

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

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

An Australian public company limited by guarantee

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

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**1. Definitions**

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

**Annual General Meeting** means any General Meeting other than an Extraordinary General Meeting;

**Associate Member** means any Heritage Transport Organisation that is admitted as a Member and which complies with any code of conduct rules established by the Board from time to time;

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

**Board** means the directors, acting together;

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

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

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

**Extraordinary General Meeting** means any General Meeting other than an Annual General Meeting;

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

**Funding Deed** means the Deed so called entered into or to be entered into between the Company and Transport for NSW;

**General Meeting** means a meeting of the members of the Company;

**Heritage Transport Organisations** means not-for-profit organisations whose purpose and objects relate to the restoration, maintenance and preservation of transport heritage assets and artefacts and who have applied for, and been accepted as, Associate Members by the Company;

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

**Inaugural Chair** means the person appointed by the Minister to the Board of Directors as the inaugural Chair of the Company in accordance with this Constitution;

**Independent Funding Panel** means an panel of persons with heritage management, rail heritage or other relevant experience, appointed by the Minister to provide independent advice to the NSW Government and (on request from the Company) to the Company in relation to heritage asset funding, restoration, management, maintenance and any other matter referred to it by the Board;

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

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

**Membership Year** means the twelve (12) month period commencing on 1 October and concluding at midnight on 30 September of the following year;

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

**NSW** means New South Wales;

**NSW RTM Asset Register** means the list of assets including, without limitation, all tools, plant, machinery, logos and trademarks, that are privately owned by the Company under the name of New South Wales Rail Transport Museum at 1 August 2013;

**Non-Voting Member** means an Ordinary Member under 18 years of age, Patron, Honorary Member, Complimentary Member and Associate Member and any person who is a member of an Associate Member;

**Objects** mean the objects for which the Company is established as set out in clause 4;

**Ordinary Member** means a Member so established under clause 13.1;

**Register of Members** means the register established under clause 30;

**Thirlmere Heritage Centre** means the precinct at Thirlmere leased by the Company for the purpose of operating a transport museum;

**Trainworks** means is a company called Trainworks Limited ACN 147 877 772 set up to operate the museum at Thirlmere Heritage Centre;

**Transport Heritage** means heritage and historical elements of NSW State Railways and other public transport systems in NSW;

**Transport for NSW** means the NSW Government integrated transport authority or its successor in function;

**Voting Member** means a Member who is an individual and who is at least 18 years of age and who has fully paid all membership fees then due and payable to the Company and who is entitled to vote at General Meetings and includes Ordinary Members and Life Members but excludes Non-Voting Members.

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## 2. Objects

2.1 The Company is:

- (a) a not-for-profit institution established to preserve Transport Heritage in NSW and elsewhere, most particularly railway heritage; and
- (b) and is intended to be primarily membership based and volunteer-based.

2.2 The objects for which the Company is established are:

- (a) to actively promote, in the community, an interest in Transport Heritage in NSW and elsewhere;
- (b) to conserve, restore, manage, maintain, develop and promote assets and artefacts related to Transport Heritage in NSW;
- (c) to operate, manage and promote the Thirlmere Heritage Centre through collection, interpretation, exhibitions, promotions, events, functions and education programs;
- (d) to coordinate and promote Transport Heritage related events and activities in the NSW community and elsewhere;

- (e) to foster and actively encourage membership of the Company and to provide Members with services and opportunities that support the objects of the Company, while providing Members with enjoyment and satisfaction;
- (f) to ensure that all heritage objects and assets in the Company's care are managed, restored, maintained, developed and promoted in ways that are appropriate and consistent with the item's historical significance;
- (g) to develop appropriate opportunities to generate revenue from partnerships, sponsorships, events, functions and activities and apply that revenue for the benefit, conservation, preservation, development and promotion of Transport Heritage and related assets;
- (h) to provide educational resources, programs, events, opportunities and experiences in Transport Heritage for school students and the general community at Trainworks and other heritage sites in NSW;
- (i) to arrange and conduct rail tours, excursions and charters to demonstrate rolling stock in action and provide experiences to the public;
- (j) to maintain the Picton–Mittagong Loop Line as an operating, demonstration railway, and further develop it as an engaging public experience;
- (k) to assist and establish rules for, the creation and operation of regional divisions of the Company;
- (l) to represent Heritage Transport Organisations to all levels of Government and to corporate entities whenever the Funding Deed is in full force and effect and funding is being provided under it by Transport for NSW;
- (m) to work with Transport Heritage Organisations across NSW for the purpose of conserving, promoting, restoring, developing and maintaining Transport Heritage assets and artefacts whenever the Funding Deed is in full force and effect and funding is being provided under it by Transport for NSW;
- (n) to support, maintain and operate a heritage train fleet;
- (o) provide support, assistance, guidance, advice and, in some cases funding, to Heritage Transport Organisations which are Associate Members in relation to Transport Heritage activities and events whenever the Funding Deed is in full force and effect and funding is being provided under it by Transport for NSW;

- (p) act fairly and equitably in all dealings with other Heritage Transport Organisations across NSW whenever the Funding Deed is in full force and effect and funding is being provided under it by Transport for NSW;
- (q) do all acts, deeds, matters and things and to enter into such agreements as are incidental or conducive to the attainment of the above objects or any of them;
- (r) do such other things and undertake such other works and activities which the Board decides are consistent with the above objects or any of them.

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### **3. Powers of the Company**

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

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### **4. Members of the Company**

- 4.1 The classes of membership of the Company are Voting Members and Non-Voting Members.
- 4.2 Each Member agrees to be bound by this Constitution and by any rules made pursuant to this Constitution.
- 4.3 Individuals are permitted to join as Voting Members of the Company and be given full voting rights at General Meetings.

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### **5. Partner organisations**

- 5.1 Not-for-profit Heritage Transport organisations in NSW with aims consistent with the aims of the Company are permitted to join the Company as an Associate Member provided:
  - (a) it is an incorporated entity; and
  - (b) the majority of the elected directors approves its constitution or rules of incorporation or operation;
  - (c) it satisfies the probity and management standards required by the majority of the elected directors for its admission as an Associate Member; and
  - (d) it agrees to comply with any code of conduct rules established by the Board from time to time.
- 5.2 Associate Members are Non-Voting Members.
- 5.3 Associate Members are only entitled to be and remain members of the Company whenever they comply with any code of conduct rules established by the Board from time to time.



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## **6. Applications for Membership**

- 6.1 The Board may determine from time to time the form of application and procedure for applications for membership and set annual subscription fees for membership.
- 6.2 Any person or organisation wishing to apply to become a Member shall lodge an application to become a Member and pay to the secretary the current annual subscription (which may be applied pro rata when occurring outside the normal Membership Year).
- 6.3 The Board shall determine all applications to become a Member.
- 6.4 The secretary shall enter the particulars of new Members in the Register of Members and inform the applicant of acceptance of or failure of the application for membership.
- 6.5 A person or organisation that becomes a Member shall be either a Voting Member or a Non-Voting Member.

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## **7. Annual Subscriptions**

- 7.1 No entrance fee shall be paid by applicants for membership.
- 7.2 An annual subscription shall be payable in advance on 1 October in respect of each Membership Year by every Member other than Life Members, Honorary Members and Complimentary Members.

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## **8. Voting Members**

- 8.1 Voting Members have the following rights and privileges:
- (a) the right to attend, speak and vote at any General Meeting;
  - (b) the right to hold office as a director of the Company (unless they are a full or part-time employee under a written or oral contract of employment with the Company, or a patron of the Company); and
  - (c) the right to participate in all of the activities of the Company, subject to such restrictions as may be determined by the Board.

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## **9. Non-Voting Members**

- 9.1 Non-Voting Members have the following rights and privileges:
- (a) the right to attend and speak, but not to vote, at any General Meeting or other meeting; and

- (b) the right to participate in all of the activities of the Company, subject to such restrictions as may be determined by the Board.

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## **10. Life Members**

- 10.1 The Company, at an Annual General Meeting on the recommendation of the Board, may elect a person as a Life Member of the Company provided:
  - (a) the person is a Voting Member;
  - (b) the person has such qualifications and is nominated in such manner as may be determined by the Board; and
  - (c) the person has, in the opinion of the Board, given such exceptional, unusual or distinguished service to the Company as to be deserving of recommendation by the Board for election as a Life Member to an Annual General Meeting.
- 10.2 A Life Member does not pay the annual subscription fee, but is entitled to all other rights of a Voting Member.
- 10.3 The Secretary shall have delivered to each Life Member a silver badge acknowledging that person's life membership.

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## **11. Patrons and Honorary Members**

- 11.1 The Board may appoint a patron or patrons or an Honorary Member for a nominated period without the payment of any subscription fee provided that the person is:
  - (a) a prominent citizen; or
  - (b) a local dignitary.
- 11.2 Patrons and an Honorary Members are Non-Voting Members.

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## **12. Complimentary Members**

- 12.1 The Board may admit a person as a Complimentary Member for any period it may determine without the payment of any subscription or entrance fee provided that the Board is satisfied that the admittee is a person, not otherwise being a Member, who has made a contribution to the Company that, in the opinion of the Board, warrants such admission.
- 12.2 Complimentary Members are Non-Voting Members.

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### **13. Ordinary Members**

- 13.1 Any individual Member not being a Life Member, Patron, Honorary Member, Complimentary Member or Associate Member shall be an Ordinary Member of the Company.

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### **14. Cessation of Membership**

- 14.1 A Member may resign from membership of the Company by giving written notice to the secretary.
- 14.2 The Board may restore that person's name to the Register of Members at any time as a Member on re-application for membership of the Company by that person.
- 14.3 If the annual subscription of a Member remains unpaid for a period of three (3) months after it becomes due and payable, the Board may cancel that membership and during that period of cancellation of membership, that person shall not receive any of the benefits or entitlements of membership. Upon payment by the person of all amounts due but not paid at the moment of cancellation of that person's membership, the Board will reinstate that person's membership and restore that person's name to the Register of Members as a Member.
- 14.4 Every person ceasing to be a Member, whether by resignation, expulsion, death or neglecting to pay annual subscription or otherwise, shall forfeit all rights as a Member but shall remain liable for all moneys due or payable by that person for the following twelve (12) months under the provisions of clause 38.

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### **15. Disciplining of Members**

- 15.1 If any Member refuses or neglects to comply with the provisions of the Constitution or is guilty of any conduct that, in the opinion of the Board, is unbecoming of a Member or is prejudicial to the interests of the Company, the Board has the power to admonish or reprimand the Member, suspend the Member (for such period and on such conditions as the Board considers fit), or expel the Member from the Company and remove the person's name from the Register of Members. The exercise of this power is referred to as a 'disciplinary resolution' in this Constitution.
- 15.2 Before exercising the power conferred in clause 15.1 the Board must give the Member at least seven (7) days' notice in writing, setting out the following information:
- (a) the date, time and place of the meeting at which the allegations against the Member are to be heard by the Board;
  - (b) details of the facts and circumstances on which the allegations against the Member are based;

- (c) stating that the Board has the power to admonish or reprimand the Member, suspend or expel the Member from the Company and remove his or her name from the Register of Members if any of the allegations is found to be proved;
  - (d) stating that the Member will be entitled to make an oral or written submission to the Board in relation to the facts and circumstances alleged against the Member before the Board makes any determination in relation to the allegations; and
  - (e) stating that the Board has the power to deal with the allegations against the Member should the Member fail to attend the nominated meeting of the Board.
- 15.3 If, after considering all the material before it, including any submissions made by the Member, the Board is satisfied that the facts on which the allegations are based have been proved, the Board may make a disciplinary resolution.
- 15.4 If the Board makes a disciplinary resolution, the secretary must, within seven (7) days after the disciplinary resolution is made, cause written notice to be given to the Member of the disciplinary resolution and the reasons given by the Board for having made the disciplinary resolution and of the Member's right of appeal.
- 15.5 The disciplinary decision of the Board made clause 15.3 does not take effect:
- (a) until the expiry of the period within which the Member is entitled to appeal; or
  - (b) if the Member exercises the right of appeal, until the appeal is finalised.
- 15.6 A Member may appeal to the Company against a disciplinary resolution within fourteen (14) days after notice of the resolution is received by the Member pursuant to clause 15.4, by lodging with the secretary a notice to that effect.
- 15.7 The notice of appeal may, but need not, be accompanied by a statement of the grounds on which the Member intends to rely for the purposes of the appeal.
- 15.8 The Board shall convene a General Meeting of the Company to consider any such appeal as soon as is practicable and in any event no later than forty two (42) days after notice of the appeal is received by the secretary under clause 15.6.
- 15.9 At the General Meeting called under clause 15.8:
- (a) no business other than the question of the appeal is to be transacted;
  - (b) the Board and the Member must be given the opportunity to state their respective cases orally and/or in writing;

- (c) the Members present are to vote by secret ballot to confirm or revoke the disciplinary resolution; and
- (d) the Members may confirm or reject the disciplinary resolution made by the Board under clause 15.3 but shall not be entitled to make any other decision.

15.10 A decision by the Members at a General Meeting called under clause 15.8 shall be final and binding on the Member who lodged the appeal, the Board and the Company.

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## **16. The Board**

- 16.1 The Board shall consist of a total of eight (8) directors, with suitable skills, experience and competence to undertake the duties of directors in furthering the aims and objectives of the Company.
- 16.2 Three (3) directors will be appointed as non-elected directors pursuant to clause 19.
- 16.3 Four (4) directors will be elected by the Voting Members as elected directors pursuant to clause 20.
- 16.4 The eighth director shall be the Chair.
- 16.5 The quorum for a meeting of the Board shall be such number of directors who attend the meeting if the number of attending directors elected under Article 16.3 exceeds the number of attending, directors appointed under Article 16.2 who attend.

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## **17. Chair**

- 17.1 The Chair, including the inaugural Chair, will be nominated by the Minister by written notice received by the secretary:
  - (a) at least twenty one (21) days prior to each Annual General Meeting subject to clause 17.3; or
  - (b) at other appropriate times if the position of Chair becomes vacant between Annual General Meetings.
- 17.2 The Minister may revoke the appointment of a person as the Chair by written notice to the secretary provided that written notice nominates a replacement person as the Chair. The person whose appointment is so revoked by the Minister ceases to be the Chair on receipt of a notice from the secretary that the secretary has received that written notice from the Minister. The replacement person becomes the Chair simultaneously with the revoked person ceasing to be the Chair.

- 17.3 The Minister's power under clause 17.1 and clause 17.2 exists only whilever the Funding Deed is in full force and effect and funding is being provided under it by Transport for NSW and the person appointed by the Minister as Chair shall cease to hold that office only when the Funding Deed ceases to be in full force and effect or Transport for NSW ceases providing funding under it by.
- 17.4 A person appointment as Chair by the Minister shall cease automatically to be Chair if the Funding Deed ceases to be in full force and effect or Transport for NSW ceases providing funding under it by.
- 17.5 The Minister has the right nominate the Chair whilever the Funding Deed is in full force and effect and funding is being provided under it by Transport for NSW and may do so within twenty one (21) Business Days after the office of Chair becomes vacant unless the Minister has done so otherwise.
- 17.6 After, and if the Funding Deed ceases to be in full force and effect or Transport for NSW ceases providing funding under it by, the Chair shall be appointed by the majority of the current four (4) elected directors elected by the Voting Members under clause 16.3.
- 17.7 The term of the tenure of each Chair is two (2) years except that the term of the inaugural Chair appointed by the Minister is three (3) years, unless in each case the person who holds the position as Chair resigns as a director of the Company before that term ends or is removed as Chair pursuant to this Constitution.
- 17.8 A Chair is eligible to serve an unlimited number of terms.
- 17.9 The Chair has no deliberative vote on the Board subject to clause 23.9. The only time the Chair may vote is in the event of a deadlock between the other directors.
- 17.10 The Board may remove the Chair if the Board is of the opinion that the conduct of the Chair is not in the best interests of the Company.

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## **18. Elected Directors**

- 18.1 Voting Members will be eligible for election by the Voting Members as elected directors of the Company under clause 20 on the basis of competence using an appropriate merit-based selection process designed to reflect the appropriate mix of skills and experience required at Board level.
- 18.2 No person shall be qualified to hold office as an elected director of the Company unless that person is at the time of election to and the holding of that office a Voting Member.

- 18.3 The elected directors elected under clause 20 shall be declared elected at the Annual General Meeting at which the voting for their election is conducted.
- 18.4 The term of each elected director elected under clause 20 is two (2) years (or until the second Annual General Meeting after the date of the election (whichever first occurs), unless a director resigns before the expiry of that term in which case that person's directorship ends on the occurrence of that resignation. An elected director who retires or whose office is vacated under this Constitution is eligible for re-election to the Board.
- 18.5 Each elected director has a single vote.

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## **19. Appointment of Non-Elected Appointed Directors**

- 19.1 At the earliest opportunity after each Annual General Meeting, a panel comprising the Chair, one (1) elected director and one (1) representative of Transport for NSW will appoint three (3) non-elected appointed directors under clause 16.2.
- 19.2 These appointees need not be Members but may be. They must possess, in the opinion of that panel, the requisite skills, experience and competence to further the aims and objectives of the Company. Their skills, experience and competence will be assessed generally against the same merit-based, selection criteria as the elected directors.
- 19.3 Each non-elected appointed director shall hold office (unless that director ceases in the meantime to be a director or is removed during their term if the Board so agrees) until the expiry of two (2) years from their appointment or the second Annual General Meeting after the date of their appointment (whichever first occurs), when the director shall retire. A non-elected appointed director appointed pursuant to clause 19.1 and to clause 16.2 who retires or whose office is vacated under this Constitution is eligible for re-appointment to the Board.
- 19.4 Each non-elected appointed director has a single vote.

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## **20. Election of Elected Directors**

- 20.1 The nomination of Voting Members as candidates for election as elected directors under clause 16.3 shall take place in the following manner:
- (a) the secretary shall at least eight (8) weeks prior to the Annual General Meeting forward to all Voting Members entitled to vote at a General Meeting of the Company a notice of the forthcoming election of elected directors under clause 16.3 containing the names of the retiring elected directors and of nominees for election as elected directors, and including details of the merit based selection process and selection criteria and inviting nominations for the position of elected director. The non receipt by

any Member entitled to vote of such notice shall not invalidate the election of the elected directors;

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

20.2 The election of elected directors by postal ballot shall take place in the following manner:



- (a) at least twenty one (21) days before the date of the Annual General Meeting, the secretary will forward a ballot paper containing a statement of the number of vacancies to be filled and the names of all candidates for election to the position of elected director to each Voting Member. The non-receipt of such ballot paper by any Voting Member will not invalidate the ballot for election of elected director;
- (b) the order in which the names of candidates for election to the position of elected director shall appear on the ballot paper will be determined by lot. All candidates for election to the position of elected director are entitled to be present when the lot for positions on the ballot paper takes place;
- (c) a Member shall mark his or her ballot paper in such manner as may be prescribed from time to time by the Board (and this will be communicated when the postal ballots are posted out to Voting Members);
- (d) the ballot for elected directors shall be conducted by way of the first-past-the-post system;
- (e) the ballot for elected directors shall be conducted by the returning officer appointed by the Board, witnessed by scrutineers appointed by the candidates for election to the position of elected director and/or the returning officer and/or the Board. Each candidate for election to the position of elected director shall have the right to appoint only one scrutineer;
- (f) all formal ballot papers received by the returning officer not later than 5:00pm on the fourth day immediately prior to the Annual General Meeting shall be counted;
- (g) the returning officer shall report the result of the voting for elected director to the Chair who shall then, subject to the provisions of the Corporations Act 2001 (Cwth), declare the successful candidate or candidates for election to the position of elected director elected as elected directors;
- (h) any question relating to the formality of any ballot paper shall be referred to the Chair, whose decision on that shall be final;
- (i) the Chair shall have a casting vote or votes in the event of two (2) or more candidates obtaining an equal number of votes on a ballot; and
- (j) the Board may make rules prescribing the way a ballot shall be conducted, including but not limited to the manner of returning completed ballot papers, the address to which completed ballot papers are to be returned, the appointment of the returning officer and scrutineers, the counting of votes and the retention of ballot papers after the election.

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

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## **21. Vacancies on the Board**

- 21.1 A director shall cease to be a director if he or she:
- (a) tenders his or her resignation in writing;
  - (b) is an elected director and ceases to be a Voting Member;
  - (c) is disqualified by law from holding office;
  - (d) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
  - (e) becomes unsound of mind or a person whose person or estate is dealt with in any way under the law relating to mental health;
  - (f) absents himself or herself from three (3) consecutive meetings of the Board or five (5) meetings of the Board within a twelve (12) month period without prior granting of leave of absence by the Board;
  - (g) is directly or indirectly interested (within the meaning of the Corporations Act 2001 (Cwth)) in any contract with the Company or a participant in the profits of any contract with the Company. A director, however, shall not vacate the office by reason of being a member of any corporation, society or association that has entered into contracts with, or done any work for, the Company if such corporation, society or association is among the class of companies referred to in clause 38.3 and if he or she declared the nature of the interest in the manner required by the provisions of the Corporations Act 2001 (Cwth).

- 21.2 The Board may appoint any Voting Member qualified to hold office as an elected director to the Board for the purpose of filling a casual elected director's vacancy, and such person shall hold office until the next Annual General Meeting and be eligible for re-election.
- 21.3 The Chair may appoint a qualified person to fill a casual non-elected appointed director's vacancy, and such a person shall be entitled to hold office for a full term (two (2) years).
- 21.4 The directors may act notwithstanding any casual vacancy in their number. If the number of directors is less than five (5), the directors may act for the purpose of increasing the number of directors or for the purpose of convening a General Meeting to elect additional elected directors, but for no other purpose.

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## **22. Powers of the Board**

- 22.1 The business and affairs of the Company shall be under the management of the Board, which may exercise all the powers of the Company that are not, by this Constitution or the Corporations Act 2001 (Cwth), required to be exercised by the Company in General Meetings. In particular, but without limiting the powers of the Board, the Board shall have power to do the following:
- (a) to appoint sub-committees for any purpose and to delegate to any such sub-committee such powers as it may think fit and to revoke or alter any such appointment or delegation and to require that the committee report to the Board on a regular basis.
  - (b) to make, amend and rescind such rules as, in the opinion of the Board, are necessary or desirable for the proper control, administration and management of the Company, including rules as to membership;
  - (c) to enforce the observance of rules;
  - (d) to appoint any delegate or delegates to represent the Company for any purpose with such powers as the Board may think fit and vary or revoke such powers at any time;
  - (e) to engage, appoint, hire, control, remove, discharge, suspend and dismiss the chief executive officer, and to determine the duties, salary and other conditions of employment or engagement of that position;
  - (f) to pay the expenses of managing and promoting the Company;
  - (g) to determine who shall sign cheques and other negotiable documents on behalf of the Company;
  - (h) to purchase or otherwise acquire for the Company any real or personal property rights at such price and upon such terms and conditions as it shall think fit;

- (i) to sell, lease, exchange or otherwise dispose of any real or personal property rights or privileges of the Company at such price and on such terms and conditions as the Board thinks fit (excluding any item listed on the NSW RTM Asset Register);
- (j) to invest and deal with any of the moneys of the Company not immediately required for the purposes of the Company provided that such moneys shall be invested only in such forms of investment as are permitted by law for the investment of trust funds;
- (k) to borrow or secure the payment of any sum or sums of money for the purpose of the Company and to raise or secure payment of such money in any manner and upon any terms and conditions in all respects as they shall think fit;
- (l) to meet the expenses of any director or other representative of the Company attending to any business or representation on behalf of the Board or the Company;
- (m) to institute, conduct, defend, compound or abandon any legal proceedings by or against the Company or its officers or otherwise concerning the affairs of the Company and to refer any claims or demands by or against the Company to arbitration or mediation and to observe and perform the award or decisions made in regard thereto;
- (n) subject to the Corporations Act 2001 (Cwth), to pay premiums for an insurance policy in favour of any director or officer for any type of liability;
- (o) to vote for a payment of an annual or other director's fees to the directors;
- (p) to introduce a class of perpetual membership on such terms as the Board deems appropriate;
- (q) to perform such acts and thing as may be necessary or desirable to carry out the objects and interests of the Company.

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## **23. Procedure at Meetings of the Board**

- 23.1 There shall be no fewer than six (6) meetings of directors each calendar year.
- 23.2 The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit. A director may at any time cause the secretary to summon a meeting of the directors by written notice to the secretary setting out the matters to be discussed at that meeting.
- 23.3 At least forty eight (48) hours' notice in writing through any medium agreed to by the directors must be given to each director for each meeting.

- 23.4 Subject to the Corporations Act 2001 (Cwth), a directors' meeting may be held by the directors communicating with each other by any technological means by which they are able to simultaneously hear each other and participate in discussion. The directors need not all be physically present in the same place for a directors' meeting to be held.
- 23.5 Every director is entitled to attend and vote at every Board meeting, but no other person shall attend or be heard except at the invitation of the Chair or by resolution of the Board.
- 23.6 No business shall be transacted at any meeting of the Board unless a quorum of directors is present at the time of the commencement of the meeting.
- 23.7 If a quorum of directors is not present at the time fixed for the holding of a meeting of the Board, the meeting shall stand adjourned until the same time and day of the following week.
- 23.8 The Chair shall preside at every meeting of the Board or, if not present within fifteen (15) minutes of the time appointed for the holding of the meeting, the Deputy Chair shall preside at that meeting of the Board or if the Deputy Chair is unable or unwilling to act as Chair, the directors present shall elect one of elected directors to act as Chair for the meeting.
- 23.9 In the event that a director other than the Chair is acting as Chair, that director will be entitled to vote in accordance with his or her normal deliberative voting rights.
- 23.10 A resolution put to the vote at a meeting of the Board shall be decided on by a show of hands unless a poll is demanded (before or on the declaration of the result of the show of hands):
- (a) by the Chair, or
  - (b) by at least two (2) directors present at the meeting at least one of whom must be an elected director elected pursuant to clause 20.
- 23.11 Decisions are made by the majority of votes.
- 23.12 The Chair has a casting vote only in the event of a deadlock, and does not have a deliberative vote, subject to clause 23.9.
- 23.13 A resolution in writing signed by all the directors shall be valid as if it had been passed at a meeting of the Board, duly convened and held. Any such resolution may consist of several documents in like form, each signed by one (1) or more directors.
- 23.14 All acts done at any meeting of the Board or by any person acting as a director shall, notwithstanding that it shall afterwards be discovered that there was some defect in that person's appointment as a director or that they were disqualified from being a director, be as valid as if such person had been validly appointed and qualified to be a director.

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## **24. General Meetings**

- 24.1 The Annual General Meeting shall be held at least once in every calendar year, but not more than five (5) months after the end of the Financial Year. Unless otherwise resolved by the Board, the Annual General Meeting shall be held in the month of November following the end of the Financial Year.
- 24.2 An Extraordinary General Meeting may be called at any time by the Board and shall be convened by the Board.
- (a) if requested in writing by the Chair; or
  - (b) if requested in writing by at least five per cent (5%) of the total number of the Voting Members; or
  - (c) as otherwise required by law.

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## **25. Notice of General Meetings**

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

- (c) if a special resolution is to be proposed at the meeting, an intention to propose the special resolution and state the resolution.

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

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## **26. Procedure at General Meetings**

26.1 The business of the Annual General Meeting shall be:

- (a) to confirm the minutes of the previous Annual General Meeting;
- (b) to receive and consider the annual report of the Company;
- (c) to receive and consider a financial report, the directors' report and the audit report;
- (d) to elect the elected directors, if they are due to be elected;
- (e) to appoint an auditor or auditors as required by the Corporations Act 2001 (Cwth);
- (f) to deal with any business of which due and lawful notice has been given.

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

26.3 A quorum at a General Meeting shall be:

- (a) twenty five (25) Voting Members in the case of an Annual General Meeting;
- (b) twenty five (25) Voting Members in the case of an Extraordinary General Meeting convened by the Board as a result of a requisition pursuant to clause 24.2(b);
- (c) twenty five (25) Voting Members in the case of any other Extraordinary General Meeting convened by the Board;
- (d) twenty five (25) Voting Members in the case of an Extraordinary General Meeting convened pursuant to an order of the Court.

26.4 No business shall be transacted at a General Meeting unless a quorum of Members is present at the commencement of the meeting.

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

(30) minutes of the time fixed for the holding of the meeting, the Voting Members present shall constitute a quorum.

- 26.6 The Chair shall preside at every General Meeting or, if the Chair is not present within fifteen (15) minutes of the time appointed for the holding of the General Meeting, or if he or she is unable or unwilling to act as Chair the Deputy Chair shall preside at that meeting, or if the Deputy Chair is unable or unwilling to act as Chair, the directors present shall elect one of the elected directors to act as Chair for the meeting.
- 26.7 No person other than a Member shall be entitled to attend or speak at a General meeting without the leave of the Chair.
- 26.8 The Chair of the meeting may, with the consent of the Voting Members present at a General Meeting at which a quorum is present, adjourn the meeting to a date, time and place agreed to by the Voting Members present, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 26.9 When a meeting is adjourned for thirty (30) days or more, a fresh notice of meeting shall be given in the manner specified in this Constitution.

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## **27. Voting at General Meetings**

- 27.1 A resolution put to the vote of a General Meeting shall be decided on a show of hands unless a poll (before or on the declaration of the result of the show of hands) is demanded:
- (a) by the Chair; or
  - (b) by at least five (5) Voting Members present and entitled to vote at the meeting.
- 27.2 Unless a poll is demanded, the Chair shall declare that a resolution has been:
- (a) carried; or
  - (b) carried unanimously; or
  - (c) carried by a particular majority; or
  - (d) lost,
- on the show of hands.
- 27.3 If a poll is duly demanded at the meeting, the manner in which the poll is to be taken and the time at which it is to be taken shall be determined by the Chair and the result of the poll shall be the resolution of the meeting at which the poll is demanded, but a poll demanded on the election of the directors or on a question of adjournment shall be taken at once.



- 27.4 A declaration of the Chair shall be conclusive evidence of the result of the vote to which it refers, without proof of the number or proportion of the vote recorded in favour or against the resolution, unless a poll is demanded. A demand for a poll may be withdrawn.
- 27.5 If there is an equality of votes on a show of hands or on a poll, then the resolution concerned is lost.
- 27.6 Voting Members may request that a vote of no confidence in the Board of Directors be held at a General Meeting. Notice of the resolution and sufficient details to support the no confidence are to be supplied in accordance with the provisions for notification of lawful business in clause 26.1. Any such resolution shall be put at the relevant General Meeting.
- 27.7 In the case of any dispute as to the admission or rejection of a vote pursuant to a notice under clause 27.6, the Chair of the meeting shall determine the dispute and such determination made in good faith shall be final.
- 27.8 At least ten percent (10%) of Voting Members may request that a vote of no confidence in the Chair be held at a General Meeting. Notice of the resolution and sufficient details to support the no confidence are to be supplied in accordance with the provisions for notification of lawful business in clause 26.1.
- 27.9 An objection to the qualification of a voter may only be raised at the General Meeting or adjourned General Meeting at which the voter tendered his or her vote.
- 27.10 An objection to the qualification of a voter must be referred to the Chair of the General Meeting, whose decision is final.
- 27.11 A vote that the Chair does not disallow because of an objection is valid for all purposes.

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## **28. Proxies**

- 28.1 Every Voting Member is entitled to appoint another Voting Member as proxy to attend and vote at any General Meeting by notice given to the secretary not later than twenty four (24) hours before the time of the meeting in respect of which the proxy is appointed.
- 28.2 The notice of appointment of a proxy shall be in the following form:

<p><b>TRANSPORT HERITAGE NSW LIMITED (ACN 000 570 463)</b> <b>NOTICE OF APPOINTMENT OF A PROXY</b></p> <p>I (name) _____ of (address) _____</p> <p>_____</p>
--

being a Voting Member of the Company appoint (name) \_\_\_\_\_  
of (address) \_\_\_\_\_

or failing him, appoint instead (name) \_\_\_\_\_ of (address)  
\_\_\_\_\_

As my proxy to vote for me on my behalf at the Annual/Extraordinary General Meeting of the  
Company to be held on (date) \_\_\_\_\_ and at any adjourned meeting.

Signed \_\_\_\_\_ this day of (date) \_\_\_\_\_

Voting instructions:

Proposed resolution:

In favour of OR against (strike out whichever is not desired)

Unless otherwise instructed herein, my proxy may vote as he thinks fit.

## **29. Minutes of Meetings**

29.1 A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast, the appointor:

- (a) died;
- (b) became mentally incapacitated, or
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant General Meeting or adjourned General Meeting.

29.2 The Board shall cause Minutes to be kept by the secretary or the secretary's delegate of:

- (a) all appointments of directors and other officers made by the Company or by the Board;
- (b) the names of the directors present and voting at each meeting of the Board;
- (c) the number of Voting Members present at General Meetings of the Company;
- (d) the number of Voting Members registering a vote on each resolution presented; and
- (e) all resolutions and proceedings of all meetings of the Company or of the Board.

29.3 The minutes shall comply with the Charitable Fundraising Act 1991.

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## **30. Register of Members**

- 30.1 The Company shall keep a Register of Members in which at least the following information shall be entered with regard to each Member:
- (a) full name and current address;
  - (b) date of admission as a Member;
  - (c) class of Member;
  - (d) the date of admission as a Life Member (if applicable);
  - (e) the dates and particulars of any other changes that are required by this Constitution to be entered in the Register of Members;
  - (f) the amount and date of the last payment of annual subscription by that Member;
  - (g) the date upon which he or she ceased to be a Member;
  - (h) any other information as determined by the Board.
- 30.2 Every Member shall notify the membership officer in writing of any change in his or her name or address. The last address given in writing shall be deemed to be the registered address of the Member for the purpose of the issue of notices.

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## **31. Seal**

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

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## **32. Secretary and Chief Executive Officer**

- 32.1 The Board shall appoint a secretary and a chief executive officer each upon such terms and conditions as the Board determines, including, but not limited to, the period of such appointment and the remuneration, if any, to be paid in respect of such appointment.

32.2 Any secretary or chief executive officer so appointed may be removed by the Board.

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### **33. Treasurer**

33.1 The Board may appoint a treasurer upon such terms and conditions as the Board determines, including, but not limited to, the period of such appointment and remuneration, if any, to be paid in respect of such appointment.

33.2 any treasurer so appointed may be removed by the Board.

33.3 it is the duty of the treasurer or his or her delegate to ensure that:

- (a) all money due to the Company is collected and received and that all payments authorised by the Company are made;
- (b) true and fair books and accounts are kept showing the financial affairs of the Company, including full details of all receipts and expenditure connected with the activities of the Company.
- (c) as far as possible, adequate funding is available for any proposed operations, activities, funding or events.

33.4 Nothing in clause 33.3 derogates from the obligations of the directors at law.

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### **34. Financial Statements**

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

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

34.3 A copy of all financial reports, directors' reports and audit reports shall be made available to Transport for NSW on reasonable notice given to the Company.

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### **35. Inspection of Financial Records**

35.1 The financial records of the Company shall be kept at the registered office of the Company and shall be open for inspection by:

- (a) the directors and; free of charge,

- (b) by a Voting Member of the Company at any reasonable hour on reasonable prior notice.

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## **36. Application of Funds**

- 36.1 The income and property of the Company will only be applied towards the promotion of the Objects of the Company, as set out in clause 4.
- 36.2 No portion of income or property of the Company shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to or amongst the Members, provided that nothing shall prevent the payment in good faith of any of the following:
  - (a) reasonable and proper remuneration to any Member in return for any services actually rendered to the Company by that Member;
  - (b) payment of out-of-pocket expenses to a Member that have been incurred in the course of carrying out duties or responsibilities in relation to the Company;
  - (c) payment to a Member of interest as a rate not exceeding interest at the rate for the time being charged by bankers in Sydney for overdraft accounts on money lent to the Company; and
  - (d) payment to a Member of reasonable rent for premises leased to the Company.

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## **37. Receipts**

- 37.1 If the Company accepts a gift, contribution or donation of money or property, the Company must give the donor a receipt, and otherwise comply with all applicable laws in relation to any such gift, contribution or donation, including without limitation the provisions of section 30-228 of the Tax Act and the provisions of the Charitable Fundraising Act 1991 (NSW).
- 37.2 The Company may seek gifts, support in kind, contributions or donations from the public.

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## **38. Liability of Members on Winding Up**

- 38.1 The liability of the Members is limited.
- 38.2 Every Member undertakes to contribute to the assets of the Company in the event of the Company being wound up while he or she is a Member, or within one (1) year after he or she ceases to be a Member, and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding twenty dollars (\$20).
- 38.3 If, upon winding up or dissolution of the Company, there remains after the satisfaction of all its debts and liabilities, any property, the same shall not be paid to or distributed among the

Members, but shall be given or transferred to some other institution or institutions having objects similar to the Company, and which shall prohibit the distribution of its or their income and property amongst its or their Members to an extent at least as great as is imposed on the Company by virtue of this clause 38.3. Such institution/s are to be determined by the Voting Members at or before the time of dissolution or failing such determination by the Chief Judge in Equity of the Supreme Court of New South Wales, or such other judge of that Court as may have or acquire jurisdiction in the matter. If, in so far as effect cannot be given to this provision, then properties shall be dealt with in accordance with clause 42.3 subject to the rights of third parties to access and use such assets pursuant to custody management agreements and like agreements entered into between any such third party and the Company.

- 38.4 If the Company's general restoration fund or any other gift fund operated by the Company is wound up, or if the endorsement of the Company as a deductible gift recipient is revoked, any surplus assets remaining after the payment of liabilities attributable to it shall be transferred to a fund, authority or institution to which income tax deductible gifts can be made.

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## **39. Indemnity**

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

Section 1317G of the Corporations Act 2001 (Cwth) or a compensation order under Section 1317H of the Corporations Act 2001 (Cwth), unless the liability arises out of conduct by the officer involving a lack of good faith.

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

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## **40. Replaceable Rules and Constitution**

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

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## **41. Amendments to the Constitution**

- 41.1 This Constitution may only be amended through a majority vote by the Voting Members.
- 41.2 This Constitution must not be amended if to do so would cause the Company to no longer eligible for endorsement as a deductible gift recipient under Division 30 of the Tax Act.

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## **42. NSW RTM Owned Assets**

- 42.1 The assets listed in NSW RTM Owned Asset Register may not be sold, mortgaged or otherwise disposed of, unless approved by resolution at a General Meeting.
- 42.2 Renovation, maintenance or other work may be carried out on and funding may be provided for that work on assets on the NSW RTM Owned Assets List with the approval of a majority of the elected directors.
- 42.3 If, for whatever reason, the Company is wound up, the RTM NSW Owned Assets are to be transferred to an entity nominated by a majority of the elected directors.
- 42.4 Any gift to the Company for a specific purpose relating to an item listed on the NSW RTM Asset Register may be used for that purpose, if supported by a majority of the elected directors.
- 42.5 The acquisition of any item which is proposed to be added to the NSW RTM Owned Asset Register must first be approved by a majority of the directors elected under Article 16.3 and the acquisition of the item must also be consistent with the Company's Museum Collections Policy from time to time.
- 42.6 The RTM NSW Owned Assets List may be added to, or amended, from time to time, by a motion approved by a resolution at a General Meeting.

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### **43. Transitional Provisions**

43.1 The following transitional provision shall apply:

- (a) the Inaugural Chair, Mr Peter Lowry, will be appointed by the Minister for an initial period of three (3) years from and including the date of the commencement of this Constitution, subject to part 17 of this Constitution;
- (b) all Members at the date of adoption of this Constitution shall continue as Members on the same basis as far as is possible, and where the adoption of this Constitution necessitates a change in the kind of membership or the rights and privileges of the membership of any Member, such change shall not disadvantage the Member and subject thereto the Board shall, in its discretion, determine any matter consequential upon such change;
- (c) each elected director who holds office at the date of adoption of this Constitution shall continue in office until the first Annual General Meeting occurring at least two (2) years after the date of adoption of this Constitution, at which time these directors may or may not choose to nominate for re-election;
- (d) where any date or period of time is to be fixed or reckoned under this Constitution, the same shall be done by reference to the dates that would otherwise have been relevant for the particular purpose under the former Articles of Association of the Company;
- (e) any dispute or matter arising in respect of the interpretation or application of this Constitution on the transition from the former Articles of Association of the Company shall be determined with the objective of maintaining continuity in all aspects of the membership, Board, operations and business of the Company and subject thereto the Board shall in its discretion, determine any matter consequential upon such change.