

# **Constitution of Eden Marine Centre Limited - a company limited by guarantee**

Eden Marine Centre Limited

ACN 109 304 172

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**A company limited by guarantee**

## **Constitution**

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### **1 Company's name**

The name of the company is **Eden Marine Centre Limited** ("the Company").

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### **2 Company's objects**

2.1 The primary objects of the Company are:

- (a) to act as trustee for the Eden Whale Discovery Centre Research Trust.
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### **3 Company's powers**

3.1 The Company has all powers given to it by the Corporations Law including all powers necessary to enable the Company to carry out its objects and without limiting the generality of the foregoing, power to:

- (a) accept and undertake full or partial trusteeship, administration and management of trusts and funds, whether as trustee or as agent for the trustee or otherwise, and charge and accept fees, commission or other remuneration in respect of the trusteeship, administration and management;
  - (b) raise funds and invite and receive contributions, grants, distributions of income or capital, gifts (by will or otherwise), loans and deposits from any person;
  - (c) accept and hold funds or property of any kind on or for any charitable objects or purposes specified or to be specified by any person or to be selected by the directors from a class of trusts, objects or purposes specified by any person;
  - (d) purchase, take on lease or in exchange, hire or otherwise acquire real or personal property, and any rights or privileges that are required for the purposes of, or capable of being conveniently used in connection with, the company's objects. However, if the company takes or holds any property which is subject to a trust, the company may only deal with that property in the manner allowed by law having regard to that trust;
  - (e) control, manage, lease, exchange, mortgage, charge, sell, transfer, surrender, dispose of, develop, carry on business or otherwise deal with any real or personal property of any kind or any estate or interest in that property;
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- (f) invest, deal with and lend money and otherwise provide financial accommodation to, and guarantee or otherwise secure loans to, charitable objects or purposes;
- (g) construct, improve, maintain, develop, work, manage and control real or personal property and enter into contracts and agreements;
- (h) enter into any arrangement with any government or authority that seems conducive to the company's objects, obtain from any government or authority any right, privilege or concession that the Company thinks it desirable to obtain, and carry out, exercise and Comply with any of those arrangements, rights, privileges and concessions;
- (i) engage, dismiss or suspend any employee, agent, contractor, volunteer or professional person;
- (j) borrow, raise or secure the payment of money and secure the repayment or performance of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge or overdraft or by the issue of debentures or debenture stock (perpetual or otherwise) charged on all or any of the company's property (both present and future) and purchase, redeem or pay off those securities;
- (k) spend money and do all other things that it considers desirable to promote the Company's objects;
- (l) make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (m) print and publish newspapers, periodicals, books or leaflets or otherwise publish information in hard copy or by electronic means;
- (n) accept any gift of property, whether subject to any special trust or not, for the Company's objects;
- (o) take any steps by personal or written appeals, public meetings or otherwise, that the Company considers expedient to procure contributions to the Company's funds, by way of donations, gifts (by will or otherwise), grants, sponsorships or otherwise;
- (p) appoint patrons of the Company;
- (q) make donations for charitable purposes;
- (r) decline or otherwise refuse to accept any gift (by will or otherwise), donation, settlement or other disposition of money or property;
- (s) co-ordinate and arrange conferences, meetings, standing committees and commissions and other forums; and
- (t) do all other things that are incidental or conducive to attaining the Company's objects.

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## **4 Income and property**

- 4.1 The Company's income and property must be applied solely towards promoting the Company's objects. No part of the income or property may be paid,
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transferred or distributed, directly or indirectly, by way of dividend, bonus, fee or otherwise, to any of the members or directors. However, this Rule 4 does not prohibit making a payment approved by the Directors in good faith for:

- (a) out-of-pocket expenses incurred by a Director in performing a duty as a Director of the Company; or
- (b) remuneration to any Director, employee, Member or other person in return for services actually rendered to the Company where:
  - (1) the provision of the service has the prior approval of the Directors; and
  - (2) the amount payable is not more than an amount which commercially would be reasonable payment for the service, or prohibit payment;
- (c) for goods supplied by any Member in the ordinary and usual course of business;
- (d) interest on money lent to the Company by a member at a rate not exceeding the rate for the time being charged by the Company's bankers for overdrawn accounts;
- (e) reasonable and proper rent, remuneration or return for any premises of a Member occupied by the Company; or
- (f) indemnification of, or payment of premiums on contracts of insurance for, any Director to the extent permitted by law and this constitution.

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## **5 Liability of members**

5.1 The liability of the Members is limited.

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## **6 Guarantee by members**

6.1 Every Member undertakes to contribute to the property of the Company in the event of the Company being wound up while they are a Member or within one (1) year after they cease to be a Member, such amount as may be required not exceeding two dollars (\$2.00), for:

- (a) payment of the Company's debts and liabilities contracted before the time he or she ceased to be a Member;
- (b) the costs, charges and expenses of winding up; and
- (c) the adjustment of the rights of the contributories among themselves,

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## **7 Winding up or Dissolution**

7.1 (a) If, on the winding up or dissolution of the Company (other than for the purpose of reconstruction or amalgamation), there remains after satisfaction of all its debts and liabilities any property whatsoever, this

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property shall not be paid to or distributed among the Members of the Company but shall be given or transferred to any organisation fund, authority or institution:

- (1) which has similar objects to the Company; and
  - (2) to which income tax deductible gifts can be made.
- (b) The identity of the fund, authority or institution referred to in Rule 7 must be decided by the Members by ordinary resolution at or before the time of winding up or dissolution of the Company and, if the Members cannot decide, by the Supreme Court of the State.

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## **8 Altering this constitution**

- 8.1 This Constitution may be amended from time to time in accordance with the Corporations Law.

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## **9 Membership**

### **9.1 The Members of the Company shall consist of:**

- (a) Voting Members, who may attend, debate at and vote at General Meetings; and
- (b) Associate Members, who may attend and participate in General Meetings but otherwise have no right to vote at General Meetings (unless also a Delegate or a Director); and
- (c) Such new categories of Members, as may be created in accordance with Rule 9.2 of this Constitution.

### **9.2 Creation of New Categories of Membership**

The Board has the right and power from time to time to create new categories of membership with such rights (other than voting rights), privileges and obligations as are determined applicable, even if the effect of creating the new category is to alter rights, privileges or obligations of an existing category of Membership. No new category of membership may be granted voting rights.

### **9.3 Voting Members**

The Voting Members shall be the Directors of the Board.

### **9.4 Associate Members**

- (a) The Board may appoint as many Associate Members as is deemed appropriate. There is no minimum or maximum number of Associate Members.
  - (b) People wishing to become an Associate Member must fill in the application form in Attachment A and submit it to the Chief Executive Officer.
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- (c) The Directors must consider the application and decide whether to admit or reject the admission of the applicant. The Directors need not give any reason for rejecting an application. The results of these deliberations must be noted in the minutes of the meeting and the approved applicant invited to become an Associate Member.
- (d) Associate Members are not covered by Rule 18 Indemnity and Insurance of this Constitution.

## **9.6 Application for Membership**

- (a) Every applicant for membership of the Company must be proposed by one and seconded by another Member. The application for membership must be:
  - (1) made in writing and signed by the applicant and his or her proposer and seconder;
  - (2) on the form in Attachment A; and
  - (3) handed to the Chief Executive Officer four weeks before the General meeting or AGM considering the application.
- (b) The Directors must consider the applications and decide whether to admit or reject admission of the applicants. The Directors need not give any reason for rejecting an application. The approved applications must be taken forward to the AGM. If the number of nominations for membership is equal or less than the number of vacancies the approved applicants are declared elected. If the number of applicants are greater than the vacancies, a ballot must be held.

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## **10 When membership ceases**

### **10.1 Death, resignation and other events**

A person immediately ceases to be a Member if the person:

- (a) dies;
  - (b) resigns as a Member by giving written notice to the Company;
  - (c) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under a law relating to mental health;
  - (d) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors;
  - (e) is expelled under Rule 10.2; or
  - (f) becomes, if the Directors so decide in their absolute discretion, an untraceable Member because the person has ceased to reside at, attend or otherwise communicate with his or her registered address.
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## **10.2 Expulsion**

- (a) The Directors may by resolution expel a Member from the Company if, in their absolute discretion, they decide it is not in the interests of the Company for the person to remain a Member.
- (b) If the Directors intend to propose a resolution under Rule 10.2(a), at least one week before the meeting at which the resolution is to be proposed, they must give the Member written notice:
  - (1) stating the date, place and time of the meeting;
  - (2) setting out the intended resolution and the grounds on which it is based; and
  - (3) informing the Member that he or she may attend the meeting and may give an oral or written explanation or submission before the resolution is put to the vote.

## **10.3 Forfeiture of Rights**

A Member who or which ceases to be a Member, for whatever reason, shall forfeit all right in and claim upon the Company and its property including intellectual property. Any company documents, records or other property in the possession, custody or control of that Member shall be returned to the Company immediately.

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## **11 Subscription and fees**

- 11.1 Fees including annual membership fees, capitation fees and levies payable by Members (or any category of Member) to the Company, the basis of, the time for and the manner of payment, shall be determined by the Board.
  - 11.2 Monies payable to the Company by the Members under Rule 11.1 shall be forwarded to the Company for the Company's use by such dates as are prescribed by the Board.
  - 11.3 Any Member which has not paid all monies due and payable by that Member to the Company shall (subject to the Board's discretion) have all rights under this Constitution immediately suspended from the expiry of the time prescribed for payment of those monies. Such rights will be suspended until the monies are fully paid or otherwise in the Board's discretion. The Member shall be dealt with in the Board's discretion, which includes the right to suspend, disqualify, discipline or retain (but not impose a financial penalty) that a Member as a Member, or impose such other condition or requirements as the Board considers appropriate.
  - 11.4 Where the Board exercises its discretion under Rule 11.3 and imposes a penalty on a Member which or who has not paid all monies due and payable by that Member to Eden Marine Centre, the rules of natural justice are hereby expressly excluded and do not apply to the imposition of that penalty.
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## **12 Register of Members**

### **12.1 Chief Executive Officer to Keep Records**

The Chief Executive Officer shall keep and maintain a register of Members in which shall be entered such information as is required under the Act from time to time.

### **12.2 Inspection of Register**

Having regard to privacy and confidentiality considerations, an extract of the register, excluding the address of any Member or Director, shall be available for inspection (but not copying) by Members upon reasonable request.

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## **13 Effect of Membership**

### **13.1 Members acknowledge and agree that:**

- (a) this Constitution constitutes a contract between each of them and the Company and that they are bound by this Constitution and the By-Laws;
  - (b) they shall comply with and observe this Constitution and the By-Laws and any determination, resolution or policy which may be made or passed by the Board or any duly authorised committee;
  - (c) by submitting to this Constitution and the By-Laws they are subject to the jurisdiction of the Company;
  - (d) this Constitution is made in pursuit of a common object, namely the mutual and collective benefit of the Company, the Members and marine education and research;
  - (e) this Constitution and the By-Laws are necessary and reasonable for promoting the Objects and particularly the advancement and protection of marine education and research; and
  - (f) they are entitled to all benefits, advantages, privileges and services of Company Membership.
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## **14 General meetings**

### **14.1 Annual General Meetings to be Held**

- (a) An annual general meeting of the Company shall be held in accordance with the Act and this Constitution on a date and at a venue to be determined by the Board.
- (b) All General Meetings other than the annual general meeting shall be a Special General Meeting and shall be held in accordance with this Constitution.

### **14.2 Calling General Meetings**

- (a) The Directors may call and arrange to hold a Special General Meeting whenever they think fit.
- (b) A General Meeting may be called and arranged to be held only as provided by this Rule 14.2 or as provided by sections 249D, 249E, 249F and 249G of the Act.
- (c) The Directors may change the venue for, postpone or cancel a General Meeting, unless the meeting is called and arranged to be held by the Members or the court under the Act. If a General Meeting is called and arranged to be held under section 249D of the Act, the Directors may not:
  - (1) postpone it beyond the date by which section 249D requires it to be held; or
  - (2) cancel it without the consent of the requisitioning member.

### **14.3 Notice of general meetings**

- (a) Notice of every General Meeting must be given in any manner authorised by Rule 20 to:
  - (1) every Member entitled to vote, except a Member who has not supplied the Company with an address in Australia for giving notices;
  - (2) each Director; and
  - (3) the Auditor.

No other person is entitled to receive notice of General Meetings.

- (b) A notice of a General Meeting must:
    - (1) specify the date, time and place of the meeting; and
    - (2) except as provided by the Act, state the general nature of the business to be transacted at the meeting.
  - (c) A person may waive notice of a General Meeting by written notice to the Company.
  - (d) The non-receipt of notice of a General Meeting or proxy form by, or a failure to give notice of a General Meeting or a proxy form to, any person entitled to
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receive notice of a General Meeting under this Rule 14 does not invalidate any act, matter or thing done or resolution passed at the General Meeting if:

- (1) the non-receipt or failure occurred by accident or error; or
  - (2) before or after the meeting, the person:
    - (i) has waived or waives notice of that meeting under Rule 14.3(c); or
    - (ii) has notified or notifies the Company of the person's agreement to that act, matter, thing or resolution by written notice to the Company.
- (e) A person's attendance at a General Meeting waives any objection that person may have to:
- (1) a failure to give notice, or the giving of a defective notice, of the meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and
  - (2) 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 presented.

#### **14.4 Proceedings at General Meetings**

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

- (a) No business may be transacted at any General Meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of Members is present when the meeting proceeds to business.
- (b) A quorum consists of one-half of the total number of Voting Members at that time, rounded up to the next whole number where the calculation of one half results in a fraction.
- (c) If a quorum is not present within 30 minutes after the time appointed for a General Meeting:
  - (1) where the meeting was convened on the requisition of Members, the meeting must be dissolved; or
  - (2) in any other case:
    - (i) the meeting stands adjourned to the day, and at the time and place, that the Directors decide or, if the Directors do not make a decision, to the same day in the next week at the same time and place; and
    - (ii) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

#### **14.5 Chairperson to preside**

- (a) The chairperson of Directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each General Meeting.
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- (b) If at a General Meeting:
- (1) there is no chairperson of Directors;
  - (2) the chairperson of Directors is not present within 15 minutes after the time appointed for the meeting; or
  - (3) the chairperson of Directors is present within that time but is not willing to act as chairperson of the meeting,
- the members present must elect a director as chairperson of the meeting.

#### **14.6 Conducting and adjourning General Meetings**

- (a) A question arising at a General Meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chairperson of the meeting, whose decision is final.
- (b) The chairperson of a General Meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.
- (c) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (d) Except as provided by Rule 14.6(e), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (e) Where a meeting is adjourned, the Directors may change the venue of, or postpone or cancel, the adjourned meeting, unless the meeting was called and arranged to be held by the Members or the court under the Act. If a meeting is called and arranged to be held under section 249D of the Act, the Directors may not postpone it beyond the date by which section 249D requires it to be held and may not cancel it without the consent of the requisitioning Member.

#### **14.7 Decisions at general meetings**

- (a) Except where by law a resolution requires a Special Resolution, questions arising at a General Meeting must be decided by a majority of votes cast by the Members present and entitled to vote at the meeting. Such a decision is for all purposes a decision of the Members.
  - (b) Where the votes on a proposed resolution are equal:
    - (1) the chairperson of the meeting shall not have a second or casting vote; and
    - (2) the proposed resolution is taken as lost.
  - (c) A resolution put to the vote of a General Meeting must be decided on a show of hands unless, before the vote is taken or before or immediately after the declaration of the result of the show of hands, a poll is demanded by:
    - (1) the chairperson of the meeting;
    - (2) at least 3 Members present and with the right to vote on the resolution; or
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- (3) a Member or Members present at the meeting and representing at least 5% of the total voting rights of all the Members entitled to vote on the resolution on a poll.
- (d) A demand for a poll does not prevent a General Meeting continuing for the transaction of any business except the question on which the poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the chairperson of a General Meeting that a resolution has on a show of hands been carried or carried unanimously, or carried 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.
- (f) If a poll is duly demanded at a general meeting, it must be taken in such manner, and either at once or after an interval or adjournment or otherwise, as the chairperson of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- (g) A poll demanded at a general meeting on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.
- (h) The demand for a poll may be withdrawn.
- (i) If the Company has only one Member, the Company may pass a resolution by the Member recording it and signing the record.

#### **14.8 Entitlements at General Meeting**

##### **Each Voting Member shall have voting rights.**

Each Voting Member may vote by proxy in accordance with this Rule 14.8 as follows:

- (i) the instrument appointing the proxy shall be in writing, under the hand of the appointor or under a duly authorised attorney in writing or, if the appointor is a corporation, either under seal or under the hand of a director, secretary or duly authorised attorney. The instrument appointing a proxy shall confer authority on the holder to demand, or join in demand a written poll. An eligible Member shall be entitled to (but is not obliged) to instruct a proxy to vote in favour or against any proposed resolution. Unless otherwise instructed, the proxy may vote as he or she thinks fit.
  - (ii) the instrument appointing a proxy may be in the form set out in Annexure 1 to this Constitution or in a common or usual form as directed by the Board from time to time.
  - (iii) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a copy (certified as a true copy by a solicitor or a Justice of the Peace) of that power or authority shall be deposited at the registered office of the Company, or at any other place within Australia that is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 48 hours before
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the time appointed for taking of the poll and in default of compliance with this provision, the instrument of proxy shall be invalid.

- (iv) A vote, given in accordance with the terms of a proxy or power of attorney, shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the proxy or power under which the instrument was executed provided no notice in writing of that death, unsoundness of mind or revocation shall have been received by the Company at its registered office before the commencement of the meeting or adjourned meeting.

## **14.9 Resolutions not in meeting**

- (a) Except:
  - (1) in the case of an annual general meeting; or
  - (2) where a Special Resolution is required under this Constitution or under the Act; a resolution in writing signed or assented to be facsimile or other form of visible or other electronic communication by all the Members entitled to vote shall be as valid and effectual as if it had been passed at a meeting of Members entitled to vote duly convened and held. Any such resolution may consist of several documents in like form each signed by 1 or more Members entitled to vote.
- (b) Without limiting the power to hold Special General Meetings in accordance with this Constitution, a Special General Meeting may be held where 1 or more of the Members entitled to vote is not physically present at the meeting, provided that:
  - (1) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously whether by means of telephone or other form of communication;
  - (2) notice of the meeting is given to all persons entitled to notice in accordance with this Constitution;
  - (3) in the event that a failure in communications prevents Rule 14.9(b)(1) from being satisfied by a quorum then the meeting shall be suspended until Rule 14.9(b)(1) is satisfied again. If such notice is not satisfied within 15 minutes from the interruption the meeting shall be deemed to have terminated; and
  - (4) no meeting shall be invalidated merely because no Member entitled to vote is physically present at the place for the meeting specified in the notice of meeting.

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## **15 Directors**

### **15.1 Appointing and removing directors**

- (a) There must be:
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- (1) at least 3 Directors; and
  - (2) subject to Rule 15.1(b), not more than 12 Directors.
- (b) The Company may by resolution:
- (1) increase or reduce the minimum or maximum number of Directors; and
  - (2) appoint or remove a Director.
- (c) Subject to Rule 15.3 and to the terms of any agreement entered into between the Company and the relevant Director, a Director is elected (or re-elected) at the annual general meeting of the Company and holds office for three (3) years, unless removed under Rule 15.1(b)(2) or 15.1(e).
- (d) If a casual vacancy arises on the Board, it may be filled by the appointment of a new Director who satisfies the qualification requirements applicable to the position left vacant by resolution of:
- (1) Members in General Meeting; or
  - (2) the Board.

A Director elected by resolution of the Members under this Rule holds office for the same period that would have applied to the former Director whose position was filled had that former Director continued in office. A Director elected under this Rule by the Board holds office until the next annual general meeting. For the avoidance of doubt, where the casual vacancy arises in the position of a Delegate, the Associate Members shall be entitled to fill that position in accordance with Rule 15.3

- (e) One third of the Directors will retire at each annual general meeting and be eligible for re-election. A Director appointed by the Board to fill a casual vacancy (who holds office until the relevant annual general meeting), will be treated as one of the Directors to retire at that annual general meeting. As between the other Directors, the Director or Directors to retire at an annual general meeting will be determined by the Board by lot with the order for retirement being the order in which names are drawn.
- (f) Upon registration of this Constitution, the Initial Directors will comprise the Board. Each Initial Director will hold office for the same term on which they were last elected to hold office as a Director of the Company, and otherwise subject to the conditions set out in this Constitution.

## **15.2 Election of Directors**

- (a) Subject to this Rule 15.2, a Director will be elected to fill any Director vacancies on the Board:
- (1) by the Voting Members at the annual general meeting which marks the end of the current Director's term of office; or
  - (2) by postal ballot vote of the Voting Members held prior to the annual general meeting which marks the end of the current Director's term of office.
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- (b) The method of election and the manner in which the election is conducted under Rule 15.2(a) will be determined by the Board subject to the requirement of the Act.
- (c) A person may only be elected as a Director under Rule 15.2(a) if:
  - (1) he or she is a Director whose term of office is concluding at the relevant annual general meeting; or
  - (2) written notice of his or her nomination for the position of Director signed by two (2) or more Directors has been given to the Company before the date fixed by the Board for the closing of nominations.
- (d) If there is only one (1) candidate for election for each available Director position, that candidate will be deemed to be elected under Rule 15.2(a) without the need for an election taking place.
- (e) This Rule does not limit any right under this Constitution to appoint a Director to fill a casual vacancy.
- (f) A person may only be elected to the office of a Director if the person has consented in writing to act as a Director. This does not apply to a Director retiring from office and standing for re-election.

### **15.3 Appointment of Delegate to Board**

- (a) The Associate Members shall be entitled to appoint one (1) Delegate as a Director of the Board.
- (b) A Delegate must be an individual Associate Member.
- (c) The Associate Members shall advise the Chief Executive Officer of its appointed Delegate prior to each annual general meeting.
- (d) The Associate Members may appoint an alternate Delegate. An Alternate Delegate must comply with the requirements for Delegates set out in this Rule 15.2 and has such rights and powers as does a Delegate. Where the Associate Members appoint an alternative Delegate they shall advise the Chief Executive Officer as soon as practical after the appointment.
- (e) The Delegate must satisfy the qualification requirements in Rule 15.4 and shall hold office for the term set out in Rule 15.1(c).

### **15.4 Qualifications of directors**

All Directors must be residents of Australia or must hold a current Visa that permits them to fulfil all requirements for the position of Director and meet the Federal Environment Department eligibility criteria for members of a public fund management committee.

### **15.5 When office of director becomes vacant**

In addition to the circumstances prescribed by the Law, the office of a Director becomes vacant if the Director:

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- (a) dies
- (b) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (c) becomes bankrupt or insolvent or makes an arrangement or composition with his or her creditors generally;
- (d) is convicted on indictment of an offence and the Directors do not within one month after that conviction resolve to confirm the Director's appointment or election (as applicable) to the office of Director;
- (e) resigns by written notice to the Company;
- (f) fails to attend, in total, a minimum of six Board Meetings and General Meetings in any Financial Year;
- (g) without the prior consent or later ratification of the Members in General Meeting, holds any office of profit under the Company;
- (h) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of his or her interest;
- (i) is removed from office by Special resolution; or
- (j) would otherwise be prohibited from being a director of a corporation under the Act.

#### **15.6 Interested directors**

- (a) Subject to Rule 4, a Director may hold another position (except as auditor) in the Company or any related body corporate in conjunction with his or her directorship and may be appointed to that position on terms as to remuneration, tenure and otherwise that the Directors think fit.
  - (b) A Director:
    - (1) may be or become a Director or other officer of, or otherwise interested in, any related body corporate or other body corporate promoted by the Company or in which the Company is interested as a shareholder or otherwise; and
    - (2) is not accountable to the Company for any remuneration or other benefits he or she receives as a Director or officer of, or from having an interest in, that body corporate.
  - (c) The Directors may exercise the voting rights conferred by shares in any body corporate held or owned by the Company in the manner in all respects that they think fit.
  - (d) A Director is not disqualified merely because he or she is a Director from contracting with the Company in any respect including, but not limited to:
    - (1) selling property to, or purchasing property from, the Company;
    - (2) lending money to the Company with or without interest or security;
    - (3) guaranteeing the repayment of money borrowed by the Company for a commission or profit;
    - (4) underwriting or guaranteeing the subscription for securities in any related body corporate or other body corporate promoted by the Company or in
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which the Company is interested as a shareholder or otherwise, for a commission or profit; or

- (5) being employed by the Company or acting in any professional capacity (except as auditor) on behalf of the Company.
- (e) A contract made by a Director with the Company and a contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is not avoided or rendered voidable merely because the Director holds office as a Director or because of the fiduciary obligations arising out of that office.
- (f) A Director contracting with or being interested in any arrangement involving the Company is liable to account to the company for any profit realised by or under that contract or arrangement unless the directors otherwise decide.
- (g) Unless section 195 of the Act permits, a Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
  - (1) be present while the matter is being considered at the meeting; or
  - (2) vote on the matter.
- (h) The Directors may make regulations requiring the disclosure of interests that a Director, and any person considered by the Directors as related to or associated with the Director, may have in any matter concerning the company or a related body corporate. Any regulations made under this Constitution bind all Directors.

#### **15.7 Powers and duties of Directors**

- (a) The Directors are responsible for managing the Company's business and affairs and may exercise to the exclusion of the Company in General Meeting all the Company's powers which are not required, by the Act or by this Constitution, to be exercised by the Company in General Meeting.
  - (b) Without limiting Rule 15.7(a), the Directors may exercise all the Company's powers to:
    - (1) borrow or otherwise raise money;
    - (2) charge any property or business of the Company; and
    - (3) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.
  - (c) The Directors may decide how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed (as applicable) by or on behalf of the Company.
  - (d) The Directors may pay out of the Company's funds all expenses of the promotion, formation and registration of the Company and the vesting in it of the assets acquired by it.
  - (e) The Directors may:
    - (1) appoint or employ a person to be an officer, agent or attorney of the Company for the purposes, with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the Directors), for the period and on the conditions they think fit;
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- (2) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
  - (3) subject to any contract between the Company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney at any time, with or without cause.
- (f) A power of attorney may contain any provisions for the protection and convenience of the attorney or persons dealing with the attorney that the Directors think fit.
- (g) Directors are expected to attend, in total, a minimum of 6 Board Meetings and General Meetings each financial year. If a Director is unable to attend 2 consecutive Board Meetings, the Director must seek leave of absence from the Board. A Director may seek leave of absence for no more than 6 Board Meetings in any one year.

### **15.8 Proceedings of Directors**

- (a) The Directors may meet together and adjourn and otherwise regulate their meetings as they think fit.
- (b) The contemporaneous linking together by telephone or other electronic means of a sufficient number of the Directors to constitute a quorum constitutes a meeting of the Directors. All the provisions in this constitution relating to meetings of the Directors apply, so far as they can and with any necessary changes, to meetings of the Directors by telephone or other electronic means.
- (c) A Director who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (d) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the Directors involved was at that place for the duration of the meeting.

### **15.9 Convening meetings of Directors**

- (a) A Director may convene a meeting of the Directors whenever he or she thinks fit.
- (b) A secretary must, on the requisition of a Director, convene a meeting of the Directors.

### **15.10 Notice of meetings of Directors**

- (a) Subject to this Constitution, notice of a meeting of Directors must be given to each person who is at the time of giving the notice a Director, except a Director on leave of absence approved by the Directors.
  - (b) A notice of a meeting of Directors:
    - (1) must specify the time and place of the meeting;
    - (2) need not state the nature of the business to be transacted at the meeting;
    - (3) may be given immediately before the meeting; and
    - (4) may be given in person or by post, telephone, fax or other electronic means.
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- (c) A Director may waive notice of a meeting of Directors by notifying the Company to that effect in person or by post, telephone, fax or other electronic means.
- (d) The non-receipt of notice of a meeting of Directors by, or a failure to give notice of a meeting of Directors to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
  - (1) the non-receipt or failure occurred by accident or error;
  - (2) before or after the meeting, the Director:
    - (i) has waived or waives notice of that meeting under Rule 15.10(c); or
    - (ii) has notified or notifies the Company of his or her agreement to that act, matter, thing or resolution personally or by post, telephone, fax or other electronic means.

### **15.11 Quorum at meetings of Directors**

- (a) No business may be transacted at a meeting of Directors unless a quorum of Directors is present at the time the business is dealt with.
- (b) The quorum for any meeting of the Board is one-half of the total number of Directors in office at that time, rounded up to the next whole number where the calculation of one half results in a fraction.
- (c) If there is a vacancy in the office of a Director, the remaining Director or Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at meeting of the Directors, the remaining Director or Directors may act only in an emergency or for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum or to convene a General Meeting of the Company.

### **15.12 Chairperson of Directors**

- (a) The Directors may elect one of the Directors as chairperson of Directors and may decide the period for which that Director is to be the chairperson.
- (b) The chairperson of Directors must (if present within 10 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each meeting of Directors.
- (c) If at a meeting of Directors:
  - (1) there is no chairperson of Directors;
  - (2) the chairperson of Directors is not present within 10 minutes after the time appointed for the meeting; or
  - (3) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,

the Directors present must elect one of the Directors as chairperson of the meeting.

### **15.13 Decisions of Directors**

- (a) A meeting of Directors at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the Directors under this Constitution.
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- (b) Questions arising at a meeting of Directors must be decided by a majority of votes cast by the Directors present. Such a decision is for all purposes a decision of the Directors.
- (c) Where the votes on a proposed resolution are equal:
  - (1) the chairperson of the meeting does have a second or casting vote; and
  - (2) the proposed resolution is taken as lost.

#### **15.14 Written resolutions**

- (a) If:
  - (1) a majority of the Directors assent to a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed; and
  - (2) the Directors who assent to the document would have constituted a quorum at a meeting of directors held to consider that act, matter, thing or resolution,
  - (3) then that act, matter, thing or resolution is taken as done at or passed by a meeting of the Directors.
- (b) The meeting is taken as held:
  - (1) if the Directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to; or
  - (2) if the Directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to;
  - (3) 2 or more separate documents in identical terms, each of which is assented to by one or more Directors, are taken as constituting one document; and
  - (4) a Director may signify assent to a document by signing the document or by notifying the company of the director's assent in person or by post, telephone, fax or other electronic means.
- (c) Where a Director signifies assent to a document otherwise than by signing the document, the Director must as confirmation sign the document at the next meeting of the Directors that Director attends, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.

#### **15.15 Committees of directors**

- (a) The Directors may delegate any of their powers to one or more committees consisting of the number of Directors they think fit.
  - (b) A committee to which any powers have been delegated must exercise the powers delegated in accordance with any directions given by the Directors.
  - (c) The provisions of this Constitution that apply to meetings and resolutions of Directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of Directors.
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### **15.16 Validity of acts**

An act done by a person acting as a Director, a meeting of Directors, or a committee of Directors attended by a person acting as a Director, is not invalidated merely because of:

- (a) a defect in the appointment of the person as a Director;
- (b) the person being disqualified to be a Director or having vacated office; or
- (c) the person not being entitled to vote, if that circumstance was not known by the person, the Directors or the committee (as applicable) when the act was done.

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## **16 Chief Executive Officer and Secretaries**

16.1 The Board may appoint a Chief Executive Officer for such term and on such conditions as it thinks fit.

16.2 The Chief Executive Officer shall:

- (a) as far as practical attend all Board meetings and General Meetings;
- (b) prepare the notice of and agenda for all Board Meetings and all General Meetings;
- (c) ensure that minutes of the proceedings of all Board meetings and General Meetings are recorded and prepared; and
- (d) regularly report to the Board on the activities of, and issues relating to Eden Marine Centre.

16.3 Subject to the Act, this Constitution, the By-Laws and any directive of the Board, the Chief Executive Officer has powers to perform all such things as appear necessary or desirable for the proper management and administration of the Company.

16.4 The Chief Executive Officer, in consultation with the Board, may employ such office personnel as are deemed necessary from time to time. Such appointments shall be for such period and on such conditions as the Chief Executive Officer and the Board determine.

### **16.5 Secretaries**

- (a) The Directors must appoint at least one secretary and may appoint additional secretaries.
  - (b) The Directors may appoint one or more assistant secretaries
  - (c) The secretary does not have to be a Director or a member of the Board and may be the Chief Executive Officer.
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## **16.6 Provisions that apply to all Executive Officers**

- (a) A reference in this Rule 16.6 to an Executive Officer is a reference to a Chief Executive Officer, a secretary or assistant secretary appointed under this Rule 16.
- (b) The appointment of an Executive Officer may be for the period, at the remuneration and on the conditions that the Directors think fit.
- (c) Subject to any contract between the Company and the relevant Executive Officer, an Executive Officer may be removed or dismissed by the Directors at any time, with or without cause.
- (d) The Directors may:
  - (1) confer on an Executive Officer the powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the Directors) they think fit;
  - (2) withdraw, suspend or vary any of the powers, discretions and duties conferred on an Executive Officer; and
  - (3) authorise the Executive Officer to delegate all or any of the powers, discretions and duties conferred on him or her.
- (e) An Executive Officer need not be a Member to qualify for appointment.
- (f) An act done by a person acting as an Executive Officer is not invalidated merely because of:
  - (1) a defect in the person's appointment as an Executive Officer; or
  - (2) the person being disqualified to be an Executive Officer, if that circumstance was not known by the person when the act was done.

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## **17 Delegations**

### **17.1 Board may Delegate Functions**

The Board may by instrument in writing create or establish or appoint from among the Directors, Members or otherwise committees, individual officers or consultants to carry out such duties and functions and with such powers, as the Board determines.

### **17.2 Delegation by Instrument**

The Board may in the establishing instrument delegate such functions as are specified in the instrument, other than:

- (a) this power of delegation; and
  - (b) a function imposed on the Board or the Chief Executive Officer by the Act or any other law or this Constitution.
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### **17.3 Delegated function exercised in accordance with terms**

A function, the exercise of which has been delegated under this Rule, may whilst the delegation remains unrevoked, be exercised from time to time in accordance with the terms of this delegation.

### **17.4 Procedure of delegated entity**

The procedures for any delegated entity shall, with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under Rule 15. The quorum shall be determined by the committee, but shall be no less than one half of the total number of committee members.

### **17.5 Delegation may be conditional**

A delegation under this Rule may be made subject to such conditions or limitations as to the exercise of any function or at the time or circumstances as may be specified in the delegation.

### **17.6 Revocation of delegation**

The Board may by instrument in writing, revoke wholly or in part any delegation made under this Rule, and may amend, repeal or veto any decision made by such body or person under this Rule.

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## **18 Indemnity and insurance**

### **18.1 Persons to whom Rules 18.2 and 18.4 apply**

Rules 18.2 and 18.4 apply to:

- (a) each person who is or has been a Director, alternate Director or Executive Officer (within the meaning of Rule 16.6) of the Company; and
- (b) any other officers or former officers of the Company or of its related bodies corporate that the Directors decide in each case.

### **18.2 Indemnity**

The Company must

- (a) indemnify; and
- (b) if requested by a person to whom this Rule 18.2 applies, enter into a deed indemnifying,

on a full indemnity basis and to the full extent permitted by law, each person to whom this Rule 18.2 applies for all losses or liabilities incurred by the person as an officer of the company or of a related body corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

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- (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (ii) in connection with an application, in relation to those proceedings, in which the court grants relief to the person under the Act.

### **18.3 Extent of indemnity**

The indemnity in Rule 18.2:

- (a) is a continuing obligation and is enforceable by a person to whom Rule 18.2 applies even though that person has ceased to be an officer of the Company or of a related body corporate; and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

### **18.4 Insurance**

The Company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this Rule 18.4 applies against any liability incurred by the person as an officer of the company or of a related body corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

### **18.5 Savings**

Nothing in Rule 18.2 or 18.4:

- (a) affects any other right or remedy that a person to whom those Rules apply may have in respect of any loss or liability referred to in those Rules; or
- (b) limits the capacity of the company to indemnify or provide insurance for any person to whom those Rules do not apply.

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## **19 Auditor**

19.1 A properly qualified auditor or auditors shall be appointed and the remuneration of such auditor or auditors fixed by the Board. The auditor's duties shall be regulated in accordance with the Act, or if no relevant provisions exist under the Act, in accordance with generally accepted principals, or any applicable code of conduct.

19.2 The accounts of the Company including the profit and loss accounts and balance sheet shall be examined by the auditor or auditors at least once in every year.

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## **20 Notices**

### **20.1 How notices may be given**

A notice may be given by the Company to a Director/Member by:

- (a) delivering it to the Director/Member personally;
- (b) sending it to the Director/Member's fax number or electronic address (if the Director/Member has nominated one to the Company for receipt of notices); or
- (c) posting it by prepaid post to the Director/Member's registered address.

### **20.2 When taken as given**

A notice is taken as given by the Company and received by the Director/Member:

- (a) if delivered, at the time of delivery;
- (b) if faxed, when the Company receives a confirmation report that all pages of the fax have been transmitted to the member's fax number, but if transmission or receipt is after 5.00 p.m., it is taken as received on the next business day;
- (c) if sent by electronic means, on the next business day; and
- (d) if posted, on the second business day after it was posted.

### **20.3 When Director/Member has no registered address**

If one or more Directors/Members do not have a registered address in Australia, a notice addressed to the Director/Member or Directors/Members and advertised in a daily national newspaper is taken to be duly given to the Director/Member or Directors/Members at midday on the day on which the advertisement appears.

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## **21 Dissolution**

21.1 The Company may be wound up in accordance with the provisions of the Act

21.2 The provisions of Rule 7 of this Constitution relating to winding up and dissolution shall take effect and be observed as if the same were repeated in this Rule.

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## **22 By-Laws**

### **22.1 Board to formulate By-Laws**

The Board may (by itself or by delegation to a committee) formulate, approve, issue, adopt, interpret and amend such By-Laws for the proper advancement, management and administration of the Company, the advancement of the

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Objects as it thinks necessary or desirable. Such By-Laws must be consistent with this Constitution.

## **22.2 By-Laws Binding**

All By-Laws made under this Rule shall be binding on the Company and Members.

## **22.3 By-Laws deemed applicable**

All rules, regulations and By-Laws of the Company in force at the date of the approval of this Constitution insofar as such rules, regulations or By-Laws are not inconsistent with, or have been replaced by this Constitution, shall be deemed to be By-Laws under this Rule.

## **22.4 Notices binding on Members**

Amendments, alterations, interpretations or other changes to By-Laws shall be advised to Members by means of notices approved by the Board and prepared and issued by the Chief Executive Officer. Notices are binding upon all Members.

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# **23 Records and Accounts**

## **23.1 Records Kept in Accordance with the Act**

The Company shall keep proper accounting and other records in accordance with the Act, generally accepted accounting principles and/or any applicable code of conduct. A copy of the Company records shall be made available within a reasonable time to a person who is entitled to inspect the financial records and other books of the Company in accordance with the Act.

## **23.2 Company to retain records**

The Company shall retain such records for the period required by the Act.

## **23.3 Negotiable Instruments**

All cheques, promissory notes, bankers drafts, bills or exchange and other negotiable instruments and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any 2 authorised Director or by 1 authorised Director and the Chief Executive Officer or in such other manner and by such persons the Directors determine.

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## 24 Application of the Law

- 24.1 Unless the contrary intention appears in this Constitution, Division 8 of Part 1.2 (except section 109X) of the Act applies, so far as it is capable of application and with any necessary changes, in relation to this Constitution as if the provisions of this Constitution were provisions of the Act.
- 24.2 An expression used in a particular part or division of the Act that is given by that part or division a special meaning for the purposes of that part or division has, in any of part this Constitution that deals with a matter dealt with by that part or division, the same meaning as in that part or division, unless the contrary intention appears.

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## 25 Replaceable rules displaced

- 25.1 The provisions of this Constitution displace each provision of a section or subsection of the Act that applies (or would apply but for this Rule) to the Company.
- 25.2 The replaceable rules do not apply to the Company except those which operate as mandatory rules for public companies under the Act.

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## 26 Definitions and interpretation

### 26.1 Definitions

In this constitution:

**Act** means the Corporations Law;

**Associate Member** means an associate member of the Company appointed under Rule 9.4;

**Auditor** means the auditor of the Company;

**Board** means the Board of Directors of the Company for the time being;

**Business Day** means a day on which the major trading banks are open for business in Sydney, except a Saturday, Sunday or public holiday;

**By-Laws** means any by-laws made by the Board under Rule 22;

**Company** means Eden Marine Centre Ltd ACN 109 304 172;

**Company's Office** means the Company's registered office;

**Delegate** means a Delegate appointed to the Board by the Associate Members in accordance with Rule 15.3;

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**Director** means a member of the Board (other than the Chief Executive Officer) and includes any person acting in that capacity for the time being of the Company;

**General Meeting** means the annual or any special general meeting of the Company;

**Initial Directors** means those persons who were directors of the Company immediately before registration of this Constitution;

**ITAA 97** means the *Income Tax Assessment Act 1997*;

**Member** means a member for the time being of the Company under Rule 9;

**Registered Address** means a director/member's address as notified to the company by the member and recorded in the company's records;

**Secretary** means a person appointed to perform the duties of a secretary of the company and includes an honorary secretary;

**Special Resolution** means a special resolution passed in accordance with the Act;

**State** means New South Wales; and

**Voting Member** means a voting member of the Company as defined in Rule 9.3.

## 26.2 Interpretation

In this Constitution unless the context requires otherwise:

- (a) references to notices include formal notices of meeting and all documents and other communications from the Company to its Members;
- (b) a reference to any legislation includes any amendment to that legislation, any consolidation or replacement of that legislation and any subordinate legislation made under it;
- (c) a reference to **writing** and **written** includes printing, lithography and other ways of representing or reproducing words in a visible form;
- (d) a word or expression defined in the Law has the same meaning unless it is defined differently; and
- (e) the singular (including defined terms) includes the plural and the plural includes the singular.

## 26.3 Headings

Headings are used for convenience only and do not affect the interpretation of this Constitution.

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The initial members of the company (whose consents are set out below) adopt, on registration of the company, the above constitution as the company's constitution in accordance with section 136(1) of the Law.

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**Full name and address of  
initial members**

**Signatures consenting  
to be a member**

**Witnesses to signatures  
and addresses of witnesses**

**Date:**

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