

Constitution

Foundation and Friends of the Botanic Gardens Limited

ACN 159 378 855

(Company)

A Company Limited by Guarantee

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1 Definitions and Interpretation

1.1 Definitions

In this Constitution unless a contrary intention appears:

Auditor means the auditor for the time being of the Company.

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

Chairman means the chairman appointed under clause 21.1.

Chief Executive Officer means the chief executive officer of the Company appointed on such terms and for such period as the Directors shall determine in accordance with clause 15.

Commissioner means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the *Income Tax Assessment Act 1997* (Commonwealth).

Committee means a committee of the Directors constituted under clause 18.

Company means Foundation and Friends of the Botanic Gardens Limited being an Australian Public Company Limited by Guarantee established under the *Corporations Act 2001* (Commonwealth) which bears the ACN 159 378 855.

Constitution means this Constitution as amended from time to time and a reference to a clause is a reference to a clause of this Constitution.

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

Director means a person holding office as Director of the Company.

Directors means all or some of the persons holding office as Directors of the Company.

Deputy Chairman means the deputy chairman appointed under clause 21.1.

Elected Director means a Director elected by the Members in accordance with clause 10.1(a).

Gardens means the Royal Botanic Garden Sydney, the Australian Botanic Garden, Mount Annan and the Blue Mountains Botanic Garden, Mount Tomah, and any other activity of the Gardens Trust.

Gardens Trust means The Royal Botanic Gardens and Domain Trust constituted by the *Royal Botanic Gardens and Domain Trust Act 1980 (NSW)*.

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

Member means a person entered on the Register of the Company as a Member.

Officer means the Chairman or Deputy Chairman or Secretary as the case may be.

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

Registered Office means the registered office for the time being of the Company.

Related Body Corporate has the same meaning it has in the Corporations Act.

Relevant Law means:

- (a) an Act of which the Commissioner has the general administration (including a part of an Act to the extent to which the Commissioner has the general administration of the part);
- (b) regulations under such an Act (including such a part of an Act); and
- (c) any other statute, regulation or law applicable to the Company either in its own right, or in relation to the operation of a fund referred to in clause 5.3.

Rule means a rule made by the Board in accordance with clause 16.

Schedule means a schedule to this Constitution.

Seal means the common seal (if any) of the Company.

Secretary means a person appointed as a secretary of the Company and includes an honorary Secretary and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

1.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a law includes regulations and instruments made under the law;
- (d) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
- (e) a reference to a meeting includes a meeting by technology where all attendees have reasonable opportunity to participate;
- (f) a power, an authority or a discretion reposed in a Director, the Directors, the company in General Meeting or a Member may be exercised at any time and from time to time;
- (g) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and

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

1.3 Signing

Where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions, or in any other manner approved by the Directors.

1.4 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act; and
- (b) “section” means a section of the Corporations Act.

1.5 Headings

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

1.6 Replaceable rules do not apply

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

2 Objects of the Company

The objects of the Company are to advance the horticultural, scientific, educational, historical and cultural purposes of the Gardens, including by:

- (a) promoting and supporting the Gardens;
- (b) improving community awareness of the horticultural, scientific, educational, historical and cultural functions of the Gardens;
- (c) encouraging the use and enjoyment of the Gardens by the community;

- (d) acting as trustee and performing and discharging the duties and functions incidental thereto where this is incidental or conducive to the attainment of these objects; and
 - (e) all such other things as are incidental or conducive to the attainment of these objects.
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3 Powers

The Company has the legal capacity and powers of an individual and also has all the powers of a Body Corporate under the Corporations Act.

4 Application of income for Objects only

4.1 Profits

The profits (if any) or other income and the property of the Company, however derived:

- (a) must be applied solely towards the promotion of the purposes of the Company as set out in clause 2; and
- (b) may not be paid or transferred to the Members, in whole or in part, either directly or indirectly by way of dividend, bonus or otherwise.

4.2 Payment in good faith

The above clause does not prevent payment in good faith to a Member, or to a firm of which a Member is a partner:

- (a) of remuneration for services to the Company;
- (b) for goods supplied in the ordinary course of business;
- (c) of interest on money borrowed from a Member at a rate not exceeding that fixed for the purposes of this clause by the Company in a General Meeting; or
- (d) of a reasonable rent for premises let by a Member.

5 Winding Up

5.1 Contributions by members

- (a) Each Member undertakes to contribute to the Company's property if the Company is wound up while they are a Member, or within one year after they cease to be a Member.
- (b) This contribution is for:
 - (i) payment of the Company's debts and liabilities contracted before they ceased to be a Member;
 - (ii) the costs of winding up; and
 - (iii) adjustment of the rights of the contributories among themselves.
- (c) The amount is not to exceed \$10.

5.2 Application of Property

- (a) If any property remains on the winding up or dissolution of the Company and after satisfaction of all its debts and liabilities, that property may not be paid to or distributed among the Members but must be given or transferred to some other institution:
 - (i) having objects similar to the objects of the Company; and
 - (ii) whose constitution prohibits the distribution of its income and property among its Members to an extent at least as great as imposed on the Company under this Constitution.
- (b) The institution will be determined by the Members at or before the time of dissolution.

5.3 Revocation of Australian Tax Office Endorsement

- (a) Where the Company has been endorsed as a deductible gift recipient in relation to a public fund under Subdivision 30-BA of the *Income Tax Assessment Act 1997* (Commonwealth) (as amended), then where:
 - (i) the Company is wound up; or
 - (ii) the fund is wound up; or

- (iii) the endorsement under Subdivision 30-BA of the *Income Tax Assessment Act 1997* (Commonwealth) is revoked;

any surplus assets of the fund remaining after payment of all liabilities must be transferred to an institution or fund that complies with clause 5.2 and is an endorsed deductible gift recipient, or in any other manner permitted by the Relevant Law, as the Directors (or, after the commencement of the winding up of the Company, the liquidator) decide.

- (b) Where the Company operates more than one fund for which it is a deductible gift recipient and its endorsement under Subdivision 30-BA of the *Income Tax Assessment Act 1997* is revoked only in relation to one of those funds, then it may transfer any surplus assets of the fund after payment of all liabilities to any other fund for which it is endorsed as a deductible gift recipient or in any other manner permitted by the Relevant Law, as the Directors decide.

6 Membership

6.1 Number of members

- (a) The number of Members of the Company will be such number as the Directors determine from time to time, subject to that number complying with the Corporations Act.
- (b) The Members at the date of adoption of this Constitution and any person the Directors admit to Membership under clause 6.2 are the Members of the Company.
- (c) The Directors may from time to time increase or decrease the maximum number of Members.

6.2 Admission as a member

The Directors may admit any person as a Member if the person is eligible under clause 6.3 and agrees to be bound by this Constitution in any manner the Directors determine.

6.3 Membership Criteria

To be eligible to be a Member, a person must consent in writing to become a Member of the Company and lodge an application in the manner set out in clause 6.4.

6.4 Membership Process

- (a) The application for Membership must be made:
 - (i) in writing; and
 - (ii) in such form as the Directors from time to time prescribe.
- (b) Each application for Membership will be considered and determined by the Directors in such manner as they from time to time shall prescribe. The Directors shall be responsible for determining whether to admit the applicant to Membership of the Company or whether to reject the application.
- (c) When an applicant has been accepted or rejected for Membership the Secretary or other delegate of the Directors must notify the applicant of the decision as soon as reasonably practicable.

6.5 Directors' discretion to admit or refuse admission as a Member

The Directors have the discretion to refuse any person or corporation admission as a Member without giving any reason for refusing.

6.6 Membership terms

From the date of adoption of this Constitution, all membership of the Company will be renewable every year or such other term determined by the Directors. At the end of each term, each Member must reapply for membership.

6.7 Membership fees

The Directors may set such membership fees to be paid by Members as they may think fit, including discounted fees, and waived fees.

7 Ceasing to be a member

7.1 Cessation of membership

A Member ceases to be a Member on:

- (a) death;

- (b) resignation by written notice to the Company having immediate effect or with effect from a specified date occurring not more than seven days after the service of the notice;
- (c) becoming of unsound mind or a person whose personal estate is liable to be dealt with in any way under a law related to mental health;
- (d) becoming bankrupt or insolvent or making an arrangement or composition with creditors of a person's joint or separate estate generally;
- (e) the passing of a resolution by the Directors pursuant to clause 7.2;
- (f) the expiry of a period of three months after the end of the term of membership, unless the Member had applied for and been admitted as a Member for the following term;
- (g) that Member ceasing to be a Director (in such circumstances the Member is able to make a new application for membership pursuant to clause 6.2 and 6.4); or
- (h) termination of his or her appointment as a Director pursuant to clause 13.

7.2 Termination of membership

- (a) Subject to this Constitution the Directors may at any time terminate the membership of a Member if the Member:
 - (i) refuses or neglects to comply with this Constitution or any applicable Rules or regulations made by the Directors;
 - (ii) engages in conduct which in the opinion of the Directors is unbecoming of the Member or prejudicial to the interests of the Company; or
 - (iii) fails to pay any debt due to the Company for a period of three months after the date for payment (such debt not including a subscription referred to in clause 6.7).
- (b) For a decision of the Directors under clause 7.2(a) to be effective the general nature of the allegations made against the Member must be notified to the Member. If the Member objects, the dispute resolution procedure contained in clause 28 must be followed, and for the purposes of clause 28.1(a) this notification will be the notice of the Dispute.

7.3 Limited liability

The Members have no liability as Members except as set out in clause 5.1.

8 General Meetings

8.1 Annual General Meetings

Annual General Meetings of the Company are to be held in accordance with the Corporations Act.

8.2 Convening a General Meeting

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

8.3 Notice of a General Meeting

Notice of a meeting of Members must be given in accordance with clause 33 and the Corporations Act.

8.4 Calculation of period of notice

In computing the period of notice under clause 8.3, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

8.5 Cancellation or postponement of General Meeting

- (a) Where a meeting of Members (including an Annual General Meeting) is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.
- (b) This clause 8.5 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members or to a meeting convened by a Court.

8.6 Notice of cancellation or postponement of a meeting

- (a) Notice of cancellation, postponement or change of place of a General Meeting must state the reason for cancellation or postponement and be given:
 - (i) to each Member individually; and
 - (ii) to each other person entitled to be given notice of a meeting of the Company's Members under the Corporations Act.

8.7 Contents of notice of postponement of meeting

A notice of postponement of a General Meeting must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

8.8 Number of clear days for postponement of meeting

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

8.9 Business at postponed meeting

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

8.10 Proxy at postponed meeting

Where by the terms of an instrument appointing a proxy:

- (a) the proxy is authorised to attend and vote at a General Meeting or General Meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy;

then, by force of this clause 8.10, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, unless the Member appointing the proxy gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

8.11 Non-receipt of notice

The non-receipt of notice of a General Meeting or cancellation or postponement of a General Meeting by, or the accidental omission to give notice of a General Meeting or cancellation or

postponement of a General Meeting to, a person entitled to receive notice does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the cancellation or postponement of a meeting.

8.12 Director entitled to notice of meeting

A Director is entitled to receive notice of and to attend all General Meetings and is entitled to speak at those meetings.

9 Proceedings at General Meetings

9.1 Number of a quorum

- (a) Twenty (20) or one fifth of the Members (whichever is the lesser) present in person or by proxy are a quorum at a General Meeting.
- (b) In determining whether a quorum is present, each individual attending as a proxy is to be counted, except that:
 - (i) where a Member has appointed more than one proxy, only one is to be counted; and
 - (ii) where an individual is attending both as a Member and as a proxy, that individual is to be counted only once.

9.2 Requirement for a quorum

- (a) An item of business may not be transacted at a General Meeting unless a quorum is present when the meeting proceeds to consider it.
- (b) If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chairman of the meeting (on the Chairman's own motion or at the request of a Member or proxy who is present) declares otherwise.

9.3 If quorum not present

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

- (a) if convened by a Director or at the request of Members, is dissolved; and

- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

9.4 Adjourned meeting

At a meeting adjourned under clause 9.3(b), ten (10) Members present in person or by proxy at the meeting are a quorum. If a quorum is not present within fifteen minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

9.5 Appointment and powers of chairman of General Meeting

If the Directors have elected one of their number as Chairman of their meetings, that person is entitled to preside as Chairman at a General Meeting.

9.6 Absence of Chairman at General Meeting

If a General Meeting is held and:

- (a) a Chairman has not been elected by the Directors; or
- (b) the elected Chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the following may preside as chair of the meeting (in order of precedence):

- (c) the Deputy Chairman if a Director has been so elected by the Directors; or
- (d) a Director or Member elected by the Members present to preside as chair of the meeting.

9.7 Conduct of General Meetings

- (a) The Chairman of a General Meeting:
 - (i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
 - (ii) may require the adoption of any procedure which is, in the Chairman's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the General Meeting; and

(iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the Chairman considers it necessary or desirable for the proper conduct of the meeting.

(b) A decision by the Chairman under this clause is final.

9.8 Adjournment of General Meeting

(a) The Chairman of a General Meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:

(i) in exercising the discretion to do so, the Chairman may, but need not, seek the approval of the Members present in person or by proxy; and

(ii) only unfinished business is to be transacted at a meeting resumed after an adjournment.

(b) Unless required by the Chairman, a vote may not be taken or demanded by the Members present in person or by proxy in respect of any adjournment.

9.9 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

9.10 Questions decided by majority

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

9.11 Equality of votes – no casting vote for Chairman

If there is an equality of votes, either on a show of hands or on a poll, then the Chairman of the meeting is not entitled to a casting vote in addition to any votes to which the Chairman is entitled as a Member or proxy, and consequently the resolution fails.

9.12 Voting on show of hands

- (a) At any General Meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn.
- (b) A declaration by the Chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact.
- (c) Neither the Chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

9.13 Poll

If a poll is demanded:

- (a) it must be taken in the manner and at the date and time directed by the Chairman and the result of the poll is the resolution of the meeting at which the poll was demanded;
- (b) on the election of a Chairman or on a question of adjournment, it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

9.14 Votes of Members

- (a) Every Member has one vote.
- (b) Subject to this Constitution:
 - (i) on a show of hands, each Member present in person and each other person present as a proxy of a Member has one vote; and
 - (ii) on a poll, each Member present in person has one vote and each person present as proxy of a Member has one vote for each Member that the person represents.

9.15 Right to appoint proxy

- (a) Subject to the Corporations Act, a Member entitled to attend a meeting of the Company is entitled to appoint another person (whether a Member or not) as proxy to attend in the Member's place at the meeting. A proxy has the same right as the Member to speak and vote at the meeting and may be appointed in respect of more than one meeting.
- (b) The instrument appointing a proxy must be in writing under the hand of the appointor or of his attorney duly authorised in writing. The instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll. A Member will be entitled to instruct his proxy to vote in favour of or against any proposed resolutions. The proxy may vote as he thinks fit unless otherwise instructed.
- (c) No Member, and no other person, may hold and vote in accordance with more than three proxies.
- (d) The instrument appointing a proxy may be in the form set out in Schedule 1 to this Constitution.
- (e) The instrument appointing a proxy will be deposited at the registered office of the Company, or at such other place within the State as 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 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy will not be treated as valid.
- (f) A vote given in accordance with the terms of an instrument of proxy will be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument if no notice in writing of such death unsoundness of mind or revocation as aforesaid has been received by the Company at the registered office by 5pm on the day before the commencement of the meeting or adjourned meeting at which the instrument is used.

9.16 Validity of vote in certain circumstances

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies; or

- (b) the Member revokes the appointment.

9.17 Objection to voting qualification

- (a) An objection to the right of a person to attend or vote at the meeting or adjourned meeting:
 - (i) may not be raised except at that meeting or adjourned meeting; and
 - (ii) must be referred to the Chairman of the meeting, whose decision is final.
- (b) A vote not disallowed under the objection is valid for all purposes.

10 Directors

10.1 Number of Directors

The number of Directors shall be twelve (12), subject to clause 10.2 and that number complying with the Corporations Act, and shall comprise:

- (a) eight (8) Directors elected by the Members (**Elected Directors**);
- (b) four (4) Directors appointed as follows:
 - (i) one (1) Trustee of the Gardens Trust or other person nominated in writing by the Gardens Trust; and
 - (ii) the Executive Director and the Head of Fundraising of the Gardens Trust, appointed ex officio, or (in place of one or each of them) such executive officer in an equivalent position or other officer from time to time determined, and nominated in writing, by the Gardens Trust; and
 - (iii) the Chief Executive Officer of the Company appointed ex officio.

10.2 Change of number of Directors

The Company in General Meeting may by resolution increase or reduce the number of Elected Directors.

10.3 Directors elected at General Meeting

The Company may, at a General Meeting at which an Elected Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.

10.4 Qualification of Directors

- (a) To be eligible for the office of Director a person must:
 - (i) In the case of an Elected Director be a Member of the Company; and
 - (ii) consent in writing to act as a Director.
- (b) A majority of the Directors must be persons who, because of their tenure of some public office or other position or activity in the community, have a responsibility to the community as a whole, and a high degree of responsibility to the public in controlling and administering the Company.

10.5 Election of Officers

At the first meeting of the Directors held following the Company's adoption of this Constitution, the Directors shall elect the Officers of the Company. Thereafter, the Directors shall elect those Officers with such frequency as the Directors from time to time determine.

10.6 Retirement of Directors

- (a) The Elected Directors elected upon adoption of this Constitution shall hold office for a term expiring at the second annual general meeting following its adoption.
- (b) Subject to clause 10.6(a) Elected Directors are elected for terms of three (3) years.
- (c) Subject to clause 10.6(a), at each Annual General Meeting, any Elected Director who has held office for three (3) years or more since last being elected, must retire from office but subject to clause 10.7 is eligible for reappointment.
- (d) The Members may by Ordinary resolution remove any Elected Director before the expiration of that Elected Director's period of office, and may by an Ordinary Resolution appoint another person in the place of that Elected Director.

10.7 Reappointment of Elected Directors

Elected Directors are entitled to seek reappointment as Elected Directors on three (3) occasions only so that an Elected Director's period of service to the Company shall not exceed a period of twelve (12) years.

10.8 Office held until conclusion of meeting

A retiring Elected Director holds office until the conclusion of the meeting at which that Elected Director retires but subject to clause 10.7 is eligible for reappointment.

10.9 Casual vacancy or additional Elected Director

- (a) The Directors may at any time appoint any person to be an Elected Director to fill a casual vacancy, provided the total number of Directors does not exceed the maximum number determined in accordance with clause 10.1.
- (b) A Director appointed under this clause holds office until the conclusion of the next Annual General Meeting of the Company but is eligible for election at that meeting.

11 Remuneration of Directors

The Directors may not be paid any remuneration for their services as Directors.

12 Expenses of Directors

- (a) A Director is entitled to be reimbursed out of the funds of the Company for such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company.
- (b) Any payment to a Director must be approved by the Directors.

13 Vacation of office of Director

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) resigns from the office by notice in writing to the Company;
- (c) becomes insolvent or bankrupt, compounds with his creditors, or assigns his estate for the benefit of his creditor;
- (d) is absent at three successive meetings of the Directors without leave of absence from the Directors; or
- (e) becomes prohibited for being a Director by reason of any order of any court of competent jurisdiction.

14 Powers and duties of Directors

14.1 Directors to manage the Company

The Directors are to manage the business of the Company and may exercise all the powers of the Company that are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in General Meeting.

14.2 Specific powers of Directors

Without limiting the generality of clause 14.1, and subject to any trusts relating to the assets of the Company, the Directors may exercise all the powers of the Company to:

- (a) borrow or raise money;
- (b) charge any property or business of the Company; and
- (c) give any security for a debt, liability or obligation of the Company or of any other person.

15 Chief Executive Officer

- (a) The Directors shall appoint a suitably qualified person as Chief Executive Officer.
- (b) The duties, powers and titles of the Chief Executive Officer shall be as determined by the Directors from time to time.

16 Rules

Subject to this Constitution, the Directors may from time to time by resolution make and rescind or alter Rules which are binding on Members for the management and conduct of the business of the Company.

17 Appointment of attorney

- (a) The Directors may, by power of attorney, appoint any person to be the attorney of the Company for the purposes and with the powers, authorities and discretions held by the Directors for the period and subject to the conditions that they think fit.
- (b) A power of attorney granted under this clause 17 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

18 Directors' committees

- (a) The Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a committee or committees consisting of such persons as they think fit, provided that any such committee must consist of one or more of their number.
- (b) A committee to which any powers have been delegated under this clause 18 must exercise those powers in accordance with any directions of the Directors. A power so exercised is taken to have been exercised by the Directors.

19 Powers of delegation

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

20 Proceedings of directors

20.1 Directors meetings

- (a) The Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.
- (b) A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

20.2 Questions decided by majority

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote, and that decision is for all purposes a decision of the Directors.

21 Chairman and Deputy Chairman of directors

21.1 Election of Chairman

The Directors may elect from the Elected Directors a Chairman and a Deputy Chairman of their meetings and may also determine the period for which the persons elected as Chairman and Deputy Chairman are to hold office, provided that no Director may hold office as Chairman or Deputy Chairman for more than six (6) consecutive years.

21.2 Absence of Chairman at Directors' meeting

If a Directors' meeting is held and:

- (a) a Chairman has not been elected under clause 21.1; or
- (b) the Chairman is not present within ten minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the Deputy Chairman, if elected under clause 21.1, must be the Chairman of the meeting or, if the Deputy Chairman is not present, the Directors present must elect one of their number to be a Chairman of the meeting.

21.3 No casting vote for Chairman at Directors' meetings

In the event of an equality of votes cast for and against a question, the Chairman of the Directors' meeting does not have a second or casting vote, and consequently the question is decided in the negative.

22 Quorum for directors' meeting

- (a) At a meeting of Directors, the number of Directors whose presence in person is necessary to constitute a quorum is as determined by the Directors, and, unless so determined, is one half of the Directors holding office, or if there is an odd number of Directors, then the majority of Directors holding office, provided that any quorum must include at least half of the Elected Directors .
- (b) The continuing Directors may act despite a vacancy in their number. If their number is reduced below three (3), the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a General Meeting.

23 Chairman of directors' committee

The members (if more than one) of a committee may elect one of their number (who need not be a Director) as chairman of their meetings. If a meeting of a committee is held and:

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

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

24 Meetings of committee

24.1 Adjourning a meeting

A Committee (if consisting of more than one member) may meet and adjourn as it thinks proper.

24.2 Determination of questions

- (a) Questions arising at a meeting of a Committee are to be determined by a majority of votes of the members present and voting.
- (b) In the event of an equality of votes, the Chairman of the meeting does not have a casting vote.

25 Circulating resolutions

- (a) The Directors may pass a resolution without a Directors' meeting being held if all of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Director signs.

26 Validity of acts of directors

All acts done at a meeting of the Directors or of a committee of Directors, or by a person acting as a Director are taken as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote.

27 Secretary

27.1 Appointment of Secretary

There must be at least one Secretary who is to be appointed by the Directors, but need not be appointed from the Directors.

27.2 Suspension and removal of Secretary

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

27.3 Powers, duties and authorities of Secretary

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Directors.

28 Dispute resolution

28.1 Handling a dispute

Where there is a dispute, grievance or other disagreement between a Member and the Company, whether arising out of the application of these rules or otherwise (**Dispute**), then either must, prior to the commencement of any proceedings in a Court or Tribunal or before any authority or board, notify the other in writing of the nature of the Dispute, and the following must occur:

- (a) The Member and the Company must in the period fourteen days from the service of the notice of the Dispute (**Initial Period**) use their best endeavours to resolve the Dispute.
- (b) If the Company and the Member are unable to resolve the Dispute within the Initial Period, then the Dispute must be referred for mediation to a mediator agreed by the Member and the Company.

- (c) If the disputants are unable to agree on a mediator within seven days of the Initial Period, the Member or the Company may request the Chairman of LEADR¹ to nominate a mediator to whom the dispute will be referred.
- (d) The costs of the mediation will be shared equally between the Member and the Company.
- (e) Where:
 - (i) the party receiving the notice of the Dispute fails to attend the mediation required by clause 28.1(b); or
 - (ii) the mediation has not occurred within six weeks of the date of the notice of the Dispute; or
 - (iii) the mediation fails to resolve the Dispute;then the party serving the notice of Dispute will be entitled to commence any proceedings in a Court or Tribunal or before any authority or board in respect of the Dispute.
- (f) The procedure in this clause will not apply in respect of proceedings for urgent or interlocutory relief.

29 Documents

Documents executed for and on behalf of the company must be executed by:

- (a) two Directors;
- (b) a Director and the Secretary; or
- (c) such other persons as the Directors by resolution appoint from time to time.

¹ LEADR is a not-for-profit organisation facilitating dispute resolution – further information can be found at www.leadr.com.au.

30 Accounts

- (a) The Directors must cause proper financial records to be kept and if required by the Corporations Act or otherwise considered by the Directors to be appropriate, cause the accounts of the Company to be audited in accordance with the requirements of the Corporations Act.
- (b) The Directors must distribute to the members copies of the annual financial reports of the Company accompanied by a copy of the Auditor's report and Directors' report in accordance with the requirements of the Corporations Act.

31 Seals

31.1 Safe custody of common seals

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

31.2 Use of common seal

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

32 Inspection of records

32.1 Inspection by Members

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

32.2 Right of a Member to inspect

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

33 Service of documents

33.1 Document includes notice

In this clause 33, a reference to a document includes a notice.

33.2 Methods of service

- (a) The Company may give a document to a Member:
 - (i) personally;
 - (ii) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
 - (iii) by sending it to a fax number or electronic address nominated by the Member.
- (b) A document sent by post:
 - (i) if sent to an address in Australia, may be sent by ordinary post; and
 - (ii) if sent to an address outside Australia, must be sent by airmail; and
 - (iii) in either case is taken to have been received on the day after the date of its posting.
- (c) If a document is sent by fax or electronic transmission, delivery of the document is taken:
 - (i) to be effected by properly addressing and transmitting the fax or electronic transmission; and
 - (ii) to have been delivered on the day following its transmission.

33.3 Evidence of service

A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member by post or by fax or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

34 Indemnity

The Company must indemnify any current or former Director, Secretary or other officer of the Company or of a Related Body Corporate of the Company out of the property of the Company against:

- (a) every liability incurred by the person in that capacity; and
- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity;

except to the extent that:

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

35 Insurance

The Company must pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director, Secretary or other officer of the Company or of a Related Body Corporate of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

36 Contract

The Company may enter into an agreement with a person referred to in clauses 34 and 35 with respect to the matters covered by these clauses. An agreement entered into pursuant to this clause may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

37 Patron

The Directors may appoint a patron.

Schedule 1

Appointment of Proxy

Foundation and Friends of the Botanic Gardens Limited

ACN 159 378 855

I/We _____ [name]

of _____ [address]

being a member/members of the above named Company hereby appoint

_____ [name]

of _____ [address]

or, in his or her absence _____ [name]

of _____ [address]

as my/our proxy to vote for me/us on my/our behalf at the meeting of the members of the Company to be held on the _____ day of _____ 20__ and at any adjournment of that meeting.

[To be inserted if desired] This form is to be used in favour of / against the resolution (Strike out whichever is not desired)

[Insert details of specific resolutions if desired]

SIGNED _____

NAME _____

DATED _____

This notice must be returned to Foundation and Friends of the Botanic Gardens Limited at [address] by [time] on [date] [insert specific details ensuring that the time is at least 48 hours before the time for the meeting]