Issue Resolution**" means the resolution passed under clause 2 of this schedule.

"**redeemable preference share**" means a preference share which the Issue Resolution specifies is liable to be redeemed:

- (a) at a fixed time or on the happening of a particular event;
- (b) at the Company's option; or

(c) at the holder's option.

**"Redemption Amount"** in relation to a redeemable preference share means the amount specified in the Issue Resolution to be paid on redemption of that share.

**"Redemption Date"** in relation to a redeemable preference share, means the date on which the Issue Resolution requires the Company to redeem that share.

**"Tax Act"** means the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, or both, as applicable.

## 2. **Issue Resolution**

If the Board resolves to issue a preference share, it must pass an Issue Resolution which specifies:

- (a) the Dividend Date;
- (b) the Dividend Rate;
- (c) whether dividends are cumulative or non-cumulative;
- (d) whether the share is a redeemable preference share or not, and if so:
  - (i) the Redemption Amount; and
  - (ii) if the share is redeemable at the end of a fixed period, the Redemption Date, or otherwise the circumstances (if any) in which the share is redeemable at the option of the holder or of the Company, the way in which that option must be exercised and the way in which the resulting Redemption Date is ascertained,

and may also specify that the dividend must be a franked dividend or must not be a franked dividend.

## 3. **Franked dividends**

If the Issue Resolution specifies that the dividend on preference shares must be a franked dividend, it may also specify:

- (a) the extent to which the dividend must be franked (within the meaning of the Tax Act); and
- (b) the consequences of the dividend not being franked, which may include an increase of the dividend by the amount of franking credit which would have been imputed to the holder of the share under the Tax Act if the dividend had been franked in accordance with the Issue Resolution.

#### 4. **Dividend entitlement**

The holder of a preference share is entitled, in priority to any payment of dividend on any other class of shares, to a preferential dividend of the Dividend Amount for each Dividend Period. The dividend entitlement is cumulative if the Issue Resolution states that it is cumulative and otherwise is non-cumulative.

#### 5. **Priority on winding up**

The holder of a preference share is entitled, on a winding up, to payment in cash of:

- (a) the amount then paid up on it; and
- (b) if the Issue Resolution states that dividends are cumulative, any arrears of dividend,

in priority to any payment to the holders of any other class of shares but has no right to participate in surplus assets and profits of the Company.

#### 6. **Voting**

The holder of a preference share has no right to vote at any meeting of members of the Company except:

- (a) during a period during which a dividend (or part of a dividend) in respect of the share is in arrears; and
- (b) if approval of preference shareholders is required under Part 2J.1:
  - (i) on a proposal to reduce the Company's share capital; or
  - (ii) on a resolution to approve the terms of a buy-back agreement, then on that proposal or resolution;
- (c) on a proposal that affects rights attached to the preference share;
- (d) on a proposal to wind up the Company;
- (e) on a proposal for the disposal of the whole of the Company's property, business and undertaking; and
- (f) during the winding-up of the Company.

#### 7. **Notices and financial reports**

The Company must give the holder of a preference share notice of each meeting of members in accordance with rule 13 and send the holder financial reports in accordance with rule 21.2.

**8. Redemption of redeemable preference shares**

Subject to the Act, the Company must redeem a redeemable preference share on the Redemption Date by paying the Redemption Amount to the holder in cash, by cheque or in any other form that the holder agrees to in writing. If the Company sends the holder of a redeemable preference share a cheque for the Redemption Amount, the share is redeemed on the date on which rule 34.3(b) would treat the cheque as being received by the holder, whether or not the holder has presented the cheque. If the holder of a redeemable preference share does not present a cheque for the Redemption Amount within a reasonable period after it is sent, the Company must deal with the Redemption Amount in accordance with rule 35.

**9. Equal ranking issues**

The issue of further preference shares that rank equally with any issued preference shares is not taken to affect the rights of the holders of the existing preference share whether or not the Dividend Rate for the new preference shares is the same as or different from that applicable to that preference share.



## SCHEDULE 2

### PROPORTIONAL TAKEOVER BID

#### 1. **Special definitions**

The following definitions apply to these rules.

"**Accepted Offer**" means an offer under a proportional takeover bid that has been accepted and from the acceptance of which a binding contract has not resulted as at the end of the Resolution Deadline.

"**Approving Resolution**" means a resolution to approve the proportional takeover bid passed in accordance with rule 4 as contained in this Schedule.

"**Resolution Deadline**" means the day that is 14 days before the last day of the bid period of the proportional takeover bid or a later day allowed by the Australian Securities and Investments Commission.

A reference to "**an associate of**" another person is a reference to a person who is an associate of the first person because of sections 11, 12 and 15 ~~of the Act~~.

#### 2. **Limited life of rules**

These rules cease to apply by force of section 648G(1) ~~of the Act~~ at the end of three years starting when these rules were inserted in the constitution or starting when these rules were last renewed in accordance with ~~that~~ section 648G(2).

#### 3. **Restriction on registration of transfers**

The Company must not register a transfer giving effect to a contract resulting from the acceptance of an offer made under a proportional takeover bid until an Approving Resolution is passed.

#### 4. **Approving Resolution**

If offers have been made under a proportional takeover bid for securities in a class issued by the Company:

- (a) an Approving Resolution must be voted on at a meeting, convened and conducted by the Company, of the persons entitled to vote on the Approving Resolution;
- (b) the Directors must ensure that an Approving Resolution is voted on in accordance with these rules before the Resolution Deadline for the bid;
- (c) a person (other than the bidder or an associate of the bidder) who, as at the end of the day on which the first offer under the bid was made, held securities included in that class is entitled to vote on an Approving Resolution;

- (d) the bidder or an associate of the bidder is not entitled to vote on an Approving Resolution; and
- (e) an Approving Resolution that has been voted on 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 50%, and otherwise is taken to have been rejected.

**5. General meeting provisions apply**

The rules in this Constitution relating to general meetings apply, modified as necessary, to any meeting convened under these rules, except that:

- (a) a meeting may be convened on less than 28 days notice and on at least 14 days notice if the Directors considers that should be done to ensure that the meeting is held before the Resolution Deadline; and
- (b) the holder of a security that carries no right to vote at a general meeting of the Company has one vote for each security held at a meeting convened under these rules.

**6. Notice of meeting outcome**

If an Approving Resolution is voted on in accordance with these rules before the Resolution Deadline for the proportional takeover bid, the Company must, on or before the Resolution Deadline give a written notice stating that an Approving Resolution has been voted on and that the resolution has been passed or rejected to:

- (a) the bidder; and
- (b) ASX and any other relevant financial market.

**7. Failure to propose resolution**

If, as at the end of the day before the Resolution Deadline for a proportional takeover bid, no Approving Resolution has been voted on in accordance with these rules, an Approving Resolution is taken to have been passed in accordance with these rules.

**8. Rejected resolution**

If an Approving Resolution is voted on, in accordance with these rules, before the Resolution Deadline for the proportional takeover bid and is rejected:

- (a) despite section 652A ~~of the Act~~, all offers under the bid that have not, as at the end of the Resolution Deadline, been accepted, and all Accepted Offers are taken to be withdrawn at the end of the Resolution Deadline;
- (b) as soon as practical after the Resolution Deadline, the bidder must return to each person who accepted an Accepted Offer any documents

that were sent by the person to the bidder with the acceptance of the offer;

- (c) the bidder may rescind, and must rescind, as soon as practical after the Resolution Deadline, each contract resulting from the acceptance of an offer made under the bid; and
- (d) a person who has accepted an offer made under the bid may rescind the contract (if any) resulting from that acceptance.