

**Constitution**  
Waratah Hotels Limited

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**Corporations Act 2001**  
**Public company limited by Shares**  
**Constitution of**  
**Waratah Hotels Limited**  
**ACN 117 204 225**

**1 Nature of Company**

1.1 The Company is a public company limited by shares.

**2 Issue of Shares**

**Power to issue Shares**

2.1 The Shares in the Company may be issued only by the Board. The Board may issue or otherwise dispose of Shares to those persons, including Members, Directors or employees of the Company, determined by the Board.

2.2 While Stapling applies, no Shares may be issued unless there is a contemporaneous and corresponding issue of the same number of Units and Company No 2 Shares on the basis that the Shares (which must be Shares) are to be Stapled to the Units and Company No 2 Shares.

2.3 Shares may be issued, subject to the terms of the Trust Constitution and the Company No 2 Constitution so long as Stapling applies, at any price determined by the Board, including for no price.

**Special rights**

2.4 Subject to the provisions concerning Stapling, Shares may be issued with those preferred, deferred or other special rights or with those restrictions, whether with regard to dividends, voting, return of capital or otherwise as the Board determines.

**Partly Paid Shares**

2.5 While Stapling applies:

2.5.1 Partly paid Shares may not be issued unless there is a contemporaneous and corresponding issue of the same number of partly paid Units and partly paid Company No 2 Shares on the basis that the partly paid Shares (which must be Shares) are to be Stapled to the partly paid Units and the partly paid Company No 2 Shares.

2.5.2 The amount paid on a partly paid Share must be proportional to the contribution paid in respect of the partly paid Unit and partly paid Company No 2 Share so that the amount paid up in respect of the issue price of the

partly paid Share and the partly paid Units and partly paid Company No 2 Shares are at all times proportional to the total amount due in respect of each.

- 2.5.3 Any issue of partly paid Shares must be on the basis that a call will not be regarded as having been validly paid unless any amount payable at the same time in relation to the partly paid Units and partly paid Company No 2 Shares Stapled to those Shares is also paid.

### **Issue price of Shares**

- 2.6 Fully or partly paid Shares in the Company may be issued at any price so long as the price is consistent with the provisions of the Trust Constitution and Company No 2 Constitution (whilst Stapling applies) and with the Corporations Act 2001. Free Shares may be issued (ie for no price payable).

### **Effect of allotment on class rights**

- 2.7 Subject to the provisions concerning Stapling, the rights conferred on the holders of the Shares of a class allotted with preferred rights are not to be treated as varied by the allotment of further Shares by the Company ranking equally with them unless the terms of allotment of the earlier allotted Shares expressly provide otherwise.

### **Trusts over Shares**

- 2.8 Except as required by law, no person is to be recognised by the Company as holding a Share on trust.
- 2.9 Except as provided by this document or the law, the Company may recognise only an absolute right to the entirety of a Share in the registered holder and, regardless of it having notice of any other interest or right, the Company is not bound by, or compelled in any way to recognise, any equitable, contingent, future, partial or other right or interest in a Share or unit of a Share.

### **Entitlement to certificates**

- 2.10 Every person whose name is entered as a Member in the Register is entitled without payment to receive a certificate in accordance with the Corporations Act 2001.

### **Issue of certificates to joint holders**

- 2.11 The Company is not bound to issue more than one certificate in respect of a Share or Shares held jointly by several persons. Delivery of a certificate for a Share to one of several joint holders is sufficient delivery to all such holders.

### **Rights and obligations of joint holders**

- 2.12 The Board may from time to time determine the maximum number of joint holders, being not more than 3, whose names may be recorded in the Register. Until a determination is made, the maximum number is 3. The Company may record only the names of the first persons within the maximum number from the application for Shares, transfer document or notice of death and all other names may be disregarded by the Company.
- 2.13 If several persons are jointly entitled to a Share all of the following conditions apply in relation to that joint holding:

- 2.13.1 In the absence of an express direction from those persons to the contrary, the Company may enter the names of those persons as Members in the Register in the order in which their names appear on the application for Shares or the instrument of transfer or the notice of death or bankruptcy given to the Company to establish those persons' entitlement to the Share.
- 2.13.2 It is a sufficient discharge of any of the Company's obligations to those persons if the Company discharges that obligation in relation to the first named holder of the Share in the Register.
- 2.13.3 Any one of those persons may give effectual receipts for any dividend or return of capital payable to those persons.
- 2.13.4 Those persons are jointly and severally liable to pay all calls, interest and other amounts in respect of the Share.

### **Substantial holding information**

- 2.14 Part 6C.1 of the Corporations Act 2001 applies to the Company and is binding on the Members as if the Company was Listed.

### **Tracing of beneficial ownership of Shares**

- 2.15 The Company has by virtue of this clause all of the powers specified in Part 6C.2 of the Corporations Act 2001 on the basis that the provisions of that Part apply to the Company as if the Company was Listed.

## **3 Issue of Options**

### **Issue of Options**

- 3.1 Options over unissued Shares in the Company may be issued only by the Board. The Board may issue or otherwise dispose of Options to those persons, including Members, Directors or employees of the Company, determined by the Board.

### **Effect of Stapling**

- 3.2 While Stapling applies, no Options may be issued unless there is a contemporaneous and corresponding issue of the same number of options over unissued Units and unissued Company No 2 Shares on the basis that the Options (which must be in respect of unissued Shares) are to be Stapled to the options over the Units and the Company No 2 Shares.
- 3.3 While Stapling applies an Option may only be exercised if at the same time as Shares are acquired under the Option the same person contemporaneously acquires on exercise of an option over Units and Company No 2 Shares an identical number of Units and Company No 2 Shares which are then Stapled to the Shares.
- 3.4 In all other respects the same rules as apply to Shares under this document apply to Shares to be issued on the exercise of an Option.



## **4 Variation of class rights**

### **Form of consent**

- 4.1 If at any time there are different classes of Shares on issue, the rights attached to a class (unless otherwise provided by the terms of issue of the Shares of that class) may, whether or not the Company is being wound up, be varied in either of the following ways:
- 4.1.1 With the consent in writing of the holders of 75% of the Shares of that class.
  - 4.1.2 With the sanction of a special resolution passed at a separate general meeting of the holders of the Shares of the class.
- 4.2 No variation to the class rights of a Share may be made if it would affect Stapling.

### **Separate general meeting**

- 4.3 The provisions of this document relating to general meetings, with all necessary changes required by the context of this clause 3, apply to every separate general meeting except that:
- 4.3.1 Two Members represented in any manner permitted at general meetings who together hold one-third of the issued Shares of the class, or the only Member holding Shares in the class, is a quorum.
  - 4.3.2 Any person qualified to be counted in a quorum may demand a poll.

## **5 Alteration of capital**

### **Alteration of capital**

- 5.1 The Company may do anything in respect of its Share capital permitted by the Corporations Act 2001, including any one or more of the following:
- 5.1.1 If there is in this document a restriction on the number of Shares that may be on issue, increase by a Members' resolution the number of Shares which may be issued by the creation of new Shares.
  - 5.1.2 Convert all or any of its Shares into a larger or smaller number of Shares by a Members' resolution.
  - 5.1.3 Any form of capital reduction or buy back.

### **Effect of Stapling**

- 5.2 While Stapling applies, nothing may be done to alter the Share capital of the Company in the manner specified in clause 5.1 unless the Unit capital of the Trust and the share capital of Company No 2 is altered at the same time, in the same manner and to the same extent or which would directly or indirectly result in a Share no longer being Stapled to a Unit and a Company No 2 Share. This means that the things the Company must not do include the following:

- 5.2.1 Any consolidation or subdivision of its share capital unless the Trustee and Company No 2 contemporaneously implement a proportional consolidation or subdivision of the Stapled Units and Company No 2 Shares respectively.
- 5.2.2 Any reduction in its share capital unless the Trustee and Company No 2 contemporaneously implement a proportional redemption of the Stapled Units and Company No 2 Shares respectively.
- 5.2.3 Any buy back of any Share capital in itself unless contemporaneously a buy-back or redemption of the applicable Stapled Unit and Stapled Company No 2 Share is made by the Trustee and Company No 2 respectively.

### **Redemption or sale of unmarketable Shareholdings**

- 5.3 In clauses 5.4 to 5.10:

**Appointment Date** means the day after the end of the period specified in the notice given in accordance with clause 5.4.3 to Members with Unmarketable Holdings.

**Authorised Price** means the price per Share of the Shares of an Unmarketable Holding equal to its assessed value as at the Appointment Date

**Authorising Member** means a Member with an Unmarketable Holding who does not give notice to the Company in accordance with clause 5.4.4.

**Terms of Disposal** means the terms of the redemption, buy back or sale (as applicable) of each Authorising Member's Shares set out in clause 5.6.

**Unmarketable Holding** means a holding of 500 Stapled Securities or less.

- 5.4 If the Company proposes to redeem, buy back or sell Unmarketable Holdings, it may give notice under this clause to each Member with an Unmarketable Holding. The notice must include statements to the effect that:
  - 5.4.1 The notice is given in accordance with this clause.
  - 5.4.2 The Company intends to redeem, buy back or sell Members' Unmarketable Holdings.
  - 5.4.3 Members who desire to retain their Shareholdings must give notice of their desire to the Company within 21 days after the date of the notice, or any later date determined by the Company.
  - 5.4.4 A Member who does not give notice to the Company under this clause is to be regarded as irrevocably appointing the Company as the Member's agent to redeem, buy back or sell the Member's Unmarketable Holding in accordance with this clause.
- 5.5 Except if clause 5.10.2 applies, only one notice under clause 5.4 may be given by the Company in each period of 12 months.

- 5.6 On the Appointment Date each Authorising Member is regarded as having irrevocably appointed the Company as the Member's attorney to redeem, buy back or sell all the Member's Unmarketable Holding. The terms of appointment are as follows:
- 5.6.1 The redemption or buy back price or the sale price (as applicable) must be not less than the Authorised Price and must be payable in cash.
  - 5.6.2 The Company may execute a redemption request or a transfer of the Authorising Member's Shares or a proxy form for any vote on a selective buy back as attorney for the Authorising Member.
  - 5.6.3 The redemption, buy back or sale of the Unmarketable Holding must be effected within 20 business days after the end of the period specified in the notice to Members under clause 5.4 and the Company must do all that is reasonable to redeem, buy back or sell the Unmarketable Holdings of the Authorising Members.
  - 5.6.4 The Company must deduct from the redemption, buy back or sale proceeds all stamp duty that would otherwise be borne by the Authorising Members.
  - 5.6.5 The Company must send the proceeds of the redemption, buy back or sale of an Unmarketable Holding to the Authorising Member by electronic funds transfer or cheque mailed to the Member's address in the Register within 14 days after receipt of the proceeds.
  - 5.6.6 If an Authorising Member's whereabouts are unknown, the proceeds must be applied in accordance with the applicable laws dealing with unclaimed moneys.
  - 5.6.7 A redemption, buy back or sale of a Member's Unmarketable Holding must occur with respect to all Stapled Securities comprised in that Unmarketable Holding.
  - 5.6.8 In the case of a sale the Company may enforce the terms of the offer of sale and any contract arising from it on behalf of all or any of the Authorising Members.
  - 5.6.9 A dispute arising between any of the purchaser (in respect of a sale), the Company and an Authorising Member in respect of the terms of an offer of sale and the implementation of these clauses must be determined by the auditor of the Company acting as an expert and not an arbitrator.
- 5.7 A redemption, buy back or sale may be made only in accordance with the above Terms of Disposal.
- 5.8 In the case of a sale or buy back of Shares:
- 5.8.1 If all the Shares of 2 or more Authorising Members are sold to one purchaser, or are bought back by the Company, the transfer may be effected by one transfer document.
  - 5.8.2 The receipt of the Company for the proceeds of sale of the Shares of an Authorising Member is a good discharge to the purchaser who is not bound

to see to the regularity of the actions and proceedings of the Company under these clauses or to the application of the proceeds of sale.

- 5.8.3 After entry of the name of the purchaser in the Register as the holder of the Shares acquired from an Authorising Member the validity of the sale may not be questioned by any person.
- 5.9 The Company may not give a notice to Members under clause 5.4 whilst the Company is subject to a takeover scheme or takeover announcement.
- 5.10 If a takeover offer or takeover announcement is made after the giving of notice to Members under clause 5.4 and before the completion of the redemption, buy back or sale of an Unmarketable Holding:
  - 5.10.1 The authority of the Company to redeem, buy back or sell that Unmarketable Holding terminates.
  - 5.10.2 After the end of the takeover period a further notice under this clause may be given to all Members who then hold Unmarketable Holdings.

#### **Limited offer buy backs/redemptions**

- 5.11 The Company is empowered to implement a limited liquidity facility (**Limited Liquidity Facility**) under which the Company and/or interests associated with the Directors will pay for a Stapled Security it buys under the Limited Liquidity Facility. The terms of this Limited Liquidity Facility will be as follows:
  - 5.11.1 The redemption/buy back price or sale price will be equal to the Net Group Value (as defined in the Trust Constitution) divided by the number of Stapled Securities on issue, discounted by 5%.
  - 5.11.2 Redemptions and purchases through the Limited Liquidity Facility will generally be made within 10 days of the Trust, the Company and Company No 2 finalising and publishing their December half year and June full year results and Net Group Value.
  - 5.11.3 Total withdrawal offers under the Limited Liquidity Facility are expected to be capped at an amount specified by the Company per half year.
  - 5.11.4 Where the total applications from holders of Stapled Securities to use the Limited Liquidity Facility exceed the available facility (i.e. the applications will result in the Limited Liquidity Facility cap being reached) the available facility will be used to satisfy requests made in that half year on a pro-rata basis.
  - 5.11.5 The Limited Liquidity Facility will contain such other terms as are specified by the Company in order to ensure the fair and equal application of the Limited Liquidity Facility to all holders of Stapled Securities.

## **6 Lien**

### **Money secured by lien**

- 6.1 The Company has a first and paramount lien on every Share which is not fully paid and on all dividends payable in respect of that Share for both of the following:
- 6.1.1 For all money called but unpaid or due but unpaid in respect of that Share.
  - 6.1.2 Where the Share is registered in the name of one Member only, for all money payable to the Company by the Member or, in the case of a deceased Member, by the deceased Member's estate.
- 6.2 The lien extends to reasonable interest and expenses incurred because the amount has not been paid.
- 6.3 The Board may exclude at any time by resolution a Share either wholly or in part from the lien created under this document but only on the basis that, while Stapling applies, the Unit and the Company No 2 Share to which the Share is Stapled is excluded at the same time and to the same extent.

### **Power of sale**

- 6.4 The Company may sell, in any manner which the Board thinks fit, any Shares on which the Company has a lien.
- 6.5 While Stapling applies, any such sale must be in respect of the Shares and the Units and Company No 2 Shares Stapled to those Shares.
- 6.6 A Share on which the Company has a lien must not be sold unless both of the following are satisfied:
- 6.6.1 A sum in respect of which the lien exists is presently payable.
  - 6.6.2 A period of 14 days has elapsed after the Company has given to the Member in whose name the Share is registered or the person entitled thereto by reason of the Member's death or bankruptcy a notice in writing of the Company's intention to sell the Share.
- 6.7 The notice must:
- 6.7.1 State the amount, and demand payment, of the part of the amount in respect of which the lien exists as is presently payable.
  - 6.7.2 While Stapling applies, include the amount in respect of which the lien exists on the Units and the Company No 2 Shares Stapled to those Shares as also being presently payable.
- 6.8 The Company may do all things necessary to give effect to the sale of those Shares on which the Company has a lien, including authorise a Director, Secretary or other person to execute a transfer of the Shares sold in favour of the purchaser of the Shares. While Stapling applies, any such sale must also be in respect of the Units and Company No 2 Shares Stapled to those Shares.

- 6.9 The Company must register the purchaser of any Shares sold as the holder of the Shares. The purchaser is not bound to see to the application of the purchase money. The title of the purchaser to the Shares is not affected by an irregularity or invalidity in connection with the sale.

#### **Application of proceeds of sale**

- 6.10 The proceeds of the sale must be received by the Company and the money remaining after deducting the expenses of sale must be applied in payment of that part of the amount in respect of which the lien exists as is presently payable. The residue, if any, must (subject to any amounts due in respect of Units and Company No 2 Shares Stapled to the Shares and to a like lien for sums not presently payable as existed upon the Shares before the sale) be paid to the person entitled to the Shares at the date of the sale.

## **7 Calls on Shares**

### **Power to make calls**

- 7.1 The Board may from time to time in accordance with this document make calls on Members for any money unpaid on the Members' Shares which is not by the conditions of allotment of the Share made payable at fixed times.
- 7.2 The Board may, on the issue of Shares, differentiate between the holders as to the amount of calls to be paid and the times of payment so long as, while Stapling applies, the same differentiation is made in respect of the Units and Company No 2 Shares Stapled to those Shares.
- 7.3 The Board may require that a call be paid by instalments.
- 7.4 A call or an instalment of a call may not be made payable at a date less than one month after the date fixed for the payment of the last preceding call or instalment.
- 7.5 The Board may at any time revoke or postpone a call.

### **Effect of Stapling**

- 7.6 While Stapling applies, any call must be in respect of a pro rata amount due in respect of the Units and Company No 2 Shares Stapled to those Shares, unless the Board, the Trustee and Company No 2 decide otherwise

### **Time of call**

- 7.7 A call is to be treated as made at the time when the resolution of the Board authorising the call is passed.

### **Liability to pay calls**

- 7.8 A Member on whom a call is made in accordance with this document must pay to the Company the amount called on his Shares at the time or times and place specified.

### **Interest on unpaid calls**

- 7.9 If a sum called in respect of a Share is not paid before or on the day appointed for payment, the person from whom the sum is due must pay interest on the sum from

the day appointed for payment of the sum called to the time of actual payment at a fair market rate determined by the Board. The Board may waive payment of interest, either wholly or in part, on sums called but unpaid.

#### **Sums payable on allotment or at a fixed date**

- 7.10 Any sum which by the terms of issue of a Share becomes payable on allotment or at a fixed date is for the purposes of this document treated as a call duly made and payable on the date on which by the terms of issue the sum becomes payable.
- 7.11 In case of non-payment of a sum payable on allotment or at a fixed date, all the relevant provisions of this document as to payment of interest and expenses, forfeiture, or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

#### **Advances of uncalled amounts**

- 7.12 The Board may accept all or part of the money uncalled and unpaid upon any Shares held by a Member which the Member is willing to advance to the Company.
- 7.13 While Stapling applies, any advance must be in respect of a pro rata amount due in respect of the Units and Company No 2 Shares Stapled to those Shares, unless the Board, the Trustee and Company No 2 decides otherwise.
- 7.14 The Board may authorise the payment of interest on the whole or a part of an advance of any uncalled amount due on Shares until the date the amount would have been payable but for the advance at a rate not exceeding 10% per annum or a rate fixed from time to time by the Company in general meeting.

## **8 Forfeiture of Shares**

### **Notice of default**

- 8.1 If a Member fails to pay a call or instalment of a call on the day when it is due for payment, the Board may, while any part of the call or instalment remains unpaid, give notice requiring the Member to pay the unpaid call or instalment together with any interest which may have accrued. The notice must do all of the following:
- 8.1.1 Specify a further day (not earlier than 14 days after the date of the notice) on or before which the payment required by the notice is to be made.
- 8.1.2 State that, in the event of non-payment at or before the time appointed, the Shares, and the Units and Company No 2 Shares Stapled to those Shares, in respect of which the call was made will be liable to be forfeited.

### **Forfeiture**

- 8.2 If the requirements of a notice relating to forfeiture given under this document are not complied with, any Share in respect of which the notice has been given may be forfeited by a resolution of the Board to that effect at any time before the payment required by the notice has been made.

- 8.3 While Stapling applies, any forfeiture must be on the basis that the Units and Company No 2 Shares Stapled to those Shares are also forfeited at the same time and in the same manner.
- 8.4 A forfeiture includes all dividends declared in respect of the forfeited Shares and not actually paid before the forfeiture.
- 8.5 Before a sale or disposition of a forfeited Share the Board may annul the forfeiture on terms determined by the Board.

#### **Sale of forfeited Shares**

- 8.6 A forfeited Share becomes the property of the Company and may be sold or otherwise disposed of on the terms and in the manner determined by the Board in accordance with the Corporations Act 2001.
- 8.7 While Stapling applies, any sale must also be in respect of the Units and Company No 2 Shares Stapled to those Shares.

#### **Transfer and consideration**

- 8.8 The Company may receive the consideration, if any, given for a forfeited Share on any sale or disposition of the Share and may execute a transfer of the Share in favour of the transferee. While Stapling applies, any transfer must also be in respect of the Units Company No 2 Shares Stapled to those Shares.
- 8.9 On execution of the transfer the transferee must be registered as the holder of the Share. The transferee is not bound to see to the application of any money paid as consideration.
- 8.10 The title of the transferee to the Share is not affected by any irregularity or invalidity in connection with the forfeiture, sale, or disposal of the Share.

#### **Liability of former Member**

- 8.11 A person whose Shares have been forfeited ceases to be a Member in respect of the forfeited Shares but remains liable to pay to the Company all money that, at the date of forfeiture, was payable by him to the Company in respect of the Shares.
- 8.12 The money which the former Member is liable to pay to the Company and which may be recovered at the discretion of the Board includes both of the following amounts:
  - 8.12.1 Interest on the money for the time being unpaid.
  - 8.12.2 The expenses incurred by the Company in respect of the forfeiture and sale of the Shares.
- 8.13 The liability of a defaulting Member ceases if and when the Company receives payment in full of all the money which the defaulting Member is liable to pay.

#### **Statement of forfeiture**

- 8.14 A statement in writing declaring that the person making the statement is a Director or Secretary, and that a Share has been duly forfeited on a date stated in the statement, may not be objected to by any person claiming to be entitled to the Share.



### **Non payment of other sums**

- 8.15 The provisions of this document as to forfeiture apply in the case of non-payment of a sum that, by the terms of issue of a Share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

## **9 Transfer of Shares**

### **Form of transfer**

- 9.1 A transfer of Shares must be either in writing in a usual form or in another form approved by the Board.
- 9.2 A transfer must both show the jurisdiction of incorporation of the Company and be executed by or on behalf of both the transferor and the transferee.

### **Effect of transfers**

- 9.3 A transferor remains the holder of the Shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Shares.

### **Registration procedure**

- 9.4 A transfer of Shares must be left for registration at the Office, or at another place determined by the Board, accompanied by all of the following:
- 9.4.1 The certificate for the Shares to which it relates.
  - 9.4.2 Evidence that any fee payable on registration of the transfer has been paid.
  - 9.4.3 Evidence reasonably required by the Board to show the right of the transferor to make the transfer.
- 9.5 The Directors may register the transferee as a Member and retain the document of transfer.

### **Board power to refuse registration**

- 9.6 The Board may refuse to register a transfer of Shares if either of the following apply:
- 9.6.1 The Shares are not fully paid.
  - 9.6.2 The Company has a lien on the Shares and they are not bound to give their reasons for doing so.

### **Notification of refusal to register**

- 9.7 If the Board refuses to register a transfer of a Share in the Company, the Board must give written notice of the refusal to the person who lodged the transfer within 2 months after the date on which the transfer was lodged with the Company.

### **Effect of Stapling**

- 9.8 While Stapling applies:

- 9.8.1 A transfer of a Share forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of this clause 9, the transfer is accompanied by a transfer of the Unit and Company No 2 Share to which the Share is Stapled in favour of the same transferee.
- 9.8.2 A transfer of a Share which is not accompanied by a transfer of the Unit and Company No 2 Share to which the Share is Stapled will be taken to authorise the Board as agent for the transferor to effect a transfer of the Unit and Company No 2 Share to which the Share is Stapled to the same transferee.
- 9.8.3 A transfer of any Unit and Company No 2 Share to which a Share is Stapled which is not accompanied by a transfer of the Share will be taken to authorise the Board as agent for the transferor to effect a transfer of the Share to which the Unit and Company No 2 Share is Stapled to the same transferee.
- 9.8.4 Any provision of this document which contemplates the transfer of a Share will be taken to be a reference to the transfer of a Stapled Security unless the contrary intention expressly applies.
- 9.8.5 The same rules as for the transfer of Units, Company No 2 Shares and Shares apply to options over Stapled Securities.

## **10 Transmission of Shares**

### **Transmittee right to register or transfer**

- 10.1 Subject to the Bankruptcy Act 1966 and the Corporations Act 2001, if a person entitled to a Share because of a Transmission Event gives the Board the information that they reasonably require to establish the person's entitlement to be registered as the holder of any Shares, that person may do either of the following:
  - 10.1.1 Elect to be registered as a Member in respect of those Shares by giving a signed notice in writing to the Company, and on receiving this notice the Company must register the person as the holder of those Shares. While Stapling applies, any registration must be on the basis that the person must also be registered as the holder of the Units and Company No 2 Shares Stapled to those Shares at the same time and in the same manner.
  - 10.1.2 Transfer those Shares to another person. That transfer is subject to the provisions of this document relating to the transfer of Shares.

### **Other transmittee rights and obligations**

- 10.2 A person who has given to the Board the information referred to in clause 10.1 in respect of a Share is entitled to the same rights to which that person would be entitled if registered as the holder of that Share.
- 10.3 A person registered as a Member as a result of a Transmission Event must indemnify the Company and the Board to the extent of any loss or damage suffered by the Company or the Board as a result of that registration.

### **Deceased members**

- 10.4 If a Member (not being one of several joint registered holders) dies, the Company must recognise only the legal personal representative of that Member as having any title or interest in a Share registered in the name of that Member or any benefits accruing in respect of that Share.
- 10.5 If a Member (being one of several joint registered holders) dies, the Company must recognise only the surviving joint registered holders of that Share as having any title or interest in, or any benefits accruing in respect of, that Share.
- 10.6 Nothing in this document releases the estate of a deceased joint holder from a liability in respect of a Share which had been jointly held by the deceased Member with other persons.
- 10.7 Where 2 or more persons are jointly entitled to any Share as a consequence of the death of the registered holder of that Share, they are taken to be joint holders of that Share.

### **Effect of Stapling**

- 10.8 While Stapling applies, any transfer of a Share consequent upon a transfer or transmission under this clause 10 may only be effected if there is a simultaneous transfer of the Unit and a Company No 2 Share to which it is Stapled to the same transferee.

## **11 Stapled Security Register**

- 11.1 While Stapling applies, the Board must cause to be kept and maintained a Stapled Security Register which:
- 11.1.1 May incorporate or form part of the Register.
  - 11.1.2 Must record the names of the Members, the number of Shares held, the number of Stapled Units and Stapled Company No 2 Shares held by the Members to which each Member's Shares are Stapled and any additional information required by the Corporation Act 2001 or determined from time to time by the Board.

## **12 General meetings**

### **Voting qualification time**

- 12.1 The relevant time to determine voting entitlement at a general meeting is the time of commencement of the general meeting. While Stapling applies, any determination as to voting entitlements must be on the basis that the holders of the Units and Company No 2 Shares Stapled to those Shares are also treated in the same manner and at the same time.

### **Convening of meetings by Board**

- 12.2 The Board may convene a general meeting at any time.

### **Convening of meetings by members**

- 12.3 The Board must call and arrange to hold a general meeting if required to do so under the Corporations Act 2001.

### **Directors attendance at general meetings**

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

### **Notice of general meeting**

- 12.5 A notice of a general meeting may be given by any form of communication permitted by the Corporations Act 2001. The notice must specify the place, the day and the hour of meeting and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the meeting, the general nature of the business to be transacted and any other matters as are required by the Corporations Act 2001.
- 12.6 The accidental omission to give notice of a general meeting to, or the non receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the general meeting.

### **Cancellation of general meetings**

- 12.7 The Board may cancel a general meeting, other than a general meeting which they are required to convene and hold under the Corporations Act 2001.
- 12.8 A meeting may only be cancelled in accordance with clause 12.7 if notice of the cancellation is given to all persons entitled to receive notice of the meeting at least 2 business days prior to the time of the meeting as specified in notice of meeting.

### **Quorum at general meetings**

- 12.9 Business may not be transacted at a general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Except as otherwise set out in this document, 2 Members holding Shares present in person or by representative is a quorum.
- 12.10 If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the chairperson:
- 12.10.1 If the meeting was convened by or on the requisition of Members, it must be dissolved.
- 12.10.2 Otherwise, it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Board.
- 12.11 If a meeting has been adjourned to another time and place determined by the Board, not less than 7 days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.

### **Quorum at adjourned general meetings**

- 12.12 If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

### **Appointment of chairperson of general meetings**

- 12.13 If the Directors have elected one of their number to be the chairperson of the Board then that person is entitled to preside as chairperson at every general meeting.

- 12.14 The Directors present at a general meeting must elect one of their number to chair the meeting in either of the following circumstances:

12.14.1 A Director has not been elected to the office of chairperson at Directors meetings.

12.14.2 The chairperson is not present within 30 minutes after the time appointed for the holding of the meeting or he is unwilling to act.

- 12.15 The Members present at a general meeting must elect one of their number to chair the meeting in either of the following circumstances:

12.15.1 There are no Directors present within 30 minutes after the time appointed for the holding of the meeting.

12.15.2 All Directors present decline to take the chair.

### **Chairperson's powers**

- 12.16 Subject to the terms of this document dealing with adjournment of meetings, the ruling of the chairperson on all matters relating to the order of business, procedure and conduct of the general meeting is final and no motion of dissent from a ruling of the chairperson may be accepted.

### **Adjournment of meetings**

- 12.17 The chairperson may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and to another place.

- 12.18 The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

- 12.19 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

- 12.20 Except when a meeting is adjourned for 30 days or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

### **Voting on show of hands**

- 12.21 At a general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded before that vote is taken or before the result is declared or immediately after the result is declared.

- 12.22 If a poll is not duly demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

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

- 12.23 A poll may be demanded by one of the following:
- 12.23.1 The chairperson.
  - 12.23.2 At least 5 Members entitled to vote on the resolution.
  - 12.23.3 Any Member or Members with at least 5% of the votes that may be cast on the resolution on a poll.
- 12.24 The demand for a poll may be withdrawn.
- 12.25 The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded.
- 12.26 If a poll is duly demanded, it must be taken in the manner and, except as to the election of a chairperson or on a question of adjournment, either at once or after an interval or adjournment or otherwise as the chairperson directs. The result of the poll is the resolution of the meeting at which the poll is demanded.
- 12.27 A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.

#### **Voting rights of Members**

- 12.28 Subject to any rights or restrictions for the time being attached to a class or classes of Shares both of the following apply:
- 12.28.1 On a show of hands every person present who is a Member or who represents a corporation who is a Member has one vote.
  - 12.28.2 On a poll every Member present in person or by proxy, attorney or representative has one vote for each Share held by the Member.
- 12.29 A Member is not entitled to vote or be counted in a quorum at a meeting of Members unless all calls or other sums presently payable by the Member in respect of Shares and any Units and Company No 2 Shares to which those Shares are Stapled have been paid.

#### **Joint Shareholders' vote**

- 12.30 In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, must be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority must be determined by the order in which the names stand in the Register.

### **Voting rights where calls unpaid**

- 12.31 A Member is not entitled to vote or to be counted in a quorum at a general meeting unless all calls or other sums presently payable by the Member in respect of Shares and any Units and Company No 2 Shares to which those Shares are Stapled have been paid.

### **Vote of the Chairperson at general meetings**

- 12.32 In a case of an equality of votes, whether on a show of hands or on a poll, the chairperson of a general meeting does not have a casting vote in addition to their deliberative vote (if any) as a Member.

### **Objections to voter qualification**

- 12.33 No objection may be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered. An objection to the qualification of a voter must be referred to the chairperson, whose decision is final. A vote not disallowed according to an objection as provided in this document is valid for all purposes.

### **Effect of Stapling**

- 12.34 While Stapling applies, the directors or other representatives of the Trustee and Company No 2 may attend and speak at any meeting of Members, or invite any other person to attend and speak.
- 12.35 While Stapling applies, if permitted by the Corporations Act 2001 and any applicable ASIC relief, any meeting of Members may be held with and as part of a meeting of the Unit Holders and Company No 2 Members. If such a joint meeting is permitted, the both of the following apply:
- 12.35.1 The joint meeting will be convened and held in accordance with the procedures that apply to the holding of meetings of Members, the Unit Holders and Company No 2 Members, which such modifications as the Board decides.
- 12.35.2 Any decision made by or resolution passed by the joint meeting will be taken for all purposes as a decision made by or resolution passed by the Members.

## **13 Proxies and representatives**

### **Proxies and representatives of Members**

- 13.1 At meetings of Members or classes of Members each Member entitled to vote may vote in person or by proxy or by attorney. A Member which is a corporation may appoint an individual as a representative. Except as expressly provided by the terms of their appointment, a person attending as a proxy, as the attorney of a Member, or as representing a corporation which is a Member has all the powers of a Member, except where expressly stated to the contrary in this document.

### **Appointment of proxies**

- 13.2 A Member may appoint either 1 or 2 persons as their proxy to attend and vote instead of the Member. When a Member appoints 2 proxies the appointment must specify the proportion of the Member's voting rights which each proxy is entitled to represent. A proxy need not be a Member. A document appointing a proxy must be in writing, signed by the appointor or the attorney of the appointor duly authorised in writing and be in any form permitted by the Corporations Act 2001.
- 13.3 If the notice of the general meeting for which a proxy is appointed states that proxies may be sent to a specified facsimile number for or on behalf of the Company, a document generated from the image of a document appointing a proxy that is transmitted to that facsimile number is treated as being all of the following:
- 13.3.1 In writing.
  - 13.3.2 Signed if bearing a facsimile of a signature.
  - 13.3.3 Under seal if bearing a facsimile of a seal.
  - 13.3.4 Deposited with the Company in accordance with this document.
- 13.4 If the document appointing a proxy is sent by facsimile transmission, any power of attorney or other authority under which the appointment is signed, or a notarially certified copy of that power or authority, will be taken to be deposited with the Company in accordance with this document if it is transmitted by facsimile with the facsimile transmission of the document appointing the proxy.

### **Form of proxy**

- 13.5 There is no required form for a proxy. The Board may from time to time approve a form for use at a particular meeting.

### **Authority of proxies**

- 13.6 A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution except as specified in the document.
- 13.7 A proxy may vote on a show of hands but a person holding a proxy for more than one Member has only one vote.
- 13.8 A document appointing a proxy confers authority to demand or join in demanding a poll.
- 13.9 Except as expressly provided by the document appointing a proxy, an appointment of a proxy confers authority to agree to a meeting being convened by shorter notice than is required by the Corporations Act 2001 or by this document.

### **Verification of proxies**

- 13.10 Before the time for holding the meeting or adjourned meeting at which a proxy proposes to vote, both of the following documents must be deposited with the Company as applicable:



- 13.10.1 The document appointing the proxy.
- 13.10.2 The power of attorney or other authority (if any) under which the document is signed or a notarially certified copy of that power or authority.
- 13.11 Those documents must be received at the Office, at a fax number at the Office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting not less than 48 hours before the time for holding the meeting.
- 13.12 If a general meeting has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

#### **Validity of proxies**

- 13.13 A proxy document is invalid if it is not deposited or produced prior to a meeting or a vote being taken as required by this document.

#### **Revocation of appointment of proxy**

- 13.14 A vote given in accordance with the terms of a proxy document or power of attorney is valid despite the occurrence of any one or more of the following events if no intimation in writing of any of those events has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the document is used:
  - 13.14.1 The previous death or unsoundness of mind of the principal.
  - 13.14.2 The revocation of the instrument or of the authority under which the instrument was executed.
  - 13.14.3 The transfer of the Share in respect of which the instrument or power is given.

## **14 Appointment and retirement of directors**

### **Number of Directors**

- 14.1 Until otherwise determined in accordance with this document, the number of Directors must not be less than 3 nor more than 7. The Company may, by resolution, increase or reduce the number of Directors. Alternate Directors are not to be treated as Directors for the purpose of determining the minimum or maximum number of Directors holding office.

### **Appointment of Directors**

- 14.2 The Board or the surviving Director may at any time appoint a person to be a Director, either to fill a casual vacancy or as an addition to the existing number of Directors. The total number of Directors may not exceed the number fixed in accordance with this document.
- 14.3 The Company may also by resolution appoint a person to be a Director as an addition to the existing number of Directors.

### **Retirement of Directors**

14.4 The Directors, however appointed, are not required to retire from office at an annual general meeting of the Company. A Director may retire from office by giving notice in writing to the Company of the Director's intention to retire. A notice of resignation takes effect at the time which is the later of the following:

14.4.1 The time of giving the notice to the Company.

14.4.2 The expiration of the period, if any, specified in the notice.

### **Share qualification**

14.5 A Director or alternate Director is not required to hold a Share in order to hold office as a Director or alternate Director.

### **Removal from office**

14.6 The Company may by ordinary resolution remove a Director from office and may by ordinary resolution appoint another person as a replacement. A person appointed to replace a Director removed from office must retire as a Director at the time ascertained as if the person became a Director on the day on which the Director removed from office was elected or last re-elected a Director.

### **Vacation of office**

14.7 In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act 2001 or another provision of this document, the office of Director becomes vacant in any of the following circumstances:

14.7.1 If the Director becomes an insolvent under administration.

14.7.2 If the Director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health.

14.7.3 If the Director is absent without the consent of the Board from the meetings of the Board held during a continuous period of 6 months and the Board resolves that the office of that Director be vacated.

14.7.4 If the Director becomes prohibited from being a Director by reason of an order made under the Corporations Act 2001.

## **15 Powers and proceedings of the Board**

### **Powers of the Board**

15.1 The Board may exercise all those powers of the Company as are not, by the Corporations Act 2001 or by this document, required to be exercised by the Members in general meeting or otherwise.

### **Regard to be had to interests of Unit Holders and Company No 2 Members**

15.2 While Stapling applies, the Board may in exercising any power or discretion have regard to the interests of the Members, the Unit Holders and Company No 2

Members as a whole and not only to the interests of the Members alone. This is the case notwithstanding any other provision of this document, or any rule of law or equity to the contrary, other than any relevant provision of the Corporations Act 2001.

#### **Convening of Board meetings**

- 15.3 A Director may at any time, and a Secretary must on the requisition of a Director, convene a meeting of the Board.

#### **Notice of Board meetings**

- 15.4 Notice of each meeting of the Board must be given to each Director at least 24 hours before the meeting or at another time determined by resolution of the Board. Despite that requirement both of the following apply:

15.4.1 All Directors may waive in writing the required period of notice for a particular meeting.

15.4.2 It is not necessary to give a notice of a meeting of Board to a Director who is out of Australia or who has been given leave of absence.

#### **Mode of meeting for Board**

- 15.5 A Board meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting. The Board may otherwise regulate its meetings as it thinks fit.

#### **Quorum at Board meetings**

- 15.6 At a meeting of the Board, the number of Directors whose presence is necessary to constitute a quorum is 2 or another number determined by the Board.
- 15.7 If the number of Directors is reduced below the number necessary for a quorum of Directors, the continuing Director or Directors may act only to appoint additional Directors to the number necessary for a quorum or to convene a general meeting of the Company.

#### **Voting at Board meetings**

- 15.8 Questions arising at a meeting of the Board must be decided by a majority of votes of the Directors present and voting. A decision of the majority is for all purposes a decision of the Board.

#### **Appointment of chairperson of the Board**

- 15.9 The Directors may elect a Director to chair their meetings and determine the period for which the person is to hold office.
- 15.10 If a chairperson has not been so appointed or elected, or if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act, the Directors present may choose one of their number to chair the meeting.

### **Chairperson's vote at Board meetings**

- 15.11 The chairperson has a deliberative vote as a Director but does not have a casting vote.

### **Participation where Directors interested**

- 15.12 A may be present and vote on a matter before the Board if and to the extent that they are permitted to do so under the Corporations Act 2001.
- 15.13 If there are not enough Directors to form a quorum as a result of a Director having a material personal interest then 1 or more of the Directors (including those who have a material personal interest in the matter) may call a general meeting of the Company and the general meeting may pass a resolution to deal with the matter.

### **Delegation of powers to committee**

- 15.14 The Board may delegate any of its powers to committees consisting of Directors or other persons as they think fit to act in Australia or elsewhere. The exercise of a power by a committee in accordance with this document is to be treated as the exercise of that power by the Board. In the exercise of any powers delegated to it, a committee formed by the Board must conform to the directions of the Board.

### **Proceedings of committees**

- 15.15 Except as provided in a direction of the Board, the meetings and proceedings of a committee formed by the Board must be governed by the provisions of this document, in so far as they are applicable, as if meetings and proceedings of the committee are meetings and proceedings of the Board.

### **Validity of acts of Board**

- 15.16 All acts done by a meeting of the Board or of a committee of the Board or by a person acting as a Director are valid even if it is later discovered that there is a defect in the appointment of a person to be a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

### **Minutes**

- 15.17 The Board must cause minutes of all proceedings of general meetings, of meetings of the Board and of committees formed by the Board to be entered, within one month after the relevant meeting is held, in books kept for the purpose. The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

### **Resolution in writing**

- 15.18 A resolution in writing signed by all Directors, excluding Directors who have been given leave of absence, is to be treated as a determination of the Board passed at a meeting of the Board duly convened and held.
- 15.19 A resolution in writing may consist of several documents in like form, each signed by one or more Directors and if so signed it takes effect on the latest date on which a Director signs one of the documents.

- 15.20 If a resolution in writing is signed by an alternate Director, it must not also be signed by the appointor of the alternate Director and vice versa.
- 15.21 In relation to a resolution in writing both of the following apply:
- 15.21.1 A document generated by electronic means which purports to be a facsimile of a resolution of the Board is to be treated as a resolution in writing.
- 15.21.2 A document bearing a facsimile of a signature is to be treated as signed.

## **16 Directors' remuneration**

### **Director's fees**

- 16.1 The Directors must be paid by way of fees for their services the aggregate sum determined from time to time by the Board.
- 16.2 The aggregate sum must be divided among the Directors in the proportions and in the manner from time to time agreed by the Board. If they do not agree it must be divided equally.
- 16.3 The fees payable by the Company to Directors other than executive Directors must be by a fixed sum and must not be paid by way of commission on or a percentage of profits or operating revenue.
- 16.4 The aggregate sum of the Directors fees must not be increased except with the prior approval of the Company in general meeting. The notice convening the meeting must state the amount of the increase in the aggregate sum and the maximum sum that may be paid following the increase.
- 16.5 Directors' fees accrue from day to day.

### **Payment for expenses**

- 16.6 In addition to their fees, the Directors must be paid all travelling, accommodation, and other expenses properly incurred by them in attending and returning from meetings of the Board or any committee of the Board or general meetings or otherwise in the execution of their duties as Directors.

### **Payment for extra services**

- 16.7 A Director who is called upon to perform extra services or to make a special exertion or to undertake executive or other work for the Company beyond the Director's ordinary duties may be paid additional fees for those services, exertions or work. The additional amount may be paid in one of the following ways:
- 16.7.1 Either by fixed sum or salary determined by the Board.
- 16.7.2 Either in addition to or in substitution for the fees otherwise payable to the Director.

### **Payments to former Directors**

- 16.8 Subject to the Corporations Act 2001, the Board may determine that the Company pay a gratuity, pension or allowance, at the time of or following retirement or other vacation of office to a Director or to a relative of a Director and make contributions to any fund and pay any premiums for the purchase or provision of that gratuity, pension or allowance.

## **17 Executive Directors**

### **Appointment**

- 17.1 The Board may appoint one or more of their number to hold any executive office of the Company, including that of executive chairperson or managing Director. A Director appointed to an executive office of the Company is referred to in this document as an executive Director. The appointment of a Director to an executive office may be for the period and on the terms determined by the Board, subject to the provisions of the Corporations Act 2001.

### **Termination of appointment of executive Director**

- 17.2 The Board may revoke or terminate any appointment of a Director to an executive office, but without affecting any claim for damages for breach of any employment contract between the Director and the Company. A Director appointed as executive chairperson or managing Director (or some equivalent title) will automatically cease to hold that office if they cease to be a Director.

### **Remuneration of executive Directors**

- 17.3 Subject to the terms of any agreement entered into between the Company and an executive Director, that executive Director is entitled to receive the remuneration determined by the Board. The remuneration of an executive Director may be paid by way of salary, commission, or participation in profits, or partly in one way and partly in another as determined by the Board.

### **Powers of executive Directors**

- 17.4 The Board may entrust to and confer on an executive Director any of the powers exercisable by them on the terms and conditions and with the restrictions determined by the Board. The powers conferred on an executive Director may be conferred on terms that they are to be exercised either concurrently with or to the exclusion of the Board's own powers. The Board may revoke, withdraw, alter, or vary from time to time all or any of the powers of an executive Director.

## **18 Alternate Directors**

### **Appointment of alternate Directors**

- 18.1 A Director may appoint a person to be an alternate Director in the Director's place during the period that the Director thinks fit. The appointment of an alternate Director must be in writing, signed by the Director. The appointment of an alternate Director takes effect immediately on the signing of the notice of appointment by the Director.

### **Powers of alternate Director**

- 18.2 An alternate Director is subject in all respects to the terms and conditions applying to the other Directors except as follows:
- 18.2.1 The provisions of this document which relate to the election of Directors, their fees and remuneration and the power to appoint an alternate Director.
  - 18.2.2 As expressly provided in this document.
- 18.3 An alternate Director is entitled to do all of the following:
- 18.3.1 Perform all the duties of a Director while the Director who appointed the alternate Director is not exercising or performing them.
  - 18.3.2 Receive notice of meetings of the Board.
  - 18.3.3 Attend, be counted in a quorum, and vote at meetings of the Board if the Director who appointed the alternate Director is not present.

### **Termination of appointment of alternate Directors**

- 18.4 The appointment of an alternate Director is immediately terminated if any of the following situations occurs:
- 18.4.1 The Director who appointed the alternate Director ceases to be a Director.
  - 18.4.2 The Director who appointed the alternate Director gives notice of termination of the appointment to the Company.
  - 18.4.3 The Board resolves to terminate the appointment after giving 7 days' notice of intention to remove the alternate Director to the Director who appointed the alternate Director.

## **19 Secretary**

- 19.1 The Board must appoint one or more Secretaries and may at any time terminate the appointment or appointments. The Board may determine the terms and conditions of appointment of a Secretary, including remuneration. Any one of the Secretaries may carry out any act or deed required by this document, the Corporations Act 2001 or by any other statute to be carried out by the secretary of the Company.

## **20 Indemnity and insurance**

### **Indemnity**

- 20.1 Every officer and past officer of the Company is indemnified by the Company, to the fullest extent permitted by law, against a liability incurred by that person as an officer of the Company or a subsidiary of the Company, including legal costs and expenses incurred in defending an action.

### **Insurance premiums**

- 20.2 The Company may pay the premium on a contract insuring a person who is or has been an officer of the Company to the fullest extent permitted by law.

## **21 Execution of documents**

### **Seal**

- 21.1 The Board will decide whether the Company will have a seal, and if so will provide for the safe custody of the seal.

### **Execution of documents**

- 21.2 The Company may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by any of the following persons:
- 21.2.1 2 Directors.
  - 21.2.2 A Director and the Secretary.
  - 21.2.3 A Director and some other person appointed by the Board for the purpose.
- 21.3 The Company may also execute a document without the use of a seal as permitted by the Corporations Act 2001.

### **Official and Share Seals**

- 21.4 The Company may have for use in place of the Seal outside the jurisdiction where the Seal is kept one or more official seals, to be used in accordance with procedures approved by the Board.
- 21.5 The Company may have a duplicate common seal which must be a copy of the Seal with the addition on its face of the words 'Share Seal'. A certificate referring to or relating to securities of the Company sealed with the Share seal is taken to be sealed with the Seal. Certificates referring to or relating to securities of the Company may be issued bearing a printed impression of the Share seal and printed facsimiles of the signatures of the persons permitted by this document to sign and countersign the affixing of the Seal. A certificate so issued is to be taken as sealed with the Seal.

## **22 Dividends**

### **Declaration of dividends**

- 22.1 Dividends may be declared only by the Board and a dividend may only be paid out of profits of the Company. Interest is not payable by the Company in respect of a dividend.

### **Entitlements to dividends**

- 22.2 All dividends must be declared and paid on Shares in proportion to the amounts paid (not credited) in proportion to the total amounts paid and payable (excluding amounts credited) in respect of the Shares. However, subject to that, if a Share is issued on



terms that it ranks for dividend as from a particular date, that Share ranks for dividend from that date.

- 22.3 An amount paid on a Share in advance of a call must not be treated for the purposes of this clause 22 as paid or credited as paid on the Share.

#### **Amounts due by Member**

- 22.4 The Board may deduct from any dividend payable to a Member all sums of money, if any, presently payable by the Member to the Company on account of calls or otherwise in relation to Shares in the Company.

#### **Payment of dividends by transfer of property**

- 22.5 A dividend may be paid wholly or partly by the distribution of specific assets, including paid up Shares in, or debentures of, another corporation. Where any difficulty arises in regard to a distribution satisfied wholly or in part by the distribution of assets, the Board may settle the matter as they think expedient and to that end may do any of the following as required:

- 22.5.1 Fix the value for distribution of those specific assets or any part of them.
- 22.5.2 Determine that cash payments are to be made to some Members in order to equitably adjust the rights of all Members.
- 22.5.3 Vest any of those specific assets in trustees as the Board considers expedient.

#### **Payment of dividends in cash**

- 22.6 A dividend, interest, or other money payable in cash in respect of Shares may be paid by cheque or bankers draft sent through the post directed to either of the following addresses:

- 22.6.1 The address of the holder as shown in the Register or, in the case of joint holders, to the address shown in the Register of the joint holder who is first named in the Register.
- 22.6.2 The address which the holder or joint holders direct in writing as the address for payment of dividends.

- 22.7 Every cheque or draft for moneys referred to in clause 22.6 must be made payable to the person to whom it is sent and may be made payable to bearer. Any one of 2 or more joint holders may give effectual receipts for any dividends, bonuses, or other money payable in respect of the Shares held by them as joint holders.

#### **Dividend reinvestment**

- 22.8 The Board may grant to Members or a class of Members the right to elect to reinvest cash dividends paid by the Company by subscribing for Shares in the Company on the terms determined by the Board.
- 22.9 While Stapling applies, the Board must not grant to members the right to elect to reinvest cash dividends in the manner contemplated by this clause unless an offer is made at the same time by the Trustee to issue and allot an identical number of Units

Stapled to those Shares and by Company No 2 to issue and allot an identical number of Company No 2 Shares Stapled to those Shares. The offeree shall be precluded from accepting any offer other than an offer for an equal number of Shares, Units and Company No 2 Shares.

- 22.10 While Stapling applies, the Board may authorise the reinvestment of all or part of a dividend for the subscription of Units and Company No 2 Shares to which an identical number of Shares are Stapled.

#### **Authority to capitalise profits**

- 22.11 The Board may resolve to capitalise the whole or a part of the profits or of any reserve account of the Company and may apply that amount in any manner permitted by this document or by law.

#### **Application of capitalised sum**

- 22.12 A sum capitalised must be applied for the benefit of the Members in the proportions in which those Members would have been entitled to that sum if distributed by way of dividend. A sum capitalised may be applied by the Board for the benefit of Members in any manner permitted by this document or by law. To the extent necessary to adjust the rights of Members among themselves, the Board may issue fractional certificates or make cash payments in cases where fractional certificates are required or take any other action necessary to equalise entitlements of Members.
- 22.13 While Stapling applies, any issue of Shares on a capitalisation must be accompanied by a corresponding and contemporaneous issue of Units and Company No 2 Shares Stapled to those Shares.

### **23 Winding up**

#### **Rights to capital**

- 23.1 The assets of the Company must on a winding up be applied in repayment to the Members in proportion to their respective holdings. This clause is subject to any express provision of this document, subject to the Class rights of any Shares.

#### **Powers of Liquidator**

- 23.2 If the Company is wound up, the liquidator may, with the sanction of a special resolution, do either of both of the following:
- 23.2.1 Divide amongst the Members in kind the whole or any part of the property of the Company and may for that purpose set a value which he considers fair on any property to be so divided and may determine how the division is to be carried out as between the Members or different Classes of Members.
- 23.2.2 Vest the whole or any part of that property in trustees on those trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member may be compelled to accept any Shares or other securities in respect of which there is any liability.

## **24 Notices**

### **Persons authorised to give notices**

- 24.1 A notice by either the Company or a Member in connection with this document may be given on behalf of the Company or Member by a solicitor, director or company secretary of the Company or Member. The signature of a person on a notice given by the Company may be written, printed or stamped.

### **Method of giving notices**

- 24.2 In addition to the method for giving notices permitted by statute, a notice by the Company or a Member in connection with this document may be given to the addressee by any of the following means:
- 24.2.1 Delivering it to a street address of the addressee
  - 24.2.2 Sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the addressee.
  - 24.2.3 Sending it by facsimile or e-mail to the facsimile number or e-mail address of the addressee.

### **Notices to joint holders**

- 24.3 A notice may be given by the Company to the joint holders of a Share by giving the notice to the first named joint holder of the Share shown in the Register.

### **Addresses for giving notices to Members**

- 24.4 The street address or postal address of a Member is the street or postal address of the Member shown in the Register.
- 24.5 The facsimile number or e-mail address of a Member is the number which the Member may specify by written notice to the Company as the facsimile number or e-mail address to which notices may be sent to the Member.
- 24.6 Until a person entitled to a Share in consequence of the death or bankruptcy of a Member gives notice to the Company of an address for the giving of notices, the address of that person is the address of the deceased or bankrupt Member.

### **Address for giving notices to the Company**

- 24.7 The street and postal address of the Company is the Office.
- 24.8 The facsimile number or e-mail address of the Company is the number which the Company may specify by written notice to the Members as the facsimile number or e-mail address to which notices may be sent to the Company.

### **Time notice of meeting is given**

- 24.9 A notice of meeting given in accordance with this document is to be taken as given, served and received at the following times as applicable :
- 24.9.1 If delivered in writing to the street address of the addressee, at the time of delivery.

- 24.9.2 If it is sent by post to the street or postal address of the addressee, on the business day after posting.
- 24.9.3 If sent by facsimile or e-mail to the facsimile number or e-mail address of the addressee, at the time transmission is completed.

**Time other notices are given**

- 24.10 A notice given in accordance with this document is to be taken as given, served and received at the following times as applicable:
  - 24.10.1 If delivered in writing to the street address of the addressee, at the time of delivery.
  - 24.10.2 If it is sent by post to the street or postal address of the addressee, on the 2nd (5th if outside Australia) business day after posting.
  - 24.10.3 If sent by facsimile or e-mail to the facsimile number or e-mail address of the addressee, at the time transmission is completed.

**Proof of giving notices**

- 24.11 The sending of a notice by facsimile or e-mail and the time of completion of transmission may be proved conclusively by production of either of the following:
  - 24.11.1 A transmission report by the facsimile machine from which the notice was transmitted which indicates that a facsimile of the notice was sent in its entirety to the facsimile number of the addressee.
  - 24.11.2 A print out of an acknowledgment of a copy of the notice from the system from which it was sent authorised to be a true copy by a Director or Secretary of the Company.

**Persons entitled to notice of meeting**

- 24.12 Notice of every general meeting must be given by a method authorised by this document to all of the following persons:
  - 24.12.1 Every Member.
  - 24.12.2 Every Director and alternate Director.
  - 24.12.3 Every person entitled to a Share in consequence of the death or bankruptcy of a Member who, but for the Member's death or bankruptcy, would be entitled to receive notice of the meeting.
  - 24.12.4 The auditor for the time being of the Company, if any.
- 24.13 No other person is entitled to receive notices of general meetings.

## **25 Stapling**

### **Stapling**

25.1 Each Share is Stapled to a Unit and to a Company No 2 Share to form a Stapled Security and each Stapled Security must be registered in the Stapled Security Register. The intention being that a Share and a Unit and a Company No 2 Share which are Stapled together are treated as one security to the extent possible at law. An ordinary Share in the Company must be Stapled to an ordinary Unit in the Trust and to an ordinary share in Company No 2. If Units or Company No 2 Shares of other Classes are issued, they must be Stapled to Shares in the Company having the same or similar Class rights.

### **Ability of Board to Staple**

25.2 The Board may at any time staple an un-Stapled Share to a Unit and to a Company No 2 Share which is not Stapled.

### **Issue of Stapled Securities required**

25.3 While Stapling applies, the Board must not issue Shares unless it is satisfied that each of those Shares will be Stapled to a Unit and to a Company No 2 Share to form a Stapled Security.

### **Paramountcy of Stapling**

25.4 While Stapling applies, no Director or any Member must do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Share no longer being Stapled as a Stapled Security.

25.5 However, nothing in clause 25 prohibits the Board from determining the Unstapling Date.

### **Unstapling Date**

25.6 Subject to the Corporations Act 2001 and approval by special resolutions of the Members, the Unit Holders and the Company 1 Members respectively, the Board may determine that the Stapling provisions of this document will cease to apply and that a particular date is to be the Unstapling Date.

25.7 On and from the Unstapling Date, each Share ceases to be Stapled to a Unit and to a Company No 2 Share and the Board must do all things reasonably necessary to procure that each Share is Unstapled.

25.8 If the Board determines to Unstaple the Stapled Securities, this does not prevent the Board from (subject to the same resolutions of the Members and members of the Trust) doing the following:

25.8.1 Subsequently determining that the Stapling provisions should recommence.

25.8.2 Stapling an Unstapled Share to a Unit and to a Company No 2 Share which are not Stapled.

### **Variation of Stapling provisions**

- 25.9 While Stapling applies, the consent of the Trustee and Company No 2 must be obtained to any amendment to this document which does either of the following:
- 25.9.1 Directly affects the terms on which Shares are Stapled.
  - 25.9.2 Removes any restriction on the transfer of a Stapled Security unless that restriction also exists for Units and Company No 2 Shares and is simultaneously removed for those Units and Company No 2 Shares.

## **26 Definitions and Interpretation**

### **Definitions**

- 26.1 In this document, the following definitions apply:

**ASIC** means the Australian Securities and Investments Commission and its successors.

**Associate** has the meaning given to that term in the Corporations Act 2001 (Cth).

**Board** means the board of directors of the Company.

**Company** means Waratah Hotels Limited ACN 117 204 225.

**Company No 2** means Waratah Hotels No 2 Limited ACN 619 064 998.

**Company No 2 Constitution** means the constitution of Company No 2.

**Company No 2 Member** means the holder of a Company No 2 Share.

**Company No 2 Share** means a share in Company No 2, except the one redeemable share issued to incorporate Company No 2.

**Director** means a person appointed to perform the duties of a director of the Company.

**Listed** has the meaning given to that term in the Corporations Act 2001.

**Member** means a person whose name is entered in the Register as a member of the Company.

**Offer Document** means any information memorandum, product disclosure statement, prospectus, or other offer document issued by the Company in relation to shares in the Company or options over shares in the Company.

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

**Option** means an option to subscribe a Share.

**Register** means the register of Members kept by the Company under the Corporations Act 2001.

**Seal** means the common seal of the Company, if any.

**Secretary** means a person appointed to perform the duties of a secretary of the Company.

**Share** means a share of any class in the Company.

**Stapled** means in relation to a Share, a Unit and a Company No 2 Share, being linked together so that one may not be dealt with without the other.

**Stapled Security** means one Share, one Unit and one Company No 2 Share that are Stapled together.

**Stapled Security Register** means the register of Stapled Securities to be established and maintained by or on behalf of the Company in accordance with clause 11.

**Transmission Event** means:

- (a) If a Member is an individual, the death or bankruptcy of that Member or that Member becoming of unsound mind or becoming a person whose property is liable to be dealt with under a law about mental health.
- (b) If a Member is a body corporate, the deregistration or other dissolution of that Member.
- (c) In any case, the vesting in, or transfer to, a person of the Shares of a Member without that person becoming a Member.

**Trust** means the unregistered managed investment scheme currently known as Waratah Hotel Fund ARSN 123 286 304 of which the Trustee is the trustee or responsible entity.

**Trust Constitution** means the constitution of the Trust.

**Trustee** means Waratah Funds Management Limited ACN 606 091 543 being the trustee and responsible entity of the Trust, and any replacement trustee of the Trust.

**Unit** means an unit in the Trust.

**Unit Holder** means a holder of a Unit.

**Unstapled** means, in relation to an Share, not being Stapled to a Unit and a Company No 2 Share.

**Unstapling Date** means the date determined by the Board to be the unstapling date under clause 25.6.

## Interpretation

26.2 In this document, unless the context otherwise requires:

- 26.2.1 A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative

provision, in either case whether before, on or after the date of this document.

- 26.2.2 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.
- 26.2.3 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document.
- 26.2.4 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 26.2.5 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 26.2.6 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or public authority.
- 26.2.7 A reference to dollars or \$ means Australian dollars.
- 26.2.8 References to the word 'include' or 'including' are to be construed without limitation.
- 26.2.9 A reference to a time of day means that time of day in the place where the Office is located.
- 26.2.10 A reference to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in the place where the Office is located.
- 26.2.11 Where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day.
- 26.2.12 A term of this document which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

#### **References to the constitution**

- 26.3 A reference to this document, where amended, means this document as so amended.

#### **Replaceable rules**

- 26.4 Each of the provisions of the Corporations Act 2001 which would but for this clause apply to the Company as a replaceable rule within the meaning of the Corporations Act 2001 are displaced and do not apply to the Company.

#### **Application of Corporations Act 2001**

- 26.5 The Corporations Act 2001 applies in relation to this document as if it was an instrument made under the Corporations Act 2001 as in force on the day when this document became the constitution of the Company.



**Exercise of powers**

- 26.6 Except as specifically contemplated to the contrary in this document, the Company may, in any manner permitted by the Corporations Act 2001 exercise any power, take any action or engage in any conduct or procedure which under the Corporations Act 2001 a company limited by Shares may exercise, take or engage in if authorised by its constitution.