

TRANSPORT HERITAGE

NSW

CONSTITUTION OF TRANSPORT HERITAGE NSW LIMITED

ACN 000 570 463

**Adopted at the Transport Heritage NSW Annual General Meeting held on
30 November 2021.**

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**CONSTITUTION OF
TRANSPORT HERITAGE NSW LIMITED
(ACN 000 570 463)**

An Australian public company limited by guarantee

The name of the company is Transport Heritage NSW Limited (ACN 000 570 463)

1 Definitions

1.1 In this Constitution words and phrases have the meanings given to them in the *Corporations Act 2001* (Cth) unless the context otherwise requires, and:

Annual General Meeting (“AGM”) means the General Meeting of the Company required to be held in compliance with *Corporations Act 2001* (Cth) s250N;

Associate Member means a Partner Organisation that is admitted as a Member in accordance with clause 5;

Annual Report means the report of the Board on the activities of the Company;

Board means the directors of the Company, acting together;

Business Day means any day except a Saturday or a Sunday or any public holiday in New South Wales;

Chair means the person appointed to the office of Chair of Transport Heritage NSW Limited (ACN 000 570 463) in accordance with clause 17;

Collections Policy means the Collections Policy as determined by the Board from time to time;

Company means Transport Heritage NSW Limited (ACN 000 570 463) (“**THNSW**”);

Complimentary Member means a person who is admitted by the Board as a Complimentary Member in accordance with clause 12.1;

Deemed Membership Date means 1 October in the year in which the particulars of a Member were recorded in the Register of Members;

Elected Director means a director elected in accordance with clause 18;

Extraordinary General Meeting (“EGM”) means any General Meeting other than an AGM;

Financial Year means the twelve (12) month period commencing on 1 July and concluding at midnight on 30 June of the following year;

Funding Deed means the Deed so called entered into and in force between the Company and TfNSW;

General Meeting means a meeting of the Members of the Company;

Heritage Transport means heritage and historical elements of railways and other transport systems in NSW;

Heritage Transport Organisations means not-for-profit organisations whose purpose and objects relate to the restoration, maintenance and preservation of Heritage Transport assets and artefacts;

Honorary Member means a person who is appointed as such in accordance with clause 11.1;

Life Member means a Member who is appointed as a Life Member by the Company at an Annual General Meeting;

Member means a person who is accepted as a member of the Company;

Membership Date means the date upon which the particulars of a Member were first recorded in the Register of Members;

Membership Year means the twelve (12) month period commencing on the Membership Date or Deemed Membership Date;

Minister means the NSW Government Minister for Transport or, if there is no such Minister, the Minister with responsibility for the NSW Transport Administration Act or its successor;

NSW means New South Wales;

Non-Elected Appointed Director means a director appointed in accordance with clause 19;

Non-Voting Member means an Ordinary Member under 18 years of age, Patron, Honorary Member, Complimentary Member or Associate Member;

Objects mean the objects for which the Company is described as set out in clause 2;

Ordinary Member means a Member so established under clause 13.1;

Partner Organisation means an incorporated not-for-profit entity registered in NSW having stated aims that are consistent with the stated aims of the Company;

Rail Museum Thirlmere means the precinct at Thirlmere leased by the Company for the purpose of operating a rail museum;

Rail Museum Valley Heights means the precinct at Valley Heights leased by the Company for the purpose of operating a rail museum;

Register of Members means the register established under clause 30;

Similar Institution means one or more corporations, societies or associations each having similar Objects and which must prohibit the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on the Company by virtue of clause 38.3.

Transport Heritage NSW Heritage Asset Register (“Heritage Asset Register”) means the list of assets owned by the Company including, without limitation, all tools, plant, machinery, logos and trademarks, that have been deemed by the Board to be of special historical significance;

Transport for NSW (“TfNSW”) means the NSW Government integrated transport authority or its successor in function;

Volunteer means a Member or non-member who willingly provides their services to the Company without receiving any remuneration or financial gain in return;

Voting Member means an Ordinary Member who is at least 18 years of age who has

fully paid all annual subscription fees then due and payable to the Company or a Life Member.

2 Objects

2.1 The Company is a not-for-profit, membership and volunteer-based organisation established to preserve Heritage Transport in NSW and elsewhere, most particularly railway heritage.

2.2 The objects for which the Company is established are to:

- (a) actively promote, in the community, an interest in Heritage Transport in NSW and elsewhere;
- (b) conserve, restore, manage, maintain, develop and promote assets and artefacts related to Heritage Transport;
- (c) operate, manage and promote the Rail Museum Thirlmere and the Rail Museum Valley Heights and any other precinct through collection, interpretation, exhibitions, promotions, events, functions and education programs;
- (d) coordinate and promote Heritage Transport related events and activities in the NSW community and elsewhere;
- (e) foster and actively encourage membership of the Company and volunteering in the Company and to provide services and opportunities that support the objects of the Company, while providing Members and volunteers with enjoyment and satisfaction;
- (f) ensure that all heritage objects and assets in the Company's care are managed, restored, maintained, developed and promoted in ways that are appropriate and consistent with the item's significance;
- (g) develop appropriate opportunities to generate revenue from partnerships, sponsorship, events, functions and activities and apply that revenue for the benefit, conservation, preservation, development and promotion of Heritage Transport and related assets;
- (h) provide educational resources, programs, events, opportunities and experiences in Heritage Transport for school students and the general community in NSW and elsewhere;
- (i) arrange and conduct rail tours, excursions and charters to demonstrate rolling stock and the railway in action and provide experiences to the public;
- (j) maintain the Picton–Mittagong Loop Line as an operating, demonstration railway, and further develop it as an engaging public experience;
- (k) assist and establish rules for, the creation and operation of regional divisions of the Company;
- (l) represent Heritage Transport Organisations to all levels of Government and to corporate entities while ever the Funding Deed is in full force and effect and funding is being provided under it to the Company by TfNSW;
- (m) work with organisations across NSW for the purpose of conserving, promoting, restoring, developing and maintaining Heritage Transport assets

and artefacts while ever the Funding Deed is in full force and effect and funding is being provided under it to the Company by TfNSW;

- (n) support, maintain and operate a heritage train fleet;
- (o) provide support, assistance, guidance, advice and, in some cases funding, to Heritage Transport Organisations which are Associate Members in relation to Heritage Transport activities and events while ever the Funding Deed is in full force and effect and funding is being provided under it to the Company by TfNSW;
- (p) act fairly and equitably in all dealings with other Heritage Transport Organisations across NSW while ever the Funding Deed is in full force and effect and funding is being provided under it to the Company by TfNSW;
- (q) do all acts, deeds, matters and things and to enter into such agreements as are incidental or conducive to the attainment of the above objects or any of them;
- (r) do such other things and undertake such other works and activities which the Board decides are consistent with the above objects or any of them.

3 Powers of the Company

- 3.1 The Company has the powers necessary to implement the Objects, including the powers conferred by the Corporations Act 2001 (Cth).

4 Members of the Company

- 4.1 Each Member agrees to be bound by this Constitution and by any rules made pursuant to this Constitution.
- 4.2 The classes of membership of the Company are Voting Members and Non-Voting Members.

5 Associate Members

- 5.1 A Partner Organisation may be permitted to join the Company as an Associate Member at the sole discretion of the Board provided:
 - (a) its constitution or rules of incorporation or operation are acceptable to a majority of the Board;
 - (b) its policies and procedures in relation to governance and management are acceptable to a majority of the Board; and
 - (c) it agrees to comply with any code of conduct rules established by the Board from time to time.
- 5.2 A Partner Organisation will remain eligible for Associate Membership of the Company provided all of the conditions specified above at clause 5.1 continue to be met by the Partner Organisation to the satisfaction of the Board, including but not limited to ongoing compliance with any code of conduct rules established by the Board from time to time.

6 Applications for Membership

- 6.1 The Board alone may determine and from time to time vary:
- (a) the Application Fee;
 - (b) the classes of membership;
 - (c) the form and application procedure for each class of membership; and
 - (d) the annual subscription fee payable for each class of membership.
- 6.2 Any person or Partner Organisation wishing to apply to become a Member of any class must lodge their application to become a Member in accordance with the application procedure including any forms provided for this purpose in accordance with clause 6.1 above, and at this time pay to the Company Secretary the applicable annual subscription fee plus any further fee payable upon application (together the "Application Fee");
- 6.3 Any application to become a Member that is lodged in accordance with this clause 6 and is lodged more than fourteen (14) Business Days prior to the next scheduled meeting of the Board must be reviewed and considered by the Board or its delegate at or before the next scheduled Board meeting.
- 6.4 Any applications lodged not more than fourteen (14) Business Days prior to a scheduled meeting of the Board will be reviewed and considered by the Board or its delegate at or before the date of the subsequent scheduled meeting of the Board.
- 6.5 The Board or its delegate must consider every application to become a member that is lodged in accordance with clause 6.1 and retains sole discretion in determining whether or not to accept any such application for membership.
- 6.6 Before a period of thirty (30) calendar days has elapsed from the date of acceptance of a membership application by the Board or its delegate, the Company Secretary or delegate must:
- (a) enter the particulars of each new Member into the Register of Members;
 - (b) apply the Application Fee already paid by the new Member as full satisfaction of the annual subscription fee; and
 - (c) must inform the applicant of the acceptance of their application for membership including details of their Membership Date and the class of membership that has been granted;
- 6.7 Before a period of thirty (30) calendar days has elapsed from the date of non-acceptance of a membership application by the Board or its delegate, the Company Secretary or delegate must:
- (a) notify any person or organisation that has not been successful in their application for membership;
 - (b) return the Application Fee in full to the unsuccessful applicant and;
 - (c) cancel or deactivate any account or card provided to the unsuccessful applicant that would otherwise allow the unsuccessful applicant to enjoy benefits available only to Members of the Company.

7 Annual Subscriptions

- 7.1 A renewing Member's annual subscription fee must be paid at or before the commencement of the Member's Membership Year and no later than as permitted in clause 14.2.
- 7.2 Life Members, Honorary Members and Complimentary Members are not required to pay the annual subscription fee.

8 Voting Members

- 8.1 Voting Members have the following rights and privileges:
- (a) the right to attend, speak and vote at any General Meeting;
 - (b) subject to clause 20.4, the right to hold office as a director of the Company; and
 - (c) the right to participate in all of the activities of the Company, subject to such restrictions as may be determined by the Board.

9 Non-Voting Members

- 9.1 Non-Voting Members have the following rights and privileges:
- (a) the right to attend and speak, but not to vote, at any General Meeting; and
 - (b) the right to participate in all of the activities of the Company, subject to such restrictions as may be determined by the Board.

10 Life Members

- 10.1 Life Membership is the highest honour that the Company can bestow upon a Member.
- 10.2 The Company, at an Annual General Meeting on the recommendation of the Board, may elect a person as a Life Member of the Company provided:
- (a) the person is a Voting Member;
 - (b) the person has such qualifications and is nominated in such manner as may be determined by the Board; and
 - (c) the person has, in the opinion of the Board, given such exceptional, unusual or distinguished service to the Company as to be deserving of recommendation by the Board for election as a Life Member at an Annual General Meeting of the Company.
- 10.3 A Life Member does not pay the annual subscription fee but is otherwise subject to the same obligations and enjoys the same rights as a Voting Member.
- 10.4 The Company will provide to each Life Member a gold-plated badge acknowledging that person's life membership.
- 10.5 Subject to clause 10.2(c), the Board will from time to time publish criteria for the possible nomination for Life Membership.
- 10.6 The Company will maintain and publish an Honour Roll of Life Members.

11 Patrons and Honorary Members

- 11.1 The Board may appoint Patrons or Honorary Members for a nominated period without the payment of any subscription fee by the person(s) so appointed, provided that the person is not already a Member of the Company and is:
- (a) a prominent citizen; or
 - (b) a local dignitary.
- 11.2 Patrons and an Honorary Members are Non-Voting Members.
- 11.3 The Board may revoke such awards of membership made in accordance with this clause at its sole discretion.

12 Complimentary Members

- 12.1 The Board may offer a twelve (12) month complimentary membership to any person who is not at that time a Member of the Company and has made a contribution to the Company that, in the opinion of the Board, warrants that offer.
- 12.2 Persons that accept membership offered in accordance with Clause 12.1 are:
- (a) admitted to the Company for twelve (12) months as a Non-Voting Member;
 - (b) not required to pay any fees or charges for that membership; and
 - (c) otherwise subject to the same obligations and enjoy the same rights as a Member of the Company.
- 12.3 The Board has discretion to offer to renew a person's complimentary membership at the expiry of that person's preceding complimentary membership period.

13 Ordinary Members

- 13.1 An Ordinary Member of the Company is any natural person who is a Member and who is not a Life Member, Patron, Honorary Member or a Complimentary Member.

14 Cessation of Membership

- 14.1 A Member may resign from membership of the Company by giving written notice by hand, post or electronically to the Company Secretary.
- 14.2 The membership of a Member will automatically lapse and be cancelled if that Member's annual subscription fee is not received by the Company within the one (1) calendar month period commencing on the date upon which payment was due payable.
- 14.3 A Member that has resigned from membership of the Company, or whose membership has lapsed and been cancelled, may reapply for membership in accordance with the terms of clause 6 above.
- 14.4 All membership rights held by a Member are automatically forfeited upon the date of cessation of that Member's membership, whether occurring by resignation, lapse, expulsion, death, or by some other means. However, despite any cessation of membership, each ceasing Member remains liable for and agrees to pay the

prescribed amount that becomes due and payable in accordance with the provisions of clause 38.

15 Disciplining of Members

- 15.1 The Board retains sole discretion to reprimand, suspend (for such period and on such terms as the Board decides including the suspension of voting rights and the suspension of the right to be nominated for election) or expel a Member from the Company if, in the opinion of the Board, that Member:
- (a) refused or neglected to comply with the provisions of this Constitution or any established code of conduct;
 - (b) acted toward the Company in a manner that is unlawful or otherwise prejudicial to the interests of the Company;
 - (c) has brought the Company into disrepute; or
 - (d) has otherwise acted in a fashion that is unbecoming of a Member.
- 15.2 Before exercising the power conferred in clause 15.1, the Board must give the Member at least fourteen (14) days' notice in writing, setting out the following information:
- (a) the date, time and place of the meeting at which the allegations against the Member are to be heard by the Board;
 - (b) details of the facts and circumstances on which the allegations against the Member are based;
 - (c) stating that the Board has the power to admonish or reprimand the Member, suspend or expel the Member from the Company and remove that person's name from the Register of Members if any of the allegations are found to be proved;
 - (d) stating that the Member has the opportunity to make an oral or written submission to the Board in relation to the facts and circumstances alleged against the Member prior to the Board making its determination in relation to the allegations; and
 - (e) stating that the Board has the power to deal with the allegations against the Member whether or not the Member makes an oral or written submission to the Board at or prior to the nominated meeting of the Board.
- 15.3 If, after considering all the material before it, including any submissions made by the Member, the Board is satisfied that the allegations made against the Member have been proved, the Board will make a disciplinary resolution in relation to that Member (Disciplinary Resolution).
- 15.4 If the Board makes a Disciplinary Resolution, the Company Secretary must, within seven (7) days after the Disciplinary Resolution is made, cause written notice to be given to the Member that includes the Disciplinary Resolution and the reasons given by the Board for having made the Disciplinary Resolution and an explanation of the Member's right of appeal.
- 15.5 A Disciplinary Resolution does not take effect until the expiry of the period within which the member is entitled to appeal. If the Member validly exercises the right of

appeal any Disciplinary Resolution made will be automatically stayed until the time that the appeal is finalised.

- 15.6 A Member may Appeal any Disciplinary Resolution within fourteen (14) days after notice of the resolution is received by the Member pursuant to clause 15.4, by lodging with the Company Secretary a written notice of the Appeal and notice of the Member's election whether the Appeal will proceed under clause 15.7 or under clause 15.9.

For the purposes of this clause 15, Appeal means any appeal, dispute, controversy or claim arising out of, relating to or in connection with a Disciplinary Resolution, including any question regarding its validity).

- 15.7 An Appeal may be determined by an independent expert nominated by one of the following organisations in accordance with its respective rules (Expert Determination):

- (a) The Australian Disputes Centre (ADC). The ADC Expert Determination shall be conducted in Sydney in accordance with the ADC Rules for Expert Determination operating at the time the Appeal is referred to ADC.
- (b) The Law Society of New South Wales. The Law Society Expert Determination will be conducted in accordance with the Law Society's Rules for expert determination. The President of the Law Society of New South Wales or the President's nominee will select the expert and determine the expert's remuneration.
- (c) Another organisation selected at the time.

If the Member, in their notice of appeal given under clause 15.6, elects to have the Appeal determined under this clause 15.7, then the Board will determine which of the organisations listed in this clause will determine the Appeal.

- 15.8 In any Appeal referred to Expert Determination under clause 15.7:

- (a) the expert acts as an expert and not as an arbitrator;
- (b) the expert's decision is final and binding on all parties to the Appeal;
- (c) the expert must be instructed:
 - (1) after the expert has considered submissions from the parties as to their preferred manner of presenting their submissions (such as written, oral, a combination of written and oral) to specify how submissions may be made to the expert by the parties and the deadlines for the making of those submissions;
 - (2) to give a written decision setting out what was taken into account, what was disregarded and the respective weighting of those matters; and
 - (3) to make the decision no later than seven (7) days after the due date for the respective parties' submissions, being a date determined by the expert.
- (d) THNSW will pay the costs and expenses of the Expert Determination excluding any third party legal costs incurred by the other party or parties to the dispute that will remain the obligation of the other party or parties.

- 15.9 An Appeal may be determined by the Members at a General Meeting called by the Board. At this General Meeting:

- (a) no business other than the question of the Appeal is to be transacted;
 - (b) the Board and the Member must be given the opportunity to state their respective cases orally and/or in writing;
 - (c) the Members present are to vote by secret ballot to confirm or revoke the Disciplinary Resolution; and
 - (d) the Members may confirm or reject the Disciplinary Resolution made by the Board under clause 15.3 and shall not be entitled to make any other decision.
- 15.10 A decision by the Members at a General Meeting called under clause 15.9 shall be final and binding on the Member who lodged the appeal, the Board and the Company.

16 The Board

- 16.1 The Board consists of a total of eight (8) directors, with suitable skills, experience and competence to undertake the duties of directors in furthering the aims and objectives of the Company.
- 16.2 Three (3) directors will be appointed as non-elected appointed directors (Non-elected Appointed Directors) pursuant to clause 19.
- 16.3 Four (4) directors will be elected by the Voting Members as elected directors (Elected Directors) pursuant to clause 20.
- 16.4 The eighth director is the Chair.

17 Chair

- 17.1 The Chair will be appointed by the Minister by written notice to the Company Secretary at appropriate times including in response to a vacancy in the office of Chair.
- 17.2 The Minister may revoke the appointment of a person as the Chair by written notice to the Company Secretary provided that written notice nominates a replacement person as the Chair. The person whose appointment is so revoked by the Minister ceases to be the Chair on receipt of written notice from the Company Secretary that the Company Secretary has received that written notice from the Minister. The replacement person becomes the Chair and the revoked person ceases to be the Chair simultaneously on the date notice is so given by the Company Secretary.
- 17.3 The Minister's power under clause 17.1 and clause 17.2 exists only while ever the Funding Deed is in full force and effect and funding is being provided under it to the Company by TfNSW.
- 17.4 Upon receipt by the Company of notice from TfNSW that the Funding Deed is no longer in full force and effect, or that the Company will no longer receive funding in accordance with it, the person appointed as Chair by the Minister automatically ceases to be Chair of the Company.
- 17.5 The Board may remove the Chair by special resolution if the Board forms the opinion that the conduct of the Chair is not in the best interests of the Company. In

this event, the Board must provide written notice to the Minister that includes reasons for, and a copy of, the signed resolution within five (5) Business Days.

- 17.6 In the event the person appointed as Chair by the Minister ceases to be Chair in accordance with clause 17.4, a new Chair must be appointed by majority vote of the Elected Directors. In the event of a deadlock, all directors including Non-elected Appointed Directors will be entitled to vote and the majority of this vote will decide the appointment of the Chair.
- 17.7 Unless in each case the person who holds the position as Chair ceases to be, or is removed, as Chair pursuant to this Constitution, the term of the tenure of each Chair is:
- (a) unlimited if the Chair is installed by Ministerial appointment; or
 - (b) three (3) years if the Chair is elected by the Directors.
- 17.8 A Chair is eligible to serve an unlimited number of terms.
- 17.9 The Chair has no deliberative vote on the Board subject to clause 23.11. The only times the Chair may vote is, subject to clause 23.14 in the event of a deadlock between the other directors and when required pursuant to clause 20.2(i)

18 Elected Directors

- 18.1 Each Voting Member of at least one (1) year's standing will be eligible to be nominated for election by the Voting Members to the office of Elected Director of the Company conducted in accordance with clause 20.
- 18.2 Each Voting Member that is nominated in accordance with clause 18.1 (Nominee) will be assessed by the Board. The Board will assess each Nominee on the basis of competence using an appropriate merit-based selection process designed to reflect the appropriate mix of skills and experience required at Board level, and all nominees that pass that assessment process will become candidates for election provided also that the Nominee:
- (a) continues to be a Voting Member;
 - (b) is not disqualified by law from holding office as a Director;
 - (c) does not become bankrupt or make any arrangement or composition with that person's creditors generally;
 - (d) does not become unsound of mind or a person whose person or estate is dealt with in any way under the law relating to mental health; and
 - (e) otherwise remains a fit and proper person to hold office as a Director.
- 18.3 No person is qualified to be elected, or hold office, as an Elected Director of the Company unless that person is at the time of nomination for, election to and at all times thereafter a Voting Member.
- 18.4 The Elected Directors elected under clause 20 must be declared elected at the AGM at which the voting for their election was conducted.
- 18.5 The term of each Elected Director elected under clause 20 is three (3) years, or until the third Annual General Meeting after the date of the election should this occur first. In the event that a director resigns before the expiry of that term, that person's directorship ends on the date of such resignation.

- 18.6 An Elected Director who retires, resigns or whose office is otherwise vacated under this Constitution is eligible for re-election to the Board in accordance with clause 18.1.
- 18.7 Each Elected Director has a single vote.

19 Appointment of Non-Elected Appointed Directors

- 19.1 Where possible, prior to the termination, for whatever reason, of the term of a Non-elected Appointed Director, a panel comprising the Chair, one (1) Elected Director and one (1) representative of TfNSW ("The Panel") must make any appointment or appointments necessary to ensure all three (3) Non-elected Appointed Director positions remain filled. Where the Panel is unable to meet prior to the termination of the term of a Non-elected Appointed Director, then it will meet at the earliest opportunity after the termination. In either case, the Panel will use the same merit-based selection criteria in use at the time for the purpose of assessing the suitability of Elected Directors, being the requisite skills, experience and competence to further the aims and objectives of the Company.
- 19.2 To be considered as a candidate for appointment to the office of Non-elected Appointed Director in accordance with clause 19.1 a person:
- (a) may, but need not, have been previously appointed in accordance with this clause 19;
 - (b) may, but need not, be a Member;
 - (c) must not be disqualified by law from holding office as a Director;
 - (d) must not be bankrupt or make (or have made) any arrangement or composition with that person's creditors generally;
 - (e) must not be unsound of mind or a person whose person or estate is dealt with in any way under the law relating to mental health; and
 - (f) is otherwise a fit and proper person to hold office as a Director.
- 19.3 Each Non-elected Appointed Director may hold office (unless that Non-elected Appointed Director ceases in the meantime to be a director or is otherwise removed during their term) until the expiry of three (3) years from their appointment, upon which date the director must retire.
- 19.4 Each Non-elected Appointed Director appointed pursuant to clause 19.1 who retires or whose office is otherwise vacated is eligible for re-appointment to the Board.
- 19.5 Each Non-elected Appointed Director has a single vote.

20 Election of Elected Directors

- 20.1 The nomination of Voting Members as candidates for election as Elected Directors under clause 16.3 must take place in the following manner:
- (a) the Company Secretary must at least eight (8) weeks prior to the Annual General Meeting forward to all Voting Members entitled to vote at a General Meeting of the Company a notice of the forthcoming election of Elected Directors under clause 16.3 containing the names of the retiring Elected

Directors and calling for nominees for election as Elected Directors, and including details of the merit based selection process and selection criteria and inviting nominations for the position of Elected Director. The notice will be sent by the Company Secretary:

- (1) electronically to Members who have provided an email address and have not indicated a preference to receive notices by post; or
- (2) by post to all other Members.

The non-receipt by any Member entitled to vote of such notice does not invalidate the election of the Elected Directors;

- (b) nominations for election to the position of Elected Director must be in writing and must be delivered to the Company Secretary at the address given in the notice of the forthcoming election described in clause 20.1(a) which may be the registered office of the Company or an electronic address at least thirty (30) days prior to the day fixed for the holding of the Annual General Meeting and must include a statement of competence of each candidate against the director's duties and responsibilities demonstrating compliance with the merit based selection criteria;
- (c) a nomination for election to the position of Elected Director under clause 16.3 must not be accepted unless it is proposed by two (2) Voting Members and has the written consent of the candidate;
- (d) the Company Secretary must prepare a list of the names of the candidates for election to the position of Elected Director on the Business Day following the day on which nominations close for the election of Elected Directors;
- (e) if more than the required number of candidates is nominated for election to the position of Elected Director, an election by postal or electronic ballot must take place;
- (f) if only the requisite number of candidates is nominated for election to the position of Elected Director, the Chair of the AGM must declare those candidates elected as Elected Directors;
- (g) if the requisite number of candidates is not nominated for election to the position of director, then additional nominations of Voting Members for election as Elected Director may, with the consent of the nominee or nominees, be made at the Annual General Meeting and in such an event:
 - (1) each nominee must have a separate proposer and seconder to be accepted;
 - (2) if only the requisite number of additional candidates are nominated for election to the position of Elected Director, the Chair of the Annual General Meeting must declare those candidates duly elected as Elected Directors;
 - (3) if more than the required number of additional candidates are nominated for election to the position of Elected Director, the Chair must direct that a ballot take place at that Annual General Meeting in such manner as the Chair specifies in order to elect the additional directors to make up the required number of Elected Directors; and

- (4) a position filled in this manner is taken to be a casual appointment as per the provisions of Clause 21.2.

20.2 The election of Elected Directors by postal or electronic ballot must take place in the following manner:

- (a) The Company Secretary must at least twenty-one (21) days prior to the Annual General Meeting forward to all Voting Members entitled to vote at a General Meeting of the Company a ballot paper containing a statement of the number of vacancies to be filled and the names of all candidates for election to the position of Elected Director. The ballot paper will be sent by the Company Secretary:

- (1) electronically to Members who have provided an email address and have not indicated a preference to receive the notice by post; or
- (2) by post to all other Members.

The non-receipt of such ballot paper by any Voting Member will not invalidate the ballot for election of Elected Director;

- (b) the order in which the names of candidates for election to the position of Elected Director must appear on the ballot paper will be determined by lot. All candidates for election to the position of Elected Director are entitled to be present when the lot for positions on the ballot paper takes place;
- (c) a Member must mark the Member's physical or virtual ballot paper in such manner as may be prescribed from time to time by the Board (and this will be communicated when the postal and electronic ballots are dispatched to Voting Members) otherwise that ballot will be invalid and not counted;
- (d) the ballot for Elected Directors must be conducted by way of the first-past-the-post system;
- (e) the ballot for Elected Directors must be conducted by the returning officer appointed by the Board, witnessed by scrutineers appointed by the candidates for election to the position of Elected Director and/or the returning officer and/or the Board. Each candidate for election to the position of Elected Director has the right to appoint only one scrutineer;
- (f) all formal ballots received by the returning officer not later than forty-eight (48) hours before the Annual General Meeting must be counted;
- (g) the returning officer must report the result of the voting for Elected Director to the Chair who must then, subject to the provisions of the Corporations Act 2001 (Cth), declare the successful candidate or candidates for election to the position of Elected Director elected as Elected Directors;
- (h) any question relating to the formality of any physical or virtual ballot paper must be referred to the Chair, whose determination of that question is final;
- (i) the Chair has a casting vote or votes in the event of two (2) or more candidates obtaining an equal number of votes on a ballot; and
- (j) the Board may make rules prescribing the way a ballot must be conducted, including but not limited to the systems or mechanism(s) to be used for electronic ballots, the manner of returning physical or electronic ballots, the address to which completed ballot papers are to be returned, the

appointment of the returning officer and scrutineers, the counting of votes and the retention of ballots after the election.

- 20.3 At the earliest opportunity after each Annual General Meeting, the Elected Directors will appoint one of their number the Deputy Chair.
- 20.4 No person is entitled to hold office as an Elected Director if that person is a full time, part time or casual employee with the Company under an industry award or possesses a written or oral contract of employment with the Company. This restriction does not apply to Members who are remunerated for the performance of Rail Safeworking duties for the Company as casual workers on an irregular or infrequent basis, or to volunteer workers.
- 20.5 The immediate past Chair may be invited to provide mentoring support and assist in facilitating the activities of the Board, at the discretion of the incumbent Chair and Board, for a period of not more than one (1) year following that person's retirement as Chair.

21 Vacancies on the Board

- 21.1 A director must cease to be a director if that director:
- (a) tenders that person's resignation in writing;
 - (b) is an Elected Director and ceases to be a Voting Member;
 - (c) is disqualified by law from holding office;
 - (d) becomes bankrupt or makes any arrangement or composition with that person's creditors generally;
 - (e) becomes unsound of mind or a person whose person or estate is dealt with in any way under the law relating to mental health;
 - (f) is absent from three (3) consecutive meetings of the Board or five (5) meetings of the Board within a twelve (12) month period without prior granting of leave of absence by the Board;
 - (g) is directly or indirectly interested (within the meaning of the Corporations Act 2001 (Cth)) in any contract with the Company or a participant in the profits of any contract with the Company. A director, however, is not required to vacate the office by reason of being a member of any Similar Institution that has entered into contracts with, or done any work for, the Company and if that director declared the nature of the interest in the manner required by the provisions of the Corporations Act 2001 (Cth).
- 21.2 The Board must fill an Elected Director's vacancy, such appointment being for the remainder of the unserved term of the Elected Director that is being replaced, with a person who, to the satisfaction of the Board, is qualified and is either:
- (a) an unsuccessful Candidate from the previous AGM ballot according to the descending position they obtained on that ballot result; or
 - (b) any Voting Member qualified to hold office as an Elected Director to the Board.
- 21.3 Any Non-elected Appointed Director's vacancy must be filled as soon as practical after that vacancy arises and in accordance with the provisions of clauses 19.1,

19.2, 19.4 and 19.5. Clause 19.3 will not apply and any such appointment will instead be for the remainder of the unserved term of the director that is being replaced.

- 21.4 The directors may act notwithstanding any casual vacancy in their number. If the number of directors is less than five (5), the directors may act for the purpose of increasing the number of directors or for the purpose of convening a General Meeting to elect additional Elected Directors, but for no other purpose.

22 Powers of the Board

22.1 The business and affairs of the Company are under the management of the Board, which may exercise all the powers of the Company that are not, by this Constitution or the Corporations Act 2001 (Cth), required to be exercised by the Company in General Meetings. In particular, but without limiting the powers of the Board, the Board has power to do the following:

- (a) to appoint sub-committees for any purpose and to delegate to any such subcommittee such powers as the Board may determine and to revoke or alter any such appointment or delegation and to require that the committee report to the Board on a regular basis;
- (b) to make, amend and rescind such rules as, in the opinion of the Board, are necessary or desirable for the proper control, administration and management of the Company, including rules as to membership;
- (c) to enforce the observance of rules;
- (d) to appoint any delegate or delegates to represent the Company for any purpose with such powers as the Board may determine and vary or revoke such powers at any time;
- (e) to engage, appoint, hire, control, remove, discharge, suspend and dismiss the chief executive officer, and to determine the duties, salary and other conditions of employment or engagement of that position;
- (f) to pay the expenses of managing and promoting the Company;
- (g) to determine who has authority to authorise payments and other negotiable documents on behalf of the Company;
- (h) to purchase or otherwise acquire for the Company any real or personal property rights at such price and upon such terms and conditions as it determines;
- (i) to sell, lease, exchange or otherwise dispose of any real or personal property rights or privileges of the Company at such price and on such terms and conditions as the Board determines with the exclusion of assets listed on the Heritage Asset Register that must be dealt with in accordance with the terms of clause 42;
- (j) to invest and deal with any of the moneys of the Company not immediately required for the purposes of the Company provided that such moneys invested be so invested only in such forms of investment as are permitted by law for the investment of trust funds and provided by reputable and credible financial institutions;

- (k) to borrow or secure the payment of any sum or sums of money for the purpose of the Company and to raise or secure payment of such money in any manner and upon any terms and conditions in all respects as the Board determines;
- (l) to meet the expenses of any director or other representative of the Company in accordance with the approved and published Expense Policy of the Company that is in force at the time or as otherwise approved by resolution of the Board;
- (m) to institute, conduct, defend, compound or abandon any legal proceedings by or against the Company or its officers or otherwise concerning the affairs of the Company and to refer any claims or demands by or against the Company to arbitration or mediation and to observe and perform the award or decisions made in regard thereto;
- (n) subject to the Corporations Act 2001 (Cth), to pay premiums for an insurance policy in favour of any director or officer for any type of liability;
- (o) to perform such acts and things as may be necessary or desirable to carry out the objects and interests of the Company;
- (p) to review the performance and suitability of the auditor and, when required, to recommend at a General Meeting the removal and appointment of an auditor or auditors as required by the Corporations Act 2001.

23 Board Meetings

- 23.1 There must be no fewer than six (6) meetings of directors each calendar year.
- 23.2 The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit. A director may at any time cause the Company Secretary to summon a meeting of the directors by written notice to the Company Secretary setting out the matters to be discussed at that meeting.
- 23.3 At least forty-eight (48) hours' notice in writing through any medium agreed to by the directors must be given to each director for each meeting.
- 23.4 Subject to the Corporations Act 2001 (Cth), a directors' meeting may be held by the directors communicating with each other by any technological means by which they are able to simultaneously hear each other and participate in discussion. The directors need not all be physically present in the same place for a directors' meeting to be held.
- 23.5 Every director is entitled to attend and vote at every Board meeting, but no other person may attend or be heard except at the invitation of the Chair or by resolution of the Board.
- 23.6 No business must be transacted at any meeting of the Board unless a quorum of directors is present at the time of the commencement of the meeting.
- 23.7 A quorum for a meeting of the Board is achieved provided it is attended by:
 - (a) at least one (1) Non-elected Appointed Director;
 - (b) at least two (2) Elected Directors; and

- (c) the number of attending Elected Directors exceeds the number of attending Non-elected Appointed Directors.
- 23.8 If a quorum of directors as defined in clause 23.7 is not present at the time fixed for the holding of a meeting of the Board, the meeting must stand adjourned until the same time and day of the following week (“the Adjourned Meeting”).
- 23.9 If a quorum of directors as defined in clause 23.7 is not present at the time fixed for the holding of the Adjourned Meeting, then the meeting must be held provided there is a minimum of one (1) Non-elected Appointed Director and two (2) Elected Directors. That is, the requirement in sub-clause 23.7(c) that the number of Elected Directors exceeds the number of Non-elected Appointed Director is waived. If a minimum of one (1) Non-elected Appointed Director and two (2) Elected Directors are not present at the time fixed for the holding of a meeting of the Board, the meeting must stand adjourned until the same time and day of the following week (“the Second Adjourned Meeting”).
- 23.10 The Chair must preside at every meeting of the Board or, if not present within fifteen (15) minutes of the time appointed for the holding of the meeting, the Deputy Chair must preside at that meeting of the Board or if the Deputy Chair is unable or unwilling to act as Chair, the directors present must elect one of the Elected Directors to act as Chair for the meeting.
- 23.11 In the event that a director other than the Chair is acting as Chair, that director will be entitled to vote in accordance with the director’s normal deliberative voting rights.
- 23.12 A resolution put to the vote at a meeting of the Board must be decided on by a show of hands unless a poll is demanded (before or on the declaration of the result of the show of hands) by:
- (a) the Chair, or
 - (b) at least two (2) directors present at the meeting at least one of whom must be an Elected Director elected pursuant to clause 20.
- 23.13 Except where stated in this Constitution, decisions of the Board are made by the majority of votes.
- 23.14 Subject to clause 23.11, the Chair does not have a deliberative vote. In the event of a deadlock, the Chair has a casting vote except on any resolution connected with clause 17.6, in relation to which the Chair has no vote whatsoever.
- 23.15 Any circular resolution assented to by every Eligible Director either in writing or electronically including by e-mail, will be valid as if it had been passed at a meeting of the Board, duly convened and held. In particular:
- (a) An Eligible Director for the purposes of this clause 23.15 means any Elected Director or Non-Elected Appointed Director.
 - (b) For clarity, any such circular resolution will not fail by reason of the failure to vote by any Eligible Director who is on Board approved leave at the time the circular resolution is circulated for assent.
 - (c) Assent to any such resolution may consist of several documents or emails, each signed or sent by one (1) director.

- (d) Any such circular resolution whether assented to or not must be noted and minuted at the next meeting of the Board.

23.16 All acts done at any meeting of the Board or by any person acting as a director are valid as if such person had been validly appointed and qualified to be a director, despite any subsequent discovery of a defect in that person's appointment as a director including that they were disqualified from being a director.

24 General Meetings

- 24.1 The Annual General Meeting must be held at least once in every calendar year, but not more than five (5) months after the end of the Financial Year. Unless otherwise resolved by the Board, the Annual General Meeting must be held in the month of November following the end of the Financial Year.
- 24.2 An Extraordinary General Meeting may be called at any time by the Board and must be convened by the Board:
 - (a) if requested in writing by the Chair; or
 - (b) if requested in writing by at least five per cent (5%) or 100 members, whichever is lower, of the total number of the Voting Members; or
 - (c) as otherwise required by law.
- 24.3 The Board may determine that Voting Members may attend General Meetings "virtually". That is, the Board may facilitate General Meetings where Voting Members do not have to physically attend but may attend through electronic means. If the Board determines that Voting Members may attend virtually, then the Board must ensure the Voting Members may, at the least, participate, ask questions and vote in the General Meeting as if those Voting Members were physically present at the meeting.

25 Notice of General Meetings

- 25.1 Notice of every General Meeting must be given to each Voting Member entitled to attend and to the auditor of the Company.
- 25.2 A notice may be given by the Company to any Member, either:
 - (a) personally or by sending it by pre-paid post to the Member, to the last known address supplied by the Member to the Company; or
 - (b) by sending it via electronic mail to an address nominated by the Member for the purpose of serving notices upon the Member.
- 25.3 A notice sent by post is deemed to have been effected three (3) Business Days after it is posted and a notice forwarded by electronic mail is deemed to have been effected on the next Business Day.
- 25.4 At least twenty-one (21) days' notice must be given to every Voting Member of the holding of any General Meeting.
- 25.5 Every notice convening a General Meeting must set out:
 - (a) the place, date and time for the meeting;
 - (b) the general nature of the business of the meeting;

- (c) if a special resolution is to be proposed at the meeting, an intention to propose the special resolution and state the resolution; and
- (d) any questions on notice.

25.6 The accidental omission to give notice of a General Meeting of the Company to any Member or the non-receipt of such a notice by any Member does not invalidate the General Meeting or any of the business transacted at that meeting.

26 Procedure at General Meetings

26.1 The business of the Annual General Meeting is:

- (a) to confirm the minutes of the previous Annual General Meeting;
- (b) to receive and consider the annual report of the Company;
- (c) to receive and consider the financial report, the directors' report and the audit report;
- (d) to announce the results of the ballot for any Elected Directors elected in accordance with clause 20.2,;
- (e) in the event that less than the required number of candidates has been nominated for election to the position of Elected Director, for additional nominations to be made at the Annual General Meeting in accordance with clause 20.1;
- (f) when the position of auditor has become vacant for whatever reason, to appoint an auditor or auditors as required by the Corporations Act 2001 (Cth);
- (g) to deal with any business of which due and lawful notice has been given.

26.2 No business will be transacted at a General Meeting unless it is specified in the notice calling the meeting or is otherwise permitted to be dealt with by law.

26.3 A quorum at any General Meeting is twenty-five (25) Voting Members who may attend in person or virtually.

26.4 No business will be transacted at a General Meeting unless a quorum of Members is present at the commencement of the meeting. For the purposes of this clause 26, Members who attend the meeting virtually are taken as being present at the meeting.

26.5 If a quorum is not present at the time fixed for the holding of a General Meeting, the meeting must be dissolved, if it was convened on or by the requisition of Members. If it was convened by the Chair or by the Board or by order of the Court, the meeting must stand adjourned until the same time on the same day of the next week, which is a Business Day, at the registered office of the Company and, if a quorum is not present at the adjourned meeting within thirty (30) minutes of the time fixed for the holding of the meeting, the Voting Members present will constitute a quorum.

26.6 The Chair must preside at every General Meeting or, if the Chair is not present within fifteen (15) minutes of the time appointed for the holding of the General Meeting, or if the Chair is unable or unwilling to act as Chair the Deputy Chair must preside at that meeting, or if the Deputy Chair is unable or unwilling to act as

Chair, the directors present must elect one of the Elected Directors to act as Chair for the meeting.

- 26.7 No person other than a Member is entitled to attend or speak at a General Meeting without the leave of the Chair.
- 26.8 The Chair of the meeting may, with the consent of the Voting Members present at a General Meeting at which a quorum is present, adjourn the meeting to a date, time and place agreed to by the Voting Members present, but no business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 26.9 When a meeting is adjourned for thirty (30) days or more, a fresh notice of meeting must be given in the manner specified in this Constitution.

27 Voting at General Meetings

- 27.1 A resolution put to the vote of a General Meeting where the Board has agreed that Voting Members may attend virtually must be decided by a poll. In the event the Board has not agreed that Voting Members may attend virtually, then a resolution put to the vote of a General Meeting must be decided on a show of hands unless a poll (before or on the declaration of the result of the show of hands) is demanded:
- (a) by the Chair; or
 - (b) by at least five (5) Voting Members present and entitled to vote at the meeting.
- 27.2 Before a resolution is put to the vote, the Chair may at the sole discretion of the Chair state whether:
- (a) any proxy votes have been received by the Chair and, if so, how the proxy votes will be cast; and
 - (b) any direct votes have been received by the Company and, if so, how the direct votes were cast.
- 27.3 Unless a poll is required or demanded, the Chair must declare that a resolution has been:
- (a) carried; or
 - (b) carried unanimously; or
 - (c) carried by a particular majority; or
 - (d) lost,
- on the show of hands.
- 27.4 If a poll is required or duly demanded at the meeting, the manner in which the poll is to be taken and the time at which it is to be taken must be determined by the Chair and the result of the poll must be the resolution of the meeting at which the poll is demanded, but a poll demanded on the election of the directors or on a question of adjournment must be taken at once.
- 27.5 A declaration of the Chair is conclusive evidence of the result of the vote to which it refers, without proof of the number or proportion of the vote recorded in favour or against the resolution, unless a poll is demanded. If a poll is demanded then the

numbers recorded in favour or against must be declared at the meeting. A demand for a poll may be withdrawn.

- 27.6 If there is an equality of votes on a show of hands or on a poll, then the resolution concerned is lost.
- 27.7 At least five per cent (5%) or 100 Voting members, whichever is lower, of the total number of the Voting Members may request that a vote of no confidence in the Board be held at a General Meeting. Notice of the resolution and sufficient details to support the no confidence are to be supplied in accordance with the provisions for notification of lawful business in clause 26.1. Any such resolution must be put at the relevant General Meeting.
- 27.8 In the case of any dispute as to the admission or rejection of a vote pursuant to a notice under clause 27.6, the Chair of the meeting must determine the dispute and such determination made in good faith is final.
- 27.9 At least five per cent (5%) or 100 Voting members, whichever is lower, of the total number of the Voting Members may request that a vote of no confidence in the Chair be held at a General Meeting. Notice of the resolution and sufficient details to support the no confidence are to be supplied in accordance with the provisions for notification of lawful business in clause 26.1.
- 27.10 An objection to the qualification of a voter may only be raised at the General Meeting or adjourned General Meeting at which the voter tendered that person's vote.
- 27.11 An objection to the qualification of a voter must be referred to the Chair of the General Meeting, whose decision is final.
- 27.12 A vote that the Chair does not disallow because of an objection is valid for all purposes.

28 Postal and Electronic Votes, and Proxies

- 28.1 Every Voting Member is entitled to either:
- (a) attend the General Meeting and vote in person or virtually;
 - (b) complete and return a postal or electronic ballot in accordance with the terms of clause 20.2;
 - (c) complete and return a postal or electronic direct vote; or
 - (d) appoint an adult person including another Voting Member as proxy to attend and vote in person or virtually at any General Meeting on their behalf by notice.
- 28.2 Any postal or electronic direct vote must be:
- (a) in the form approved by the Board from time to time;
 - (b) received by the Company Secretary not later than forty-eight (48) hours before the General Meeting; and
 - (c) marked in the manner prescribed.
- 28.3 Any direct vote submitted by a Voting Member must be:
- (a) in the form approved by the Board from time to time;

- (b) marked in such manner as prescribed by the Board; and
 - (c) received by the Company Secretary not later than forty-eight (48) hours before the General Meeting.
- 28.4 The direct vote shall be in the form determined by the Board from time to time and may be delivered to the Company Secretary by hand, post or electronically.
- 28.5 Any notice of appointment of a proxy must be:
 - (a) in the form approved by the Board from time to time;
 - (b) marked in such manner as prescribed by the Board; and
 - (c) received by the Company Secretary not later than forty-eight (48) hours before the General Meeting.
- 28.6 Where a person has been appointed as a proxy by a Voting Member in accordance with clause 28.1(d) above, the Voting Member may direct the proxy to vote in accordance with the wishes of the Voting Member on none, some or all of the matters subject of a vote. Where the Voting Member does not give direction, the proxy may vote at the discretion of the proxy.
- 28.7 The notice of appointment of a proxy shall be in the form determined by the Board from time to time and may be delivered to the Company Secretary by hand, post or electronically.
- 28.8 A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast, the person appointing:
 - (a) died;
 - (b) became mentally incapacitated, or
 - (c) revoked the proxy or power,unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant General Meeting or adjourned General Meeting.

29 Minutes of Meetings

- 29.1 The Board must cause Minutes to be kept by the Company Secretary or the Company Secretary's delegate of:
 - (a) all appointments of directors and other officers made by the Company or by the Board;
 - (b) the names of the directors present and voting at each meeting of the Board;
 - (c) the total number of Voting Members present (whether physically or virtually) at General Meetings of the Company;
 - (d) the number of Voting Members registering a vote on each resolution presented; and
 - (e) all resolutions and proceedings of all meetings of the Company or of the Board.
- 29.2 The minutes must comply with the Charitable Fundraising Act 1991 (NSW) or its successor.

30 Register of Members

- 30.1 The Company must keep a Register of Members in which at least the following information must be entered with regard to each Member:
- (a) (preferred) first name and surname/family name;
 - (b) current and valid postal and/or email contact address indicating preferred method of contact if both are provided);
 - (c) date of admission as a Member;
 - (d) category and class of Member;
 - (e) the date of admission as a Life Member (if applicable);
 - (f) the dates and particulars of any other changes that are required by this Constitution to be entered in the Register of Members;
 - (g) the amount and date of the last payment of annual subscription by that Member;
 - (h) the date upon which that person ceased to be a Member;
 - (i) any other information as determined by the Board.
- 30.2 Every Member must notify the membership officer in writing of any change in the Member's name, postal address or email contact address. The last address given in writing is deemed to be the registered address of the Member for the purpose of the issue of notices.

31 Seal

- 31.1 The Company may execute a document under seal or without using a seal.
- 31.2 A document may be executed under seal if the fixing of the seal is witnessed by two (2) directors or a director and the Company Secretary.
- 31.3 A document may be executed without using the seal if the document is signed by two (2) directors or a director and the Company Secretary.
- 31.4 The Company may execute a document as a deed if the document is expressed to be executed as a deed and it is executed in accordance with this clause.
- 31.5 The seal must not be used without the prior express authority of the Board.

32 Company Secretary

- 32.1 The Board must appoint a Company Secretary upon such terms and conditions as the Board determines, including, but not limited to, the period of such appointment and the remuneration, if any, to be paid in respect of such appointment.
- 32.2 The Board may but need not appoint an Elected Director to the office of Company Secretary.
- 32.3 Any Company Secretary so appointed will:
- (a) fulfil the duties attaching to the offices of Company Secretary and Public Officer of the Company;
 - (b) attend all Board meetings unless otherwise excused by the Board; and

(c) comply with all requirements prescribed by law and by the Company's governing documents.

32.4 The Board may revoke any such appointment made under this clause at its sole discretion.

32.5 Nothing in clause 32 derogates from the duties or obligations of the directors at law.

33 Chief Executive Officer

33.1 The Board may appoint a Chief Executive Officer, who is not an Elected Director but who may be a Voting Member, upon such terms and conditions as the Board determines, including, but not limited to, the period of such appointment and the remuneration, if any, to be paid in respect of such appointment.

33.2 The Board may revoke any such appointment made under this clause at its sole discretion.

33.3 Any Chief Executive Officer so appointed must comply with all requirements prescribed by law, and by all decisions of the Board including any such decisions documented in the form of policies and procedures as may be in force from time to time.

33.4 Nothing in clause 33 derogates from the duties or obligations of the directors at law.

34 Financial Statements

34.1 The Board must cause a financial report, directors' report and audit report to be prepared for each Financial Year and laid before each Annual General Meeting as required by law.

34.2 A copy of the financial report, directors' report and audit report must be made available to Members and to TfNSW at least twenty-one (21) days prior to the date of the Annual General Meeting. Unless a Member specifies that the Member wishes to receive the reports as a hard copy by post, the reports will be made available in electronic form and/or by electronic means. Members may elect to receive a hard copy of the reports by post, on application to the Company Secretary.

34.3 A copy of all financial reports, directors' reports and audit reports must be made available to TfNSW on reasonable notice given to the Company.

35 Inspection of Financial Records

35.1 The financial records of the Company must be kept at the registered office of the Company or some other location in NSW as the Company may determine.

35.2 The Board has discretion to authorise the opening of financial records for inspection in the following circumstances only:

(a) to any current director of the Company at the request of the director; or

(b) to a Voting Member of the Company provided the request for inspection of the financial records:

- (1) is made in writing by that Voting Member;
- (2) discloses the reasons for which the Voting Member is making the request; and
- (3) is made in good faith and for a proper purpose, as determined by the Board,

by prior agreement with the Company as to starting time and duration.

35.3 Authorisation for the opening of financial records in response to a request made in compliance with clause 35.2 will not be unreasonably withheld by the Board.

36 Application of Funds

36.1 The income and property of the Company will only be applied towards the promotion of the Objects of the Company, as set out in clause 2.

36.2 No portion of income or property of the Company can be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to or amongst the Members, provided that nothing will prevent the payment in good faith of any of the following:

- (a) reasonable and proper remuneration to any Member in return for any services actually rendered to the Company by that Member;
- (b) payment of out-of-pocket expenses to a Member that have been incurred in the course of carrying out duties or responsibilities in relation to the Company;
- (c) payment to a Member of interest as a rate not exceeding interest at the rate for the time being charged by bankers in Sydney for overdraft accounts on money lent to the Company; and
- (d) payment to a Member of reasonable rent for premises leased to the Company.

37 Receipts

37.1 If the Company accepts a gift, contribution or donation of money or property, the Company must give the donor a receipt, and otherwise comply with all applicable laws in relation to any such gift, contribution or donation, including without limitation the provisions of section 30-228 of the Income Tax Assessment Act 1997 (Cth) and the provisions of the Charitable Fundraising Act 1991 (NSW).

37.2 The Company may seek gifts, support in kind, contributions or donations from the public.

38 Liability of Members on Winding Up

38.1 The liability of the Members is limited.

- 38.2 Every Member undertakes to contribute to the assets of the Company in the event of the Company being wound up while that person is a Member, or within one (1) year after that person ceases to be a Member, and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding twenty dollars (\$20).
- 38.3 Subject to clause 38.4, if, upon winding up or dissolution of the Company, there remains after the satisfaction of all its debts and liabilities, any property, the same must not be paid to or distributed among the Members, but must be given or transferred to some Similar Institution. At or before the time of dissolution, the Voting Members must determine:
- (a) the Similar Institution; and
 - (b) if the Members determine there to be more than one Similar Institution, the distribution where applicable amongst those Similar Institutions.
- 38.4 If the Members fail to make a determination in accordance with clause 38.3, then a determination shall be made by the Chief Judge in Equity of the Supreme Court of New South Wales, or such other judge of that Court as may have or acquire jurisdiction in the matter. If, in so far as effect cannot be given to this provision, then properties must be dealt with in accordance with clause 42.5 subject to the rights of third parties to access and use such assets pursuant to custody management agreements and like agreements entered into between any such third party and the Company.
- 38.5 If the Company's general restoration fund or any other gift fund operated by the Company is wound up, or if the endorsement of the Company as a deductible gift recipient is revoked, any surplus assets remaining after the payment of liabilities attributable to it must be transferred to a fund, authority or institution to which income tax deductible gifts can be made.

39 Indemnity

- 39.1 The Company indemnifies every person who is, or has been, an officer of the Company against the following:
- (a) any liability for costs and expenses incurred by the officer in their capacity as an officer of the Company, except for legal costs incurred in defending an action for a liability incurred as an officer if the costs are incurred:
 - (1) in defending or resisting proceedings in which the officer is found to have a liability for which the officer could not otherwise be indemnified; or
 - (2) in defending or resisting criminal proceedings in which the officer is found guilty; or
 - (3) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
 - (4) in connection with proceedings for relief to the officer under the Corporations Act 2001 (Cth) in which the court denies the relief.

- (b) any liability (other than a liability for legal costs) incurred by the officer in that person's capacity as an officer of the Company to a person other than the Company or a related body corporate, and other than a liability for a pecuniary penalty order under Section 1317G of the Corporations Act 2001 (Cth) or a compensation order under Section 1317H of the Corporations Act 2001 (Cth), unless the liability arises out of conduct by the officer involving a lack of good faith.

39.2 Clause 39.1(a)(3) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order.

40 Replaceable Rules and Constitution

40.1 The replaceable rules are displaced by this Constitution to the extent that they are inconsistent, and to that extent do not apply to the Company.

41 Amendments to the Constitution

41.1 This Constitution may only be amended by special resolution at a General Meeting by 75% or more of the vote by the Voting Members.

41.2 This Constitution must not be amended if to do so would cause the Company to no longer be eligible for endorsement as a deductible gift recipient under Division 30 of the Tax Act.

42 Heritage Assets

42.1 Items listed in the Company's Heritage Asset Register (Heritage Assets) must not be sold, mortgaged or otherwise disposed of except in accordance with the Company's Collections Policy as approved by the Board and in force from time to time.

42.2 The acquisition of any item proposed to be added to the Company's Heritage Asset Register must be made in accordance with the Collections Policy.

42.3 Items accessioned into the Company's Heritage Asset Register including by way of acquisition or gift will become subject to the operation of this Clause 42 immediately upon becoming listed on the Company's Heritage Asset Register.

42.4 Work may only be carried out on Heritage Assets in compliance with the Company's Collections Policy, the Company's Asset Management Plan, and any conservation management plan as approved by the Board and in force from time to time.

42.5 If, for whatever reason, the Company is wound up, Heritage Assets are to be transferred to the entity agreed upon by a majority of the Elected Directors subject to compliance with clause 38.3.