



**muswellbrook
shire council**

Muswellbrook Shire Council
**EXTRA ORDINARY COUNCIL
MEETING**

BUSINESS PAPER
28 FEBRUARY 2018



EXTRA ORDINARY COUNCIL MEETING, 28 FEBRUARY 2018

MUSWELLBROOK SHIRE COUNCIL

P.O Box 122
MUSWELLBROOK
22 February, 2018

Councillors,

You are hereby requested to attend the Extra Ordinary Council Meeting to be held in the CHAMBERS, Administration Centre, Muswellbrook on **28 February, 2018** commencing at 6.00pm.

Fiona Plesman
ACTING GENERAL MANAGER

Order of Business

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MUSWELLBROOK SHIRE COUNCIL

AGENDA

1 ACKNOWLEDGEMENT OF COUNTRY

2 CIVIC PRAYER

3 APOLOGIES AND LEAVE OF ABSENCE

4 DISCLOSURE OF ANY PECUNIARY AND NON-PECUNIARY INTEREST

Section 451 of the Local Government Act requires that if a councillor or member of a council or committee has a pecuniary interest in any matter before the council or committee, he/she must disclose the nature of the interest to the meeting as soon as practicable and must not be present at, or in sight of, the meeting, when the matter is being discussed, considered or voted on.

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of financial gain or loss (see sections 442 and 443 of the Local Government Act).

A non-pecuniary interest can arise as a result of a private or personal interest which does not involve a financial gain or loss to the councillor or staff member (eg friendship, membership of an association, or involvement or interest in an activity). A councillor must disclose the nature of the interest to the meeting as soon as practicable.

Council's Model Code of Conduct now recognises two forms of non-pecuniary conflict of interests:

- Significant
- Less than significant

A Councillor must make an assessment of the circumstances and determine if the conflict is significant.

If a Councillor determines that a non-pecuniary conflict of interests is less than significant and does not require further action, they must provide an explanation of why it is considered that the conflict does not require further action in the circumstances.

If the Councillor has disclosed the existence of a significant non-pecuniary conflict of interests at a meeting they must not be present at, or in sight of, the meeting, when the matter is being discussed, considered or voted on.

5 PUBLIC PARTICIPATION

6 CORPORATE AND COMMUNITY SERVICES

6.1 ESTABLISHMENT OF AN UPPER HUNTER ECONOMIC DEVELOPMENT CORPORATION

Attachments:	A. Circular to Councils 07-49 B. Constitution
Responsible Officer:	Fiona Plesman - Director - Planning, Community & Corporate Services
Author:	Gerry Bobsien - Executive Manager Economic Development and Innovation
Community Plan Issue:	<i>Diversify the economy, facilitate the development of intensive agricultur and other growth industries, make the Shire a more attractive place to invest and do business</i>
Community Plan Goal:	<i>Facilitate the diversification of the Shire's economy and support growth of existing industry and business enterprise.</i>
Community Plan Strategy:	<i>Apply strategic planning and development assessment planning advice to support Council's economic diversification goals.</i>

PURPOSE

The purpose of this report is to present to Council a proposal to establish an Upper Hunter Economic Development Corporation.

OFFICER'S RECOMMENDATION

1. That Council make application to the Minister for Local Government under section 358 of the Local Government Act 1993 to form a company limited by guarantee, to be known as Upper Hunter Economic Development Corporation for the purpose of developing and supporting initiatives to attract investment and support economic growth for the Upper Hunter region.
2. That the constitution of the proposed company be in the form of the draft constitution attached to this report.

Moved: _____ Seconded: _____

BACKGROUND

Council passed a resolution on 12 December to apply for Ministerial consent to form a company under section 358 of the Local Government Act. In consultation with the Office of Local Government, this application requires Council endorsement of the Constitution. This report has been amended to include the Constitution in order to progress the application.

Discussion around the establishment of an Upper Hunter Economic Development Corporation emerged following consultation with the NSW Government in relation to the Upper Hunter Economic Diversification action plan. It became clear that in order to deliver impact and jobs growth in the region, a development corporation would be an effective mechanism to promote new economic opportunities for the Muswellbrook Shire and Upper Hunter region. A Constitution has been drafted with a view to supporting new industry and employment opportunities to address our changing local economy and to buttress the region against future economic change through enhanced industry and economic diversification. The Corporation would work under the governance of a skills-based board of key

regional stakeholders to effect structural adjustments in the local economy, with seed funding available for innovation and business relocation to the region, and to promote the Upper Hunter as a key industrial centre of NSW. To date, Council has engaged with industry and NSW government representatives who have expressed support for the initiative.

CONSULTATION

NSW Department Premier and Cabinet

Hunter Development Corporation

Hunter Joint Organisation of Councils

University of Newcastle

Upper Hunter Economic Diversification Working Group

Muswellbrook Chamber of Commerce and Industry

GM and Directors Upper Hunter Councils

Industry representatives including AGL

CONSULTATION WITH COUNCILLOR SPOKESPERSON

Cr Rush

REPORT

Through the development of the Community Strategic Plan and in consultation with the NSW Government's Upper Hunter Economic Diversification Action Plan, Muswellbrook Shire Council recognises there are opportunities in regional economic transition linked to the Upper Hunter's strengths in energy and mining infrastructure, water resources, land use diversification (productive use of mined buffer lands) and transport connectivity. Council aims to focus on several key industry sectors to maintain the Shire's prominent role within as an economic powerhouse. This includes the growth of the environmental goods and services sector and agribusiness alongside increasing market opportunities for post-mining land use and rehabilitation and working alongside the University of Newcastle's International Centre for Balanced Land Use and AGL in the Hunter Energy Transition Alliance.

The Corporation would work to:

- Develop and facilitate initiatives to attract investment and support economic growth and associated employment opportunities in the Upper Hunter.
- Market and promote the Upper Hunter as a regional centre with growth potential.
- Inform and support strategies to address skills shortages.
- Advocate the interests of the Upper Hunter to NSW and Commonwealth governments.
- Identify regional priorities in the short, medium and long term working in partnership to support the delivery of these priorities.
- Collaborate between members of the Corporation to deliver enhanced tourism and event offerings and products promoting the Upper Hunter.
- Facilitate partnerships and engage with business, State and Commonwealth agencies, and education institutions to support and promote enhanced development of community social infrastructure related to employment and regional economic diversification.
- Communicate research and relevant reports undertaken by the Corporation to inform stakeholders, the community and government policy.

The Corporation will be funded in its establishment phase by Muswellbrook Shire Council to provide economic development services and advocacy and will report to Council on a quarterly basis. Following establishment there will be provisions for other Upper Hunter based Councils to join as members. It is proposed a funding agreement is established between Council and the Corporation. The proposed

Corporation would report to Council against the KPI requirements within the funding agreement. This draft agreement will be provided to Council along with the Constitution in a future report.

OPTIONS

Council could resolve not to establish an economic development corporation for the Upper Hunter and retain economic development services within Council.

CONCLUSION

In consultation with regional stakeholders and considering the comparative advantages of a similar corporation established by Lake Macquarie City Council (Dantia), there is benefit in the establishment of a Corporation that is responsive to economic opportunity and commands the focus of a dedicated independent board with expertise across sectors and with a passion for the economic development of the Upper Hunter.

SOCIAL IMPLICATIONS

Muswellbrook Shire Council aims to support the transformation of the Muswellbrook Shire economy from a reliance on the thermal coal industry to a more diverse and innovative economy that draws on the Upper Hunter regions competitive and comparative advantages. This will have a positive impact to encourage jobs growth across a diverse range of sectors.

FINANCIAL IMPLICATIONS

There are funding implications for the establishment of the Corporation. This requires an allocation for operational costs that will be detailed further in a future report. The funding agreement will outline the funds that will be provided to the Company. Existing wage and program funding allocated to Economic Development and Innovation in the current budget and proposed 2018/19 budget could be transferred over to the Company and included in the funding agreement.

POLICY IMPLICATIONS

Nil

STATUTORY IMPLICATIONS

Section 358 of the Local Government Act 1993 restricts councils in forming or participating in the formation of a corporation or other entity without first obtaining the consent of the Minister for Local Government. This restriction also extends to acquiring a controlling interest in a corporation or other entity. An entity for the purposes of section 358 of the Act means any partnership, trust, joint venture, syndicate or other body (whether or not incorporated).

LEGAL IMPLICATIONS

The Corporation will be legally separated from Council and Council will need to demonstrate adequate separation with clearly defined legal structure including liability of Council, Council staff and Councillors. The Draft Constitution has undergone a legal review with local Government Legal.

OPERATIONAL PLAN IMPLICATIONS

Establishment of the Corporation is linked to the Economic Prosperity objectives in the Operational Plan.

RISK MANAGEMENT IMPLICATIONS

There are no risk implications associated with the recommendations of this report. If Council endorses the establishment of the company and the application is approved by the Minister, the Company will adopt all insurance and associated regulatory and statutory requirements of the *Corporations Act 2001*. If approved, Council should consider the risks associated with an 'arms-length' delegated authority for service delivery of an objective that is critical to the Community Strategic Plan and Operational Plan of Council. There is however, enough evidence and local government benchmarking that highlights where this kind of model has worked successfully. There will also be appropriate reporting, auditing and review

of the Company to minimise the risk of establishing an independent company to deliver economic development services for the Shire.



Circular No. 07-49
Date 5 October 2007
Doc ID. A108632

Contact Chris Rowe
02 4428 4162
chris.rowe@dlg.nsw.gov.au

CRITERIA FOR APPLICATIONS UNDER SECTION 358 OF THE LOCAL GOVERNMENT ACT 1993 – FORMATION OF CORPORATIONS OR OTHER ENTITIES

This circular is to replace Circular No. 56 of 2006. An additional fourth administrative criteria for assessing applications has now been adopted.

Section 358 of the *Local Government Act 1993* restricts councils in forming or participating in the formation of a corporation or other entity without first obtaining the consent of the Minister for Local Government. This restriction also extends to acquiring a controlling interest in a corporation or other entity.

An entity for the purposes of section 358 of the Act means any partnership, trust, joint venture, syndicate or other body (whether or not incorporated). It does not include any such entity that is of a class prescribed by the Local Government (General) Regulation 2005 as not being within this definition. To date, the Regulation has not prescribed such a class.

It should be noted that the restrictions on the formation of corporations and other entities does not prevent a council from being a member of a co-operative society or a company limited by guarantee and licensed not to use the word "Limited" in its name.

In applying for the Minister's consent under section 358, the council must demonstrate that the formation of, or the acquisition of the controlling interest in, the corporation or entity is in the public interest. After assessing the application, the Department will make a recommendation to the Minister on the council's proposal.

As part of the Department's assessment of a council's application, we will have regard to the following:

1. *Is the proposal consistent with the functions of the council or an existing service that the council provides?*

This requirement is drawn from the power of a council to "provide goods, services and facilities and carry out activities appropriate to the current and future needs within its local community and of the wider public" that is contained in section 24 of the Act. This requirement is also consistent with council's general charter in section 8 of the Act.

Department of Local Government
5 O'Keefe Avenue NOWRA NSW 2541
Locked Bag 3015 NOWRA NSW 2541
T 02 4428 4100 F 02 4428 4199 TTY 02 4428 4209
E dlg@dlg.nsw.gov.au W www.dlg.nsw.gov.au ABN 99 567 863 195

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To establish that a proposal is consistent with council's functions or services, the following should be provided in support of the application:

- Demonstration of the link between the proposal and community or public needs
- Detail on the general appropriateness of the council's involvement in the corporation or other entity
- Explanation as to how corporatisation or involvement in the entity would improve the economic performance and ability of the council to carry out its responsibilities
- Explanation of what measures will be employed to ensure that the activities of the corporation or entity will be accountable.

2. *Will the proposed entity be legally separated from the council?*

Applications must demonstrate that the initial capital and working capital of the corporation/entity can be identified and separated from the council. The application must also indicate how the council (both as a corporate body and its members personally) are protected from any liability that might arise as a result of the activities of the corporation/entity (including the activities of other partners).

To demonstrate adequate legal separation, council should address three main areas or activities of the proposed corporation or entity. These are:

- Legal structure (including liability of the council, councillors and council staff)
- Financial separation (confirmation that the accounting for the corporation or other entity is separate to the council's accounts)
- Management separation (details of the management structure of the corporation or other entity).

3. *Is the council currently financially viable?*

An assessment of the council's overall financial viability will be made on the basis of data that the council is routinely required to supply to the Department. However, council should also provide details about the costs expected to be incurred, and revenues expected to be received, by the council as a result of being involved in the corporation or other entity.

4. *What is the impact of the proposal on existing council staff?*

Will the proposal result in existing council staff being transferred to the employment of the corporation and if so, will the staff be employed on terms and conditions consistent with their previous employment with the council. Will the corporation guarantee the

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continued employment of transferred staff for a period of at least 3 years. Will the corporation adopt an agreement to refer any industrial disputes to the NSW Industrial Relations Tribunal. Will the proposal result in existing council staff being made redundant.

Any council considering making an application under section 358 of the Act as part of a Public Private Partnership should, as well as referring to all four administrative criteria, also ensure that it follows the requirements outlined in Circular 05-51 "Public Private Partnerships Legislation and Guidelines".

In all other situations, it is recommended that councils refer to all four administrative criteria in making an application for the Minister's consent under section 358 of the Act.

A handwritten signature in black ink, appearing to be 'Garry Payne', with a long horizontal line extending to the right.

Garry Payne AM
Director General

**CONSTITUTION
OF
THE UPPER HUNTER ECONOMIC
DEVELOPMENT CORPORATION**

DRAFT

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1 Defined terms and interpretation

1.1 Defined terms

The Dictionary in Schedule 1:

- (a) defines some of the terms used in this constitution;
- (b) clarifies the effect of the Corporations Act on this constitution.

1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this constitution.

2 Nature of Corporation and liability

2.1 Nature of Corporation

The Corporation is a public corporation limited by guarantee.

2.2 Liability of each member is limited

The liability of each member is limited. Each member guarantees to contribute up to a maximum of \$10.00 to the assets of the Corporation if it is wound up while he or she is a member, or within one year afterwards, and at the time of winding up the debts and liabilities of the Corporation exceed its assets. The liability of each member is limited to making such contribution and no more.

3 Objects of the Corporation

The objects of the Corporation are primarily to:

- (a) Develop and facilitate initiatives to attract investment and support economic growth and associated employment opportunities in the Upper Hunter.
- (b) Market and promote the Upper Hunter as a regional centre with growth potential.
- (c) Inform and support strategies to address skills shortages.
- (d) Advocate the interests of the Upper Hunter to NSW and Commonwealth governments.
- (e) Identify regional priorities in the short, medium and long term working in partnership to support the delivery of these priorities.
- (f) Collaborate between members of the Corporation to deliver enhanced tourism and event offerings and products promoting the Upper Hunter.
- (g) Facilitate partnerships and engage with business, State and Commonwealth agencies, and education institutions to support and promote enhanced development of community social infrastructure related to employment and regional economic diversification.
- (h) Communicate research and relevant reports undertaken by the Corporation to inform stakeholders, the community and government policy.
- (i) Exercise, at its discretion, such other functions as may be delegated to it by members not inconsistent with the above objects including, without limitation, advice regarding the acquisition, development and disposal of assets in Muswellbrook Shire Council's Future Fund.

4 Legal capacity and powers of the Corporation

The Corporation has all of the powers of a natural person and of a body corporate, including those set out in the Corporations Act.

5 Membership

5.1 First Members

The first member of the Corporation is the Foundation Member

5.2 Classes of Members

(a) Members shall consist of:

- (i) The Foundation Member;
- (ii) Council members which have been admitted by the board to membership of the Corporation as Council Members after making application for membership and satisfying eligibility criteria adopted by the board;
- (iii) Associate members who shall be persons or entities which have been admitted by the board to membership of the Corporation as Associate Members after making application for membership and satisfying any eligibility criteria adopted by the board.

(b) The board's decision to admit a member to membership as a Council Member or an Associate Member may be conditional or unconditional.

(c) The Corporation may establish other classes of membership subject to first obtaining approval of members in a general meeting and the rights and obligations and conditions for becoming a member in any such class shall be as determined by a resolution of the members.

(d) Subject to the Corporations Act and the terms of a particular class of membership, the Corporation may vary or cancel rights attached to being a member of that class, or convert a member from one class to another, by special resolution of the Corporation in respect of which the Foundation Member votes in favour and either:

- (i) a special resolution passed at a meeting of members of that class; or
- (ii) the written consent of members who are entitled to at least 75% of the votes that may be cast in respect of membership of that class.

The provisions of this constitution concerning meetings of members (with the necessary changes) apply to a meeting held under rule 5.2(d)(i).

5.3 Members' rights

Subject to rule 5.2(d),

(a) The Foundation Member has:

- (i) the right to receive notices of and to attend and be heard at any general meeting of the Corporation; and
- (ii) the right to vote at any general meeting of the Corporation;

(b) A Council Member has:

- (i) the right to receive notices of and to attend and be heard at any general meeting of the Corporation; and

- (ii) the right to vote at any general meeting of the Corporation;
- (c) An Associate Member has the right to receive notices of and to attend and be heard at any general meeting of the Corporation but does not have a right to vote.

5.4 Form of application

A person may apply in writing to be a member of the Corporation. A person's application for membership must be:

- (a) signed by the applicant; and
- (b) accompanied by such documents or evidence as to eligibility as the board requires in accordance with rule 5.2(a).

5.5 Membership not transferable

No membership interest, benefit or right of any member is capable of being sold or transferred in any manner whatsoever and a membership interest shall automatically lapse if there is any such purported sale or transfer or agreement to effect same.

5.6 Certificates

- (a) The Corporation may issue to each member, free of charge, one certificate evidencing that person as a member.
- (b) The Corporation may issue a replacement certificate to a member if the Corporation receives and cancels the existing certificate for that person's membership or the Corporation is satisfied that the existing certificate is lost or destroyed, and the member pays any fee as the directors resolve.

6 Admission to membership

6.1 Consideration of application by the board

If a person makes an application that complies with rule 5.4 the board must consider that application for membership as soon as practicable after its receipt and determine, in their discretion, the acceptance or rejection of that application for membership.

6.2 Acceptance or rejection of membership application

- (a) If an application for membership is accepted:
 - (i) the secretary must notify the applicant of admission; and
 - (ii) the name and details of the applicant must be entered in the register as membership details of the applicant in accordance with the Corporations Act.
- (b) If an application for membership is rejected the secretary must notify the applicant that the application has been rejected.
- (c) The directors do not have to give reasons for rejecting or accepting an application for membership.

7 Removal and cessation of membership

7.1 Resignation

- (a) A member may resign from membership of the Corporation by leaving written notice to that effect at the registered office addressed to the secretary.
- (b) Unless the notice provides otherwise, the resignation of a member is deemed to take effect from the date such notice is left at the registered office.

7.2 Expulsion of member

- (a) Subject to rule 7.2(b) the directors may resolve to expel a member if:
- (i) an Expulsion Event occurs in respect of the member; and
 - (ii) the Corporation gives the member at least 10 Business Days notice in writing stating the Expulsion Event and that the member is liable to be expelled, and informing the member of its right under rule 7.2(b).
- (b) Before the passing of any resolution under rule 7.2(a), a member is entitled to give the directors, either orally or in writing, any explanation or defence of the Expulsion Event the member may think fit.
- (c) Where a resolution is passed under rule 7.2(a), the Corporation must give that member notice in writing of the expulsion within 10 Business Days of the resolution.
- (d) A member may by notice in writing to the Corporation within 10 Business Days of receipt of the notice referred to in rule 7.2(c), request that a resolution under rule 7.2(a) be reviewed by the Corporation at the next general meeting. If such a request is made, the directors must propose at the next general meeting of the Corporation that a resolution be moved to confirm the expulsion of the member concerned.
- (e) A resolution under rule 7.2(a) takes effect:
- (i) if the member gives a notice under rule 7.2(d), the date (if any) the resolution is confirmed by a general meeting of the Corporation; or
 - (ii) if the member does not give a notice under rule 7.2(d), the date of the resolution.
- (f) The directors may reinstate an expelled member on any terms and at any time as the directors resolve.

7.3 Cessation Events

A person will cease to be a member of the Corporation if a Cessation Event occurs in respect of that member.

8 No profits for members**8.1 Transfer of income or property**

Subject to the operation of rule 8.2, the assets and income of the Corporation shall be applied solely in furtherance of the objects of the Corporation and no portion of the income or assets of the Corporation may be paid or transferred, directly or indirectly to any member, except as bona fide compensation for services rendered or expenses incurred on behalf of the Corporation.

8.2 Payments, services and information

Nothing in rule 8.1 prevents the payment in good faith of:

- (a) remuneration to any officers or employees of the Corporation for services actually rendered to the Corporation;
- (b) an amount to any member in return for any services actually rendered to the Corporation (whether by the member or any corporation or partnership in which the member has an interest or is a member) or for goods supplied in the ordinary and usual course of business;
- (c) reasonable and proper interest on money borrowed from any member; or
- (d) reasonable and proper rent for premises let by any member to the Corporation.

9 Fees

The directors may require the payment of fees by members in the amounts and at the times as the directors resolve subject to the Funding Agreement.

10 General meetings**10.1 Convening of general meetings**

- (a) A general meeting may be convened by:
 - (i) the directors by resolution of the board; or
 - (ii) members or the court in accordance with sections 249E, 249F and 249G of the Corporations Act.
- (b) A general meeting must be convened by the directors in accordance with section 249D of the Corporations Act.
- (c) The Corporation must hold an annual general meeting if required by, and in accordance with, the Corporations Act.
- (d) Subject to rule 10.1(e), the directors may postpone, cancel or change the venue for a general meeting by giving notice not later than five Business Days before the time at which the general meeting was to be held to each person who is at the date of the notice:
 - (i) a member;
 - (ii) a director; or
 - (iii) an auditor of the Corporation.
- (e) A notice postponing or changing the venue for a general meeting must specify the date, time and place of the general meeting.
- (f) A general meeting convened under section 249D of the Corporations Act may not be postponed beyond the date by which section 249D requires it to be held and may not be cancelled without the consent of the member or members who requested it.
- (g) A meeting of members may be held in 2 or more places linked together by any technology that gives the members as a whole in those places a reasonable opportunity to participate in proceedings, enables the chair to be aware of proceedings in each place, and enables the members in each place to vote on a show of hands and on a poll.

10.2 Notice of general meetings

- (a) Subject to this constitution, notice of a general meeting must be given within the time limits prescribed by the Corporations Act to each person who is at the date of the notice:
 - (i) a member;
 - (ii) a director; or
 - (iii) an auditor of the Corporation.
- (b) A notice of a general meeting must specify the date, time and place of the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used

to facilitate this) and, except as provided in rule 10.2(c), state the general nature of the business to be transacted at the meeting and any other matters required under the Corporations Act.

- (c) It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the consideration of the annual financial report and the reports of the directors and auditor, the election of directors or the appointment or fixing of the remuneration of the auditor of the Corporation.
- (d) A person may waive notice of any general meeting by notice in writing to the Corporation.
- (e) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting under this rule 10.2 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
 - (i) the non-receipt or failure occurred by accident or error; or
 - (ii) before or after the meeting, the person:
 - (A) has waived or waives notice of that meeting under rule 10.2(d); or
 - (B) has notified or notifies the Corporation of the person's agreement to that act, matter, thing or resolution by notice in writing to the Corporation.
- (f) A person's attendance at a general meeting:
 - (i) waives any objection that person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
 - (ii) waives any objection that person may have to the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting or in rule 10.2(c), unless the person objects to considering the matter when it is presented.

10.3 Admission to general meetings

- (a) The chair of a general meeting may refuse admission to a person, or require that person to leave and remain out of the meeting, if that person:
 - (i) has a camera, tape recorder or video camera, or another audio or visual recording device;
 - (ii) has a placard or banner;
 - (iii) has an article which the chair considers to be dangerous, offensive or liable to cause disruption;
 - (iv) refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
 - (v) behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
 - (vi) is not:
 - (A) a member or a proxy, attorney or Representative of a member;
 - (B) a director; or
 - (C) an auditor of the Corporation.

- (b) A person who is entitled to receive notice of a meeting or who is requested by the directors or the chair to attend a general meeting is entitled to be present, whether the person is a member or not.

10.4 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business and remains present throughout the meeting;
- (b) A quorum consists of:
 - (i) if the number of members entitled to vote is two or more – two of those members; or
 - (ii) if only one member is entitled to vote – that member, present at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (i) where the meeting was convened by, or at the request of, a member or members, the meeting must be dissolved; or
 - (ii) in any other case:
 - (A) the meeting stands adjourned to the day, time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
 - (B) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

10.5 Chair of general meetings

- (a) The chair of directors must preside as chair at each general meeting if present within 15 minutes after the time appointed for the meeting and willing to act.
- (b) The directors present at a general meeting may elect a person present to chair the meeting if:
 - (i) there is no chair of directors;
 - (ii) the chair of directors is not present within 15 minutes after the time appointed for the meeting; or
 - (iii) the chair of directors is present within that time but is not willing to act as chair of the meeting.
- (c) Subject to rules 10.5(a) and (b), if at a general meeting:
 - (i) a chair has not been elected by the directors; or
 - (ii) an elected chair is not available or is not willing to act as a chair of the meeting (or part of the meeting),the members present must elect as chair of the meeting another person who is present and willing to act.

10.6 Conduct of general meetings

- (a) The chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in his or her opinion necessary or desirable for:

- (i) proper and orderly debate or discussion, including limiting the time that a person present may speak on a motion or other item of business before the meeting; and
 - (ii) the proper and orderly casting or recording of votes at the general meeting, whether on a show of hands or on a poll, including the appointment of scrutineers.
- (b) Subject to sections 250S and 250T of the Corporations Act, the chair of a general meeting may at any time he or she considers it necessary or desirable for the proper and orderly conduct of the meeting:
 - (i) terminate debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the members present; or
 - (ii) allow debate or discussion on any business, question, motion or resolution being considered by the meeting to continue.
- (c) Subject to sections 250S and 250T of the Corporations Act, the chair of a general meeting may:
 - (i) refuse to allow debate or discussion on any business, question, motion or resolution which is not within the business referred to in the notice of meeting or rule 10.2(c); and
 - (ii) refuse to allow any amendment to be moved to a resolution of which notice has been given under rule 10.2(a).
- (d) A decision by a chair under rules 10.6(a), (b) or (c) is final.
- (e) The chair of a general meeting may at any time during the course of the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting.
- (f) If the chair exercises his or her right under rule 10.6(e), it is in the chair's sole discretion whether to seek the approval of the members present to the adjournment.
- (g) If the chair does seek the members' approval, the chair must adjourn the meeting if the members present with a majority of votes agree or direct that the chair must do so.
- (h) The chair's rights under rule 10.6(e) are exclusive and, unless otherwise required by the chair, no vote may be taken or demanded by the members present in respect of any adjournment.
- (i) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (j) Notice of an adjournment and the business to be transacted at an adjourned meeting must be given to all persons who were entitled to receive notice of the meeting the subject of the adjournment.
- (k) Subject to rule 10.1(e), where a meeting is adjourned, the directors may postpone, cancel or change the venue of the adjourned meeting.

10.7 Decisions as general meetings

- (a) Except in the case of any resolution which as a matter of law requires a special resolution, questions arising at a general meeting are to be decided by a majority of votes cast by the members present and entitled to vote at the meeting and that decision is for all purposes a decision of the members.

- (b) Subject to the Corporations Act, in the case of an equality of votes upon any proposed resolution at a meeting of members, unless the members present and entitled to vote resolved that the chair ought to have a second or casting vote in addition to any vote the chair may have in his or her capacity as a member:
 - (i) the chair of the meeting does not have a second or casting vote; and
 - (ii) the proposed resolution is taken as having been lost.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded before a vote being decided on a show of hands is taken or before or immediately after the declaration of the result of the show of hands:
 - (i) by the chair of the meeting;
 - (ii) by at least five members present and entitled to vote on the relevant resolution; or
 - (iii) by a member or members present at the meeting and representing at least 5% of the votes that may be cast on the resolution on a poll.
- (d) A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the chair of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Corporation, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (f) If a poll is duly demanded at a general meeting, it will be taken when and in the manner the chair of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (g) A poll cannot be demanded at a general meeting on the election of a chair of the meeting.
- (h) The demand for a poll may be withdrawn.

10.8 Voting rights

- (a) Subject to any rights or restriction attached to any class of shares, members have the following voting rights:
 - (i) on a show of hands, every person present who is a member and entitled to vote has one vote
 - (ii) on a poll, every member present in person or by proxy or attorney and entitled to vote has one vote.
- (b) Any member present at a general meeting is not entitled to vote on any resolution if any fees or any other amount due and payable by that member to the Corporation under this constitution have not been paid, or where that vote is prohibited by the Corporations Act or any order of a court of competent jurisdiction. The Corporation must disregard any vote on a resolution purported to be cast by a member present at a general meeting where that person is not entitled to vote on that resolution.
- (c) Where a person present at a general meeting represents personally or by proxy, attorney or Representative more than one member, the following rules apply to a vote taken on a show of hands:

- (i) the person is entitled to one vote only despite the number of members the person represents; and
 - (ii) the person's vote will be taken as having been cast for all the members the person represents.
- (d) An objection to the qualification of a person to vote at a general meeting:
 - (i) must be raised before or immediately after the result of the motion on which the vote objected to is given or tenders; and
 - (ii) must be referred to the chair of the meeting, whose decision is final.
- (e) A vote not disallowed by the chair of a meeting under rule 10.8(d) is valid for all purposes.

10.9 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
 - (i) in person, or where a member is a body corporate or body politic, by its Representative;
 - (ii) by proxy or, if the member is entitled to cast two or more votes at the meeting, by not more than two proxies; or
 - (iii) by attorneys.
- (b) A proxy, attorney or Representative may be a member of the Corporation but does not have to be a member.
- (c) A proxy, attorney or Representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (d) Unless otherwise provided in the Corporations Act or in the appointment, an appointment of a proxy, attorney or Representative is taken to confer authority:
 - (i) to agree to a meeting being convened by shorter notice than is required by the Corporations Act or by this constitution;
 - (ii) to speak to any proposed resolution on which the proxy, attorney or representative may vote;
 - (iii) to demand or join in demanding a poll on any resolution on which the proxy, attorney or Representative may vote;
 - (iv) Even though the appointment may refer to specific resolutions and may direct the proxy, attorney or Representative how to vote on these resolutions:
 - (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (B) to vote on any procedural motion, including any motion to elect the chair, to vacate the chair or to adjourn the meeting; and
 - (C) to act generally at the meeting; and
 - (v) even though the appointment may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- (e) The chair of a meeting may require any persons purporting to act as a proxy, attorney or Representative to establish to the satisfaction of the chair that the person has been validly appointed as a proxy, attorney or Representative and is the person named in

the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.

- (f) Where a member appoints two proxies to vote at the same general meeting and the authority of one is not conditional on the other failing to attend or vote, the following rules apply:
 - (i) where the appointment does not specify the proportion or number of the member's votes which each proxy may exercise, each proxy may exercise half of the member's votes;
 - (ii) on a show of hands, neither proxy may vote; and
 - (iii) on a poll, each proxy or attorney may only exercise the voting rights the proxy represents.
- (g) An instrument appointing any attorney or Representative must be in form as the directions may prescribe or accept. An instrument appointing a proxy is valid if it is signed by the member making the appointment and contains the name and address of that member, the name of the company, the name of the proxy or the name of the office of the proxy, and the meetings of members at which the proxy may be used. The chair of a meeting of members may determine that an instrument appointing a proxy is valid even if it contains only some of this information.
- (h) If the name of the proxy or the name of the office of the proxy in a proxy form of a member is not filled in, the proxy of that member is the person specified by the Corporation in the form of proxy in the case the member does not choose, or if no person is so specified, the chair of that meeting.
- (i) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (j) A proxy or attorney may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy or attorney, and the original or a certificate copy of the power of attorney or other authority (if any) under which the instrument is signed, are received:
 - (i) at the registered office of the Corporation, at the facsimile number at its registered office or at another place, facsimile number or electronic address specified for that purpose in the notice convening the meeting; and
 - (ii) at least 48 hours before the time scheduled for the commencement of the meeting, as specified in the notice of meeting.
- (k) Unless the Corporation has received written notice of the matter by the time and at the place or in the manner set out in rules 10.9(j)(i) and 10.9(j)(ii), a vote cast by a proxy or attorney is valid even if, before the proxy or attorney votes:
 - (i) a Cessation Event occurs in relation to the appointer; or
 - (ii) the member revokes the proxy's or attorney's appointment; or
 - (iii) the member revokes the authority under which a third party appointed the proxy or attorney.
- (l) The authority of a proxy or attorney to speak and vote for a member at a general meeting is suspended while the member is present at the meeting.

10.10 Resolutions without meetings

- (a) Subject to rule 10.10(c), the Corporation may pass a resolution without a general meeting being held, if all of the members are 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) For the purpose of rule 10.10(a):
 - (i) the document may be sent to members in any manner described in rule 17;
 - (ii) the resolution is passed when the last member signs;
 - (iii) separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy;
 - (iv) a signature of a member transmitted to the Corporation by facsimile is sufficient evidence of signature so long as the original is produced within 30 days of signing;
 - (v) where a share is held jointly, each joint member must sign.
- (c) Rule 10.10(a) does not apply to a resolution to remove an auditor.
- (d) Where a document is signed in accordance with rule 10.10(a) the document is to be taken as a minute of the passing of the resolution.

10.11 Resolutions of single member company

If the Corporation has only one member, the Corporation may pass a resolution by the member recording it and signing the record. That record is to be taken as a minute of the passing of that resolution.

11 Directors

11.1 Number of Directors

The Corporation must have the number of directors determined by the Board from time to time, provided there are at least 5, but no more than 7, directors (or such other maximum and minimum numbers determined by ordinary resolution).

11.2 Initial Directors

The initial directors of the Corporation are those named in the application for registration of the Corporation.

11.3 Eligibility for election as Director

No person (other than an initial director) may be a director unless that person is nominated by the Selection Committee.

11.4 Rotation of Directors

The following procedures will apply to ensure rotation of directors:

- (a) At the second annual general meeting of the Corporation after its incorporation, two of the directors must retire. If two of such directors do not indicate in writing to the board that they will voluntarily retire at such meeting at least 3 months prior to such annual general meeting then the Selection Committee will convene and recommend those directors who should retire at such annual general meeting. Those directors so recommended must retire at such annual general meeting.
- (b) At the fourth annual general meeting of the Corporation after its incorporation, four of the directors must retire. If four of such directors do not indicate in writing to the board that they will voluntarily retire at such meeting at least 3 months prior to such annual general meeting then the Selection Committee will convene and recommend those directors who should retire at such annual general meeting. Those directors so recommended must retire at such annual general meeting.

- (c) At the fifth annual general meeting of the Corporation after its incorporation the initial directors who have not previously retired from the board, if any, must retire and if there are fewer than three then a sufficient number of directors must also retire to ensure that there is an opportunity for three new directors to be appointed to the board. If insufficient directors volunteer to retire then the Selection Committee will convene and recommend those directors who should retire at such annual general meeting. Those directors so recommended must retire at such annual general meeting.
- (d) At the sixth and each subsequent annual general meeting of the Corporation three directors of the Corporation must retire being the three longest serving directors (chosen by the date of their first appointment as a director) Selection Committee will convene and recommend those directors who should retire at such annual general meeting in keeping with rule 11.10(a). Those directors so recommended must retire at such annual general meeting.
- (e) A retiring director holds office until the conclusion of the meeting at which that director retires, but is eligible for re-election at that meeting.

11.5 Election of Directors

The Corporation may appoint a person as a director by resolution passed at a general meeting.

11.6 Casual Vacancy

- (a) Subject to rule 11.1 the directors may appoint any natural person to be a director, either as an addition to the existing directors or to fill a casual vacancy (including any casual vacancy arising where a director is removed from office under rule 11.7(a)(i) and no person is appointed in place of that director under rule 11.7(a)(ii)).
- (b) A director appointed under rule 11.6(a) must retire from office at the next annual general meeting following his or her appointment.

11.7 Removal of Director

- (a) The Corporation may:
 - (i) by resolution in accordance with Section 203D of the Corporations Act remove a director from office; and
 - (ii) subject to rule 11.7(b), by resolution fill the office vacated by a director who is removed under rule 11.7(a)(i) by electing another person to that office.
- (b) A person elected as a director under rule 11.7(a)(ii) must retire under rule 11.4 on the same day that the director in rule 11.4 whose place he or she was appointed would have had to retire under rule 11.4 if that director had not been removed from office under rule 11.7(a)(i).

11.8 Selection Committee

Except for a person who is eligible for election or re-election under rule 11.4 ("Rotation of Directors) or rule 11.6 ("Casual Vacancy") a person is not eligible for election as a director at a general meeting of the Corporation unless he or she has been nominated for appointment by the Selection Committee. The functions of the Selection Committee (which will be specified in the Selection Committee's charter as amended from time to time) must include:

- (a) ensuring that the board as a whole has an appropriate balance of skills and experience, having regard to the nature of the business and affairs of the Corporation.
- (b) identifying and nominating persons for appointment as directors of the Corporation to fill vacancies that arise at general meetings;

- (c) identifying and nominating persons for appointment as directors of the Corporation at any other time (casual vacancies);
- (d) making recommendations to the Board with respect to the recruitment of directors; and
- (e) appointing a suitable consultant to conduct a review of operations of the board and board members annually; and
- (f) such other functions conferred by this Constitution or determined by the Board from time to time.

11.9 Composition of the Selection Committee

The Selection Committee will be appointed on a standing basis for a term of approximately three years and will include the Mayor and General Manager of each Member Council.

11.10 Nomination of Director Candidates by Selection Committee

- (a) In identifying and nominating persons for appointment as Directors, the Selection Committee must choose from the available candidates those persons who will in its view best ensure that the Board as a whole has an appropriate balance of skills and experience.
- (b) The committee is to make only 1 nomination for each vacancy. The nomination must have received the support of a majority of the members of the Selection Committee.
- (c) The Selection Committee's report must include:
 - (i) details of each nominee's qualifications and experience; and
 - (ii) a statement of how, in the committee's opinion, the appointment of the person as a director would result in the Board having the necessary skills and experience
- (d)
 - (i) At least 2 months prior to each annual general meeting at which directors of the Corporation are to be appointed the Selection Committee will undertake the recruitment process for the nomination of new Directors.
 - (ii) At least 14 days prior to the annual general meeting at which directors are to be appointed, the board (excluding any board members who have nominated for re-appointment to the board) must meet and determine who will be appointed to the board at the relevant annual general meeting. In making its determination the board must consider the skills and experience of the continuing directors of the Corporation in an effort to best ensure that the objects of the Corporation can be addressed and progressed.
- (e) The Mayor and General Manager of Muswellbrook Shire Council shall be representatives of the Selection Committee and shall continue in that office until they cease to hold such offices with the Council. If either of them are unable to attend a meeting of the board they may appoint an alternate representative, on such terms and for such period as is notified to the remaining members of the Board. The Mayor may only appoint the Deputy Mayor as their alternate representative in accordance with this rule. The General Manager may only appoint a member of Muswellbrook Shire Council's Executive Management Team (ie a Director or Executive Manager of Muswellbrook Shire Council) in accordance with this rule.
- (f)
 - (i) Despite anything else in this Constitution neither the Mayor nor the General Manager of Muswellbrook Shire Council shall be required to retire as representatives of the Selection Committee while they hold office as Mayor or General Manager but they shall cease representation upon them ceasing for any reason to be Mayor or General Manager of Muswellbrook Shire Council.

- (ii) Upon a Mayor or General Manager of Muswellbrook Shire Council being elected or appointed that person shall thereby be a member representative of the Selection Committee.
- (g) The retirement of a director from office and the re-appointment of the director or the appointment of another person to that office (as the case may be) takes effect at the conclusion of the meeting at which the retirement and re-appointment or appointment occur.

11.11 Vacation of office

- (a) In addition to the circumstances prescribed by the Corporations Act, unless the board otherwise resolve to confirm the director's appointment, the office of a director becomes vacant if the director:
 - (i) becomes of unsound mind;
 - (ii) becomes bankrupt;
 - (iii) is convicted of an indictable offence; or
 - (iv) fails to attend more than three consecutive meetings of the directors without leave of absence from the directors.
- (b) Nothing in rule 11.11(a) prevents a director from vacating his or her office if the director resigns by notice in writing to the Corporation.

11.12 Remuneration of directors

- (a) Each director is entitled to the remuneration out of the funds of the Corporation as the directors determine, but the remuneration of non-executive directors may not exceed in total in any year the amount fixed by the Corporation in general meeting for that purpose.
- (b) The remuneration of directors will be determined by the Selection committee and may be a stated salary or a fixed sum for attendance at each meeting of directors or both.
- (c) Nothing in rule 11.12(a) restricts the remuneration to which a director may be entitled as an officer of the Corporation or of a related body corporate in a capacity other than director, which may be either in addition to or in substitution for that director's remuneration under rule 11.12(a).
- (d) Directors who are either councillors or council employees are not entitled to the payment of director's fees or other remunerations.

11.13 Director need not be a member

- (a) A director is not required to be a member in the Corporation to qualify for appointment.
- (b) A director is entitled to attend and speak at general meetings even if he or she is not a member of the Corporation.

11.14 Interested directors

- (a) A director may hold any other office or place of profit, other than auditor, in the Corporation or a related body corporate in conjunction with his or her directorship. A director may be appointed to that office or place of profit on the terms as to remuneration, tenure of office and otherwise as the directors think fit.
- (b) A director of the Corporation may be a director or other officer of:
 - (i) a related body corporate;
 - (ii) a body corporate promoted by the Corporation; or

- (iii) a body corporate in which the Corporation is interested, as shareholder or otherwise, or
 - (iv) a Member Council
- or be otherwise interested in any of those bodies. A director is not accountable to the Corporation for any remuneration or other benefits received by the director as a director or officer of that body or from having an interest in that body.
- (c) The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the Corporation as the directors think fit. This includes voting in favour of any resolution appointing a director as a director or other officer of that body corporate, or voting for the payment of remuneration to the directors or other officers of that body corporate. A director may, if permitted by law, vote in favour of the exercise of those voting rights even if he or she is, or may be about to be appointed, a director or other officer of that other body corporate.
 - (d) A director is not disqualified merely because of being a director from contracting with the Corporation in any respect including, without limitation:
 - (i) selling any property to, or purchasing any property from, the Corporation;
 - (ii) lending any money to, or borrowing any money from, the Corporation with or without interest and with or without security;
 - (iii) guaranteeing the repayment of any money borrowed by the Corporation for a commission or profit;
 - (iv) underwriting or guaranteeing the subscription for securities in the Corporation or in a related body corporate or any other body corporate promoted by the Corporation or in which the Corporation may be interested as a shareholder or otherwise, for a commission or profit; or
 - (v) being employed by the Corporation or acting in any professional capacity, other than auditor, on behalf of the Corporation.
 - (e) No contract made by a director with the Corporation and no contract or arrangement entered into by or on behalf of the Corporation in which any director may be in any way interested is avoided or rendered voidable merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
 - (f) No director contracting with the Corporation or being interested in any arrangement involving the Corporation is liable to account to the Corporation for any profit realised by or under a contract or arrangement of that kind merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
 - (g) Where a director has a material personal interest in a matter to be considered at a meeting, that director must not be present while the matter is being considered at the meeting or vote on the matter, unless the directors who do not have a material person interest pass a resolution in accordance with section 195(2) of the Corporations Act, or another exception applies under the Corporations Act, which permits that director to do so.
 - (h) Subject to rules 11.14(i) and (j), a director who is in any way interested in a contract or arrangement or proposed contract or arrangement (other than by having a material personal interest) may, despite that interest:
 - (i) be counted in determining whether or not a quorum is present at any meeting of directors considering that contract or arrangement or proposed contract or arrangement;
 - (ii) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and

- (iii) vote in respect of the contract or arrangement or proposed contract or arrangement or any matter arising out of those things.
- (i) Rule 11.14(h) does not apply if, and to the extent that, it would be contrary to Chapter 2D.1, Division 2 of the Corporations Act or any other provision of the Corporations Act.
- (j) The directors may make regulations requiring the disclosure of interests that a director, and any person deemed by the directors to be related to or associated with the director, may have in any matter concerning the Corporation or a related body corporate. Any regulations made under this rule bind all directors and apply in addition to any obligations imposed on the directors by the Corporations Act to disclose interests to the Corporation.

11.15 Powers and duties of directors

- (a) The directors are responsible for managing the business of the Corporation and may exercise to the exclusion of the Corporation in general meeting all the powers of the Corporation which are not required by the Corporations Act or this constitution to be exercised by the Corporation in general meeting.
- (b) The directors may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments or other documents must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the Corporation.
- (c) The directors may pay out of the Corporation's funds all expenses of the promotion, formation and registration of the Corporation according to the Funding Agreement between the member Council(s) and the Corporation.
- (d) The directors may:
 - (i) appoint or employ any person to be an officer, agent or attorney of the Corporation for the purposes, for the period and on the conditions as they think fit;
 - (ii) resolve to delegate any of their powers to an officer, agent or attorney and the officer, agent or attorney must exercise the powers delegated in accordance with any directions of the directors; and
 - (iii) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
 - (iv) subject to any contract between the Corporation and the relevant officer, agent or attorney, remove or dismiss any officer (excluding a director of the Corporation), agent or attorney of the Corporation at any time, with or without cause.
- (e) A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors think fit.

11.16 Proceedings of directors

- (a) The directors may hold meetings for the conduct of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) Subject to the Corporations Act, the contemporaneous linking together by a form of technology of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and all the provisions in this constitution relating to meetings of the directors apply, so far as they can and with such changes as are necessary, to meetings of the directors held using a form of technology.

11.17 Convening of meetings of directors

- (a) A director may, whenever the director thinks fit, convene a meeting of the directors.

- (b) A secretary must, on the requisition of a director, convene a meeting of the directors.

11.18 Notice of meetings of directors

- (a) Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving the notice a director, other than a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
- (i) must specify the time and place of, or form of technology for, the meeting;
 - (ii) must state the nature of the business to be transacted at the meeting; and
 - (iii) may be given in person, by post or, subject to the Corporations Act, by a form of technology
- (c) A director or alternate director may waive notice of a meeting of directors by notifying the Corporation to that effect in person, by post or by a form of technology.
- (d) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
- (i) the non-receipt or failure occurred by accident or error;
 - (ii) before or after the meeting, the director:
 - (A) has waived or waives notice of that meeting under rule 11.18(c); or
 - (B) has notified or notifies the Corporation of his or her agreement to that act, matter, thing or resolution personally, by post or by a form of technology; or
 - (iii) the director attended the meeting.

Attendance by a person at a meeting of directors waives any objection that person may have to a failure to give notice of the meeting.

11.19 Quorum at meetings of directors

- (a) No business may be transacted at a meeting of directors unless there is a quorum of directors at the time the business is dealt with.
- (b) A quorum consists of:
- (i) if the directors have fixed a number for the quorum, that number of directors; and
 - (ii) in any other case, five directors.
- (c) If there is a vacancy in the office of a director, the remaining director or directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, the remaining director or directors may act only in an emergency or for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or of convening a general meeting of the Corporation.

11.20 Chair and deputy chair of directors

- (a) The directors may elect one of the directors to the office of chair of directors and may determine the period for which that director is to be chair of directors.
- (b) The directors may elect one of the directors to the office of deputy chair of directors and may determine the period for which that director is to be deputy chair of directors.
- (c) Neither the Mayor nor the General Manager of the Council may be elected as the chair or deputy chair of directors.

- (d) The office of chair of directors or deputy chair of directors may be treated as an extra service or special exertion performed by the director holding that office for the purposes of rule 11 if:
 - (i) the directors resolve to do so; and
 - (ii) the total amount fixed by the Corporation for remuneration of non-executive directors under rule 11.12(a) will not be exceeded.
- (e) The chair of directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as chair at each meeting of directors.
- (f) If at a meeting of directors:
 - (i) there is no chair of directors;
 - (ii) the chair of directors is not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (iii) the chair of directors is present within that time but is not willing to act as chair of the meeting or of part of the meeting, then if the directors have elected a deputy chair of directors, the deputy chair of directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as the chair of the meeting or part of it.
- (g) Subject to rules 11.20(e) and (f), if at a meeting of directors:
 - (i) there is no deputy chair of directors;
 - (ii) the deputy chair of directors is not present within 10 minutes after the time appointed for the holding of the meeting or of part of the meeting; or
 - (iii) the deputy chair of directors is present within that time but is not willing to act as chair of the meeting or part of the meeting, the directors present must elect one of themselves to be chair of the meeting or part of the meeting.

11.21 Decisions of directors

- (a) A meeting of directors at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under this constitution.
- (b) Questions arising at a meeting of directors are to be decided by a majority of votes cast by the directors present and a decision of that kind is for all purposes a determination of the directors.
- (c) Subject to the Corporations Act, in the case of an equality of votes upon any proposed resolution at a meeting of directors, the Chair will have a second and casting vote.

11.22 Written resolutions

- (a) An act, matter or thing is taken to have been done or a resolution passed by a meeting of the directors, if a document containing a statement to that effect is assented to by all of the directors other than:
 - (i) a director on leave of absence approved by the directors;
 - (ii) a director who disqualifies himself or herself from considering the act, matter or thing in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; and
 - (iii) a director who the directors reasonably believe is not entitled to do the act, matter or thing or to vote on the resolution in question, and the directors who

assent to the document would have constituted a quorum at a meeting held to consider that act, matter, thing or resolution.

- (b) The act, matter or thing is taken to have been done or the resolution passed when the document is last assented to by a director.
- (c) Two or more separate documents in identical terms each of which is assented to by one or more directors are to be taken as constituting one document.
- (d) A director may signify assent to a document by signing the document or by notifying the Corporation of the director's assent in person or by post, facsimile, electronic, telephone or other method of written, audio or audio visual communication.
- (e) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the directors attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (f) Where a document is assented to in accordance with this rule 11.16, the document is to be taken as a minute of a meeting of directors.

11.23 Committees of directors

- (a) The directors may resolve to delegate any of their powers to a committee or committees consisting of such number of directors as they think fit. The directors may revoke or vary any power so delegated.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) The provisions of this constitution applying to meetings and resolutions of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of directors.
- (d) Membership of a committee of directors may be treated as an extra service or special exertion performed by the members of the committee for the purposes of rule 11 if:
 - (i) the directors resolve to do so; and
 - (ii) the total amount fixed by the Corporation for remuneration of non-executive directors under rule 11.12(a) will not be exceeded.
- (e) The chair of directors for the time being shall be an ex-officio member of any committee created pursuant to Rule 11.23(a) with a deliberate vote at any meeting of such a committee.

11.24 Delegation to individual directors

- (a) The directors may resolve to delegate any of their powers to one director.
- (b) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) Acceptance of such a delegation may be treated as an extra service or special exertion performed by the delegate for the purposes of rule 11 if:
 - (i) the directors resolve to do so; and
 - (ii) the total amount fixed by the Corporation for remuneration of non-executive directors under rule 11.12(a) will not be exceeded.

11.25 Validity of acts

An act done by a person acting as a director or by a meeting of directors or a committee of directors attended by a person acting as a director is not invalidated by reason only of:

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

12 Executive officers

12.1 Managing directors

- (a) The directors may appoint one of the directors to the office of managing director who must only exercise the powers conferred upon that managing director under rule 12.3(c).
- (b) A managing director's appointment as managing director automatically terminates if the managing director ceases to be a director.

12.2 Secretaries

The directors must appoint at least one secretary and may appoint additional secretaries.

12.3 Provisions applicable to all executive officers

- (a) A reference in this rule 12.3 to an executive officer is a reference to a managing director, executive director or secretary appointed under this rule 12.
- (b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions of the Funding Agreement
- (c) Subject to any contract between the Corporation and the relevant executive officer, an executive officer of the Corporation may be removed or dismissed by the directors at any time, with or without cause. Such removal or dismissal does not remove that person from office as a director.
- (d) The directors may:
 - (i) confer on an executive officer the powers, discretions and duties as they think fit, and may resolve to delegate any powers, discretions and duties vested in or exercisable by the directors;
 - (ii) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
 - (iii) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.
- (e) An executive officer is not required to be a member to qualify for appointment.
- (f) An act done by a person acting as an executive officer is not invalidated by reason only of:
 - (i) a defect in the person's appointment as an executive officer; or
 - (ii) the person being disqualified to be an executive officer, if that circumstance was not known by the person when the act was done.

13 Seals

13.1 Adoption of common seal

- (a) The directors may determine that the Corporation have a common seal or for the Corporation to no longer have a common seal.
- (b) Rules 13.2, 13.3, 13.4, 13.5 and 13.6 only apply if the Corporation has a common seal.

13.2 Safe custody of Seal

The directors must provide for the safe custody of the Seal.

13.3 Use of Seal

- (a) The Seal must be used only by the authority of the directors or a committee of the directors authorised by the directors to authorise the use of the Seal.
- (b) The authority to use the Seal may be given before or after the Seal is used.
- (c) Subject to rule 13.5, until the directors otherwise determine, the fixing of the Seal to a document must be witnessed by a director and by another director, a secretary or another person appointed by the directors to witness that document or a class of documents in which that document is included.

13.4 Duplicate seal

- (a) The Corporation may have for use in place of its common seal one or more duplicate seals, each of which must be a facsimile of the common seal of the Corporation with the addition on its face of the words "duplicate seal" and the name of the place where it is to be used.
- (b) A document sealed with a duplicate seal is to be taken as having been sealed with the common seal of the Corporation.

13.5 Certificate seal

- (a) The Corporation may have for use on certificates for securities of the Corporation in place of its common seal one or more duplicate seals, each of which must be a facsimile of the common seal of the Corporation with the addition on its face of the words "certificate seal".
- (b) A certificate for securities of the Corporation sealed with a certificate seal is to be taken as having been sealed with the common seal of the Corporation.

13.6 Sealing and signing of certificates

The directors may determine either generally or in a particular case that the seal and the signature of any director, secretary or other person is to be printed on or affixed to any certificates for securities in the Corporation by some mechanical or other means.

14 Winding up

Upon the winding up or dissolution of the Corporation, any assets remaining after satisfaction of all of the Corporation's debts and liabilities, will not be paid to or distributed among the members, but will be transferred to Muswellbrook Shire Council for the purpose of exercising the objectives of the Corporation to the extent permitted by the Local Government Act 1993 (NSW) or any subsequent legislation empowering Muswellbrook Shire Council to exercise functions in respect of the Shire.

15 Minutes and records**15.1 Minutes**

The directors must cause minutes of:

- (a) all proceedings and resolutions of general meetings;
- (b) proceedings and resolutions of meetings of the directors and of committees of the directors; and
- (c) resolutions passed by directors without a meeting,

to be recorded and entered in books kept for that purpose, within one month after the meeting is held or the resolution is passed.

15.2 Signing of minutes

- (a) Minutes of a meeting must be signed by the chair of the meeting or the chair of the next meeting within a reasonable time after the meeting.
- (b) Minutes of the passing of a resolution without a meeting must be signed by a director within a reasonable time after the resolution is passed.

15.3 Minutes as evidence

A minute that is recorded and signed in accordance with rules 15.1 and 15.2 is evidence of the proceeding, a resolution to which it relates, unless the contrary is proved.

15.4 Inspection of records

- (a) Subject to the Corporations Act, the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the Corporation or any of them will be open to the inspection of members other than directors.
- (b) A member other than a director does not have the right to inspect any books, records or documents of the Corporation except as provided by law or authorised by the directors.
- (c) The Corporation must establish and administer all registers required to be kept by the Corporation in accordance with the Corporations Act and each member must provide the Corporation with such information as is required for the Corporation to comply with this rule 15.4(c). If events occur which would cause the information contained a register maintained by the Corporation to be inaccurate the member must notify the Corporation in writing of the change within 21 days of the date of such change occurring.
- (d) Unless proved incorrect, the register is sufficient evidence of the matters shown in the register.
- (e) The Corporation must keep the financial records required by the Corporations Act.

16 Indemnity and insurance**16.1 Persons to whom rules 16.2 and 16.4 apply**

Rules 16.2 and 16.4 apply:

- (a) to each person who is or has been a director, alternate director or executive officer (within the meaning of rule 12) of the Corporation;
- (b) to such other officers or former officers of the Corporation or of its related bodies corporate as the directors in each case determine; and

- (c) if the directors so determine, to any auditor or former auditor of the Corporation or of its related bodies corporate.

16.2 Indemnity

The Corporation shall indemnify, to the extent permitted by law, each person to whom this rule 16.2 applies for all losses or liabilities incurred by the person as an officer and, if the directors so determine, an auditor of the Corporation or of a related body corporate including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.

16.3 Extent of Indemnity

The indemnity in rule 16.2:

- (a) is a continuing obligation and is enforceable by a person to whom rule 16.2 applies even though that person may have ceased to be an officer or auditor of the Corporation or of a related body corporate;
- (b) applies to losses and liabilities incurred both before and after the date of adoption of that rule; and
- (c) operates only to the extent that the loss or liability is not paid by insurance.

16.4 Insurance

The Corporation may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance, for any person to whom this rule 16.4 applies against any liability incurred by the person as an officer or auditor of the Corporation or of a related body corporate including, but not limited to, a liability for negligence or for legal costs.

16.5 Savings

Nothing in rule 16.2 or 16.4:

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

17 Notices

17.1 Notices by the Corporation to members

- (a) A notice may be given by the Corporation to a member:
 - (i) by serving it personally at, or by sending it by post in a prepaid envelope to, the member's address as shown in the register of members or any other address, or by facsimile or electronic mail to a facsimile number or electronic address, as the member has supplied to the Corporation for the giving of notices; or
 - (ii) if the member does not have a registered address and has not supplied another address to the Corporation for the giving of notices, by exhibiting it at the registered office of the Corporation.
- (b) The fact that a person has supplied a facsimile number for the giving of notices does not require the Corporation to give any notice to that person by facsimile.

- (c) A signature to any notice given by the Corporation to a member under this rule 17 may be in writing or a facsimile printed or fixed by some mechanical or other means.
- (d) A certificate signed by a director or secretary of the Corporation to the effect that a notice has been given in accordance with this constitution is conclusive evidence of that fact.

17.2 Notices by the Corporation to directors

Subject to this constitution, a notice may be given by the Corporation to any auditor, director or alternate director either by serving it personally at, or by sending it by post in a prepaid envelope to, the auditor's, director's or alternate director's usual residential or business address, or such other address, or by facsimile or electronic mail to such facsimile number or electronic address, as the auditor, director or alternate director has supplied to the Corporation for the giving of notices.

17.3 Notices by members or directors to the Corporation

- (a) Subject to this constitution, a notice may be given by a member, director or alternate director to the Corporation by serving it on the Corporation at, or by sending it by post in a prepaid envelope to, the registered office of the Corporation or by facsimile or electronic mail to the principal facsimile number or electronic address at the registered office of the Corporation.
- (b) The directors may resolve generally, or on a case by case basis, that a notice that is to be received by the Corporation is not to be accepted if given by electronic means (excluding by facsimile).
- (c) If a resolution of directors is passed under rule 17.3(b), the Corporation must give sufficient notice of the resolution to those required to give the particular notice to allow for the giving of notice by other means.

17.4 Time of service

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
 - (i) in the case of a notice of a general meeting, on the day after the date of its posting; or
 - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by facsimile, the notice is to be taken to be given on the Business Day after it is sent.
- (c) Where a notice is sent by electronic mail, service of the notice is taken to be effected if the sender receives a confirmation of delivery and is to have been effected on the Business Day after it is sent.
- (d) Where the Corporation gives a notice under rule 17.1(a)(ii) by exhibiting it at the registered office of the Corporation, service of the notice is to be taken to be effected when the notice was first so exhibited.

17.5 Other communications and documents

Rules 17.1 to 17.4 (inclusive) apply, so far as they can and with necessary changes, to the service of any communication or document.

17.6 Notices in writing

A reference in this constitution to a notice in writing includes a notice given by facsimile or another form of written communication.

18 Rules

18.1 Power to formulate rules of the Corporation

Without limiting the board's powers under this constitution, the board may from time to time pass resolutions to make regulations and rules relating to;

- (a) the qualifications of members and applicants for membership;
- (b) the procedure and timing of an application for admission;
- (c) the delegation by the board of its powers to committees;
- (d) the powers, role and function of any committee members or executive;
- (e) any other matter not being inconsistent with this constitution which relates to the operations or conduct of the Corporation.

18.2 Inconsistency

In the event of any inconsistency between rules or regulations formulated pursuant to rule 18.1 and the provisions of this constitution or the provisions of the Corporations Act, the provisions of this constitution and the Corporations Act shall prevail.

19 General

19.1 Submission to jurisdiction

Each member submits to the non-exclusive jurisdiction of the Supreme Court of New South Wales, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

19.2 Prohibition and enforceability

Any provision of, or the application of any provision of, this constitution which is void, illegal, prohibited or unenforceable in any place:

- (a) is, in that place, ineffective only to the extent to which it is void, illegal, prohibited or unenforceable; and
- (b) does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

19.3 Changes to the Constitution

No addition, alteration or amendment can be made to this constitution without first obtaining the consent of the Minister for Local Government in the State of New South Wales, or, if no such office exists, then the member of the New South Wales Parliament who is primarily responsible for Local Government in New South Wales.

19.4 Obligations and Restrictions

The Company must not become a member of another corporation.

Schedule 1 —**1 Dictionary**

In this constitution:

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in the place where the Corporation's registered office is located.

Cessation Event means the member ceases to satisfy any eligibility criteria specified by the Constitution.

Chair means the chair of a general meeting appointed in accordance with rule 10.4

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

Expulsion Event means, in respect of a Director:

(a) the Director has wilfully refused or neglected to comply with the provisions of this constitution;

(b) the conduct of the Director, in the opinion of the board and members, is unbecoming or prejudicial to the interests or reputation of the Corporation.

Foundation Member means Muswellbrook Shire Council

Funding Agreement means any agreement between the Corporation and a member or members relating to the funding of the operations of the Corporation.

Future Fund means the Muswellbrook Shire Council Future Fund.

Future Fund Policy means the Muswellbrook Shire Council Future Fund Policy.

Member Council means the council of a local government area in New South Wales which is a member of the Corporation.

Muswellbrook Shire Council includes any Council with which Muswellbrook Shire Council may amalgamate and by whatever other name such Council may adopt.

Representative, in relation to a body corporate, means a representative of the body corporate appointed under section 250D of the Corporations Act or a corresponding previous law.

Seal means any common seal, duplicate seal, seal or certificate seal of the Corporation.

Shire means the Local Government area of Muswellbrook.

2 Interpretation**2.1 General**

- (a) A member is to be taken to be present at a general meeting if the member is present in person or by proxy, attorney or Representative.
- (b) A director is to be taken to be present at a meeting of directors if the director is present in person or by alternate director.
- (c) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (d) In this constitution, headings and underlinings are for convenience only and do not affect the interpretation of this constitution and, unless the contrary intention appears:
 - (i) words importing the singular include the plural and vice versa;

- (ii) words importing a gender include every other gender;
- (iii) words used to denote persons generally or importing a natural person include any Corporation, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
- (iv) a reference to a person includes that person's successors and legal personal representatives;
- (v) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
- (vi) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

2.2 Application of the Corporations Act

- (a) This constitution is to be interpreted subject to the Corporations Act.
- (b) Unless the contrary intention appears, an expression in a rule that deals with a matter dealt with by a provision of the Corporations Act, has the same meaning as in that provision.
- (c) Subject to rule (b), unless the contrary intention appears, an expression in a rule that is defined in section 9 of the Corporations Act has the same meaning as in that section.

2.3 Exercise of powers

- (a) The Corporation may exercise in any manner permitted by the Corporations Act any power which under the Corporations Act a Corporation limited by guarantee may exercise if authorised by its constitution.
- (b) Where this constitution provides that a person or body may do a particular act or thing and the word "may" is used, the act or thing may be done at the discretion of the person or body.
- (c) Where this constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- (d) Where this constitution confers a power to do a particular act or thing with respect to particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.
- (e) Where this constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.
- (f) Where this constitution confers a power or imposes a duty on the holder of an office as such then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- (g) Where this constitution confers power on a person or body to delegate a function or power:

- (i) the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body; (ii) the delegation may be either general or limited in any manner provided in the terms of delegation;
- (ii) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position;
- (iii) the delegation may include the power to delegate;
- (iv) where the performance or exercise of that function or power is dependent upon the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and
- (v) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

2.4 Replaceable rules not to apply

The replaceable rules contained in the Corporations Act from time to time do not apply to the Corporation.

2.5 Single member Corporation

If at any time the Corporation has only one member then, unless the contrary intention appears:

- (a) a reference in a rule to the "members" is a reference to that member; and
- (b) without limiting rule (a), a rule which confers power or imposes an obligation on the members to do a particular act or thing confers that power or imposes that obligation on that member.

Schedule 2 — Version History

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