

Constitution

of

Winnaleah Irrigation Scheme Limited

A Company limited by Guarantee under the Corporations Act

**Shields Heritage
53 Cameron Street
Launceston 7250
C Chalmers**

Table of Contents

Part 1 - Introductory	1
1. Definitions and Interpretation	1
1.1 Definitions	1
1.2 Interpretation	2
1.3 Replaceable rules	2
Part 2 – Essential Elements of the Company	3
2. Objects and Powers of the Company	3
2.1 Objects	3
2.2 Powers	3
3. Application of income and property of Company	3
3.1 To be applied towards objects	3
3.2 Not to be applied for benefit of members	3
3.3 Application of surplus property on winding-up	4
3.4 Choosing institution	4
4. Limited Liability of members	4
4.1 Liability of members limited	4
4.2 Liability of members to contribute to funds of Company	4
Part 3 - Members	5
5. Membership	5
5.1 Membership qualification	5
5.2 Application for membership	5
5.3 Admission	5
5.4 Membership personal	5
5.5 Loss of membership qualification	5
5.6 Retirement	5
5.7 Certificate of membership	5
6. Voting entitlements of members	5
6.1 Entitlement	5
6.2 Number of votes	6
6.3 Conferral of voting rights	6
6.4 Economic Entity Test	6
6.5 Aggregated Parcels	6
6.6 Directors' discretion	6

Part 4 –Meetings and Decisions of Members	7
7. General meetings of members	7
7.1 How held	7
7.2 Convening general meetings	7
7.3 Requisitioned meetings	7
7.4 Where there is not a quorum of directors	7
7.5 Notice	7
7.6 Special business.....	7
8. Proceedings at general meetings	8
8.1 Quorum required	8
8.2 Quorum.....	8
8.3 Where quorum not present at start of meeting	8
8.4 Chairperson.....	8
8.5 Adjournment.....	8
9. Decisions at general meetings	9
9.1 How made.....	9
9.2 Demand for poll.....	9
9.3 Withdrawal of demand for poll	9
9.4 Declaration of decision.....	9
9.5 How poll taken	9
9.6 No casting vote	9
10. Votes of members	10
10.1 Entitlement to vote	10
10.2 Voting entitlements	10
10.3 Objection to votes.....	10
11. Proxies	10
11.1 Appointment	10
11.2 Validity of appointment	10
11.3 Form of proxy	10
11.4 Proxy may demand poll.....	11
11.5 Validity of things done under proxy	11
Part 5 - Directors	12
12. Make up and appointment	12

12.1	Number of Directors	12
12.2	Initial directors.....	12
12.3	Appointment of Directors.....	12
12.4	Qualification	13
12.5	Nomination of Directors.....	13
12.6	The Chairperson	13
12.7	Term of office	13
12.8	Removal and replacement of director.....	13
12.9	Filling casual vacancies	14
12.10	Vacation of director’s office	14
13.	Powers and duties of Directors.....	14
13.1	General powers	14
13.2	Subsequent general meeting.....	14
13.3	Specific powers to borrow and provide security	15
13.4	Power to appoint attorney.....	15
14.	Proceedings of directors	15
14.1	Meetings	15
14.2	Method of meeting	15
14.3	Convening of meetings.....	15
14.4	Notice of meeting	16
14.5	Quorum.....	16
14.6	Decisions	16
14.7	Where some Directors’ positions vacant	16
14.8	Acting Chairperson.....	16
14.9	Committees.....	16
14.10	Delegations	16
14.11	Written resolutions	17
14.12	Validity of acts	17
15.	Remuneration of Directors	17
15.1	Remuneration	17
15.2	Expenses	17
15.3	Special services	17
16.	Directors dealing with company	18
16.1	Director not disqualified.....	18

16.2	Directors not liable to account.....	18
16.3	Directors acting in professional capacity	18
16.4	Directors must disclose interest.....	18
16.5	Voting where Directors have interest.....	18
16.6	Effect on quorum	18
16.7	Directors' and officers insurance	19
16.8	Relaxation of restrictions.....	19
16.9	Director may execute documents despite interest	19
Part 6 – Administrative provisions		20
17.	Secretary	20
17.1	Appointment	20
17.2	Removal of secretary	20
18.	Minutes.....	20
18.1	Keeping of minutes.....	20
18.2	Signing of minutes.....	20
19.	Accounts.....	20
19.1	Keeping accounts.....	20
19.2	Inspection of books.....	21
20.	Notices.....	21
20.1	Method of giving notice	21
20.2	Notice by facsimile.....	21
20.3	Receipt of notice by post	21
20.4	Receipt of notice by facsimile	21
20.5	Notice of meetings.....	21
20.6	Entitlement to notice.....	21
21.	Protection of Officers	22
21.1	General indemnity	22
21.2	Indemnity for cost incurred in defending proceedings.....	22
21.3	Separate indemnities.....	22
21.4	How indemnity given effect	22
21.5	Notice to Company	22
21.6	Where officer not entitled to indemnity	23
21.7	Severing unlawful provisions	24
21.8	Interpretation in this Rule.....	24

21.9	Insurance premium	25
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Constitution
of
Winnaleah Irrigation Scheme Limited
A Company limited by Guarantee under the Corporations Act

PART 1 - INTRODUCTORY

1. Definitions and Interpretation

1.1 *Definitions*

In this Constitution:

“Act”	means the Corporations Act;
“the Company”	means Winnaleah Irrigation Scheme Limited;
“this Constitution”	means this Constitution as amended or replaced;
“the Directors”	means those Directors of the Company having authority to act for the Company acting as a body;
“in writing” or “written”	includes printed or represented or reproduced in a visible form by any other means;
“the Irrigation District”	means the Winnaleah Irrigation District constituted by a proclamation made under the Water At 1957 on 19 th June 1985;
“Irrigation Right”	means an irrigation right as defined in the Irrigation Clauses Act 1973;
“Irrigation Scheme”	Means the undertaking within the meaning of the Irrigation Clauses Act 1973 of the Irrigation District;
“Irrigators”	means those people who from time to time hold an Irrigation Right in respect of the Irrigation District either solely or jointly with one or more other people;
“member”	means any person who is a member of the Company and includes governing life members and life members;
“month”	means calendar month;
“the objects of the Company”	means the objects set out in Rule 2;

“office” or “office of the Company”	means the registered office of the Company;
“present”	when used in relation to a member at a meeting means present in person or by proxy;
“the replaceable rules”	means the replaceable rules referred to in section 135(1)(a) of the Act; and
“Responsible Water Entity”	has the meaning given to the words “responsible water entity” by section 3 of the <i>Water Management Act 1999</i> .

1.2 ***Interpretation***

In this Constitution:

- (a) a reference to any officer of the Company includes any person acting for the time being as such officer;
- (b) words signifying the singular include the plural and words signifying the plural include the singular;
- (c) words denoting a gender include all other genders;
- (d) words denoting a person include a partnership, association and corporation and words denoting a partnership, association or corporation include a person;
- (e) a word or expression defined in the Act has the same meaning in this Constitution unless inconsistent with its context;
- (f) a reference to the Act includes:
 - (i) any amendment, variation or replacement of the Act; and
 - (ii) any regulations proclaimed under the Act;
- (g) a reference to any provision of the Act is a reference to that provision as amended or replaced and includes any regulations proclaimed under the Act applicable to that provision; and
- (h) headings and any table of contents do not affect interpretation and are included for ease of reference only.

1.3 ***Replaceable rules***

This constitution takes the place of the replaceable rules.

PART 2 – ESSENTIAL ELEMENTS OF THE COMPANY

2. Objects and Powers of the Company

2.1 *Objects*

The objects of the Company are:

- (a) to act as the Responsible Water Entity in respect of the Irrigation District;
- (b) to provide good quality irrigation water to users in the Irrigation District in a manner that is reliable and sustainable;
- (c) to promote the optimum use of the resources of the Irrigation Scheme and further the development of catchment areas for the purposes of irrigation; and
- (d) to promote or pursue the generation of hydro-electricity including by:
 - (i) obtaining rights to water for that purpose;
 - (ii) supplying water to any entity for the generation of hydro-electricity;
 - (iii) taking equity in any entity involved in the generation of hydro-electricity.

2.2 *Powers*

The Company has all the powers a company limited by guarantee has under the Act but must only exercise those powers:

- (a) in the promotion of the object of the Company;
- (b) subject to this Constitution; and
- (c) in the way the Act requires.

3. Application of income and property of Company

3.1 *To be applied towards objects*

The Company must apply its income and property solely towards the promotion of the objects of the Company.

3.2 *Not to be applied for benefit of members*

The Company must not pay or transfer directly or indirectly any of its income and property to any member of the Company except that the Company may, subject to complying with Chapter 2E of the Act where required, pay:

- (a) reasonable and proper remuneration to any member of the Company in return for:

- (i) services actually rendered to the Company; and
- (ii) goods supplied in the ordinary and usual way of business;
- (b) reasonable and proper interest on money borrowed from any member of the Company; and
- (c) reasonable and proper rent for premises leased by any member to the Company.

3.3 *Application of surplus property on winding-up*

If when the Company is wound up a surplus of assets remains after all debts or liabilities of the Company have been paid, the surplus must be distributed to one or more corporations, funds, authorities or institutions:

- (a) having similar aims and basic objects to the Company; and
- (b) which when the distribution is to be made prohibits by its constitution or other constituent document the payment or transfer directly or indirectly any of its income and property to any member.

3.4 *Choosing institution*

The corporations, funds, authorities or institutions referred to in Rule 3.3 and the amounts to be distributed to each are to be chosen:

- (a) by the members on or before dissolution of the Company; or
- (b) if the members do not so choose, by the Supreme Court of Tasmania.

4. Limited Liability of members

4.1 *Liability of members limited*

The liability of the members is limited.

4.2 *Liability of members to contribute to funds of Company*

If the Company is wound up, each member of the Company or person who was a member in the year immediately preceding the commencement of the winding up must contribute such amount as may be required not exceeding ten dollars (\$10.00) to the assets of the Company:

- (a) to pay:
 - (i) the debts and liabilities of the Company contracted before he or she ceased to be a member; and
 - (ii) the costs, charges and expenses of the winding up; and
- (b) to adjust the rights of the contributories amongst themselves.

PART 3 - MEMBERS

5. Membership

5.1 *Membership qualification*

Membership of the Company is open to any Irrigator and to any director of a corporate Irrigator and to no other person. To clarify the operation of this Rule where an Irrigation Right is held by more than one Irrigator, membership of the Company is open to each of those Irrigators.

5.2 *Application for membership*

An Irrigator wishing to become a member of the Company must lodge with the Company a signed, written application for membership in such form as the Directors require.

5.3 *Admission*

The Directors must admit as a member each Irrigator that applies for membership under Rule 5.2 at their first meeting after the Company receives the application.

5.4 *Membership personal*

Membership is not transferable.

5.5 *Loss of membership qualification*

A member ceases to be a member immediately the member ceases to be an Irrigator.

5.6 *Retirement*

- (a) Any member may retire as a member of the Company by notice in writing to the Company.
- (b) A retiring member ceases to be a member of the Company when the Company receives the notice of retirement.

5.7 *Certificate of membership*

The Company must issue a certificate of membership to every member free of charge.

6. Voting entitlements of members

6.1 *Entitlement*

Each member is entitled to exercise the number of votes conferred on the member under this Rule 6 on any vote of members conducted by a poll.

6.2 *Number of votes*

An Aggregated Parcel and an Irrigation Right not forming part of an Aggregated Parcel confer voting rights in accordance with the volume of water that they allow to be taken as follows:

- (a) less than 10 mega litres confers no votes;
- (b) 10 or more up to 50 mega litres confers one (1) vote;
- (c) more than 50 up to 100 mega litres confers two (2) votes; and
- (d) more than 100 mega litres confers three (3) votes.

6.3 *Conferral of voting rights*

- (a) A solely held Irrigation Right confers voting rights on the holder of Irrigation Right unless the Irrigation Right is part of an Aggregated Parcel.
- (b) A jointly held Irrigation Right confers voting rights on one only of the holders as nominated by the holders unless the Irrigation Right is part of an Aggregated Parcel.
- (c) An Aggregated Parcel confers voting rights on one only of the holders of the Irrigation Rights comprising the Aggregated Parcel as nominated by the holders.

6.4 *Economic Entity Test*

The economic entity test applies to aggregate all Irrigation Rights used in a business which is managed or conducted as one economic unit even if:

- (a) more than one person owns or conducts the business; or
- (b) the person or people who own or conduct the business do not hold the Irrigation Right.

6.5 *Aggregated Parcels*

Where Irrigation Rights are aggregated in respect of a business by the application of the economic entity test, those Irrigation Rights are:

- (a) to be treated as if they were one Irrigation Right; and
- (b) referred to in this Rule 6 as an Aggregated Parcel.

6.6 *Directors' discretion*

The Directors may:

- (a) determine in their discretion whether or not Irrigation Rights are used in a business which is managed or conducted as one economic unit; and
- (b) for that purpose may require a member to provide such information as the Directors reasonably require.

PART 4 –MEETINGS AND DECISIONS OF MEMBERS

7. General meetings of members

7.1 *How held*

The Company must hold all general meetings in accordance with the provisions of the Act and this Constitution.

7.2 *Convening general meetings*

The Directors:

- (a) may convene a general meeting whenever they think fit; and
- (b) must convene an annual general meeting within five (5) months after the end of each financial year of the Company.

7.3 *Requisitioned meetings*

The Directors must convene a general meeting if requisitioned under the Act and if they do not do so the requisitionists may convene a general meeting as provided by the Act.

7.4 *Where there is not a quorum of directors*

At any time when the number of Directors capable of acting is less than a quorum, any Director may convene a general meeting in the same manner as nearly as possible as Directors may convene meetings.

7.5 *Notice*

The persons convening a general meeting must give at least twenty one (21) days notice in writing (exclusive of the day on which the notice is served or deemed to be served and of the day the meeting is to be held) of all general meetings specifying:

- (a) the place;
- (b) the day and time of meeting; and
- (c) the general nature of any special business,

to the persons entitled to receive notice from the Company unless shorter notice is agreed to under the provisions of the Act.

7.6 *Special business*

For the purpose of Rule 7.5(c), all business transacted at a general meeting is special except for the following business at an annual general meeting:

- (a) considering the annual financial report and reports of the Directors and any auditor;
- (b) appointing any auditor and fixing the auditor's remuneration; and
- (c) electing Directors.

8. Proceedings at general meetings

8.1 *Quorum required*

A general meeting can not transact any business unless a quorum is present when the business is transacted.

8.2 *Quorum*

A quorum is constituted by ten (10) members.

8.3 *Where quorum not present at start of meeting*

If a quorum is not present within thirty (30) minutes after the time appointed for a general meeting:

- (a) if the meeting were convened upon a requisition of members, the meeting is dissolved; or
- (b) if the meeting were convened in any other way, the meeting:
 - (i) is adjourned to the same day in the next week at the same time and place; and
 - (ii) is dissolved if a quorum is not present within thirty (30) minutes after the time appointed for the adjourned meeting.

8.4 *Chairperson*

- (a) The Chairperson of the Directors presides as Chairperson at every general meeting of the Company.
- (b) The persons present at the meeting and entitled to vote must choose one of them to preside as Chairperson if:
 - (i) there is no Chairperson of the Directors;
 - (ii) the Chairperson is not present within fifteen minutes after the time appointed for the meeting; or
 - (iii) the Chairperson is present but unwilling to preside.

8.5 *Adjournment*

- (a) The Chairperson may, with the consent of the meeting, and must, if directed by the meeting, adjourn any original or adjourned meeting at which a quorum is present to another time and place.
- (b) If a meeting is adjourned:
 - (i) the adjourned meeting can not transact any business other than the business left unfinished at the original meeting; and
 - (ii) the Company need not give any notice in respect of the adjourned meeting unless it is adjourned for ten days or more at one time; but
 - (iii) the Company must give notice of the adjourned meeting as if it were an original meeting if it is adjourned for ten days or more at one time.

9. Decisions at general meetings

9.1 *How made*

A general meeting decides each resolution put to it by:

- (a) a show of hands in the first instance; or
- (b) a poll if a poll is demanded under Rule 9.2 and the demand is not withdrawn.

9.2 *Demand for poll*

A poll may be demanded immediately before or after a resolution is put to a show of hands by:

- (a) the Chairperson;
- (b) at least five (5) members present and entitled to vote at the meeting; or
- (c) members with at least 5% of the votes that may be cast on the resolution.

9.3 *Withdrawal of demand for poll*

The person or persons demanding a poll may withdraw the demand.

9.4 *Declaration of decision*

Unless a poll is demanded under Rule 9.2:

- (a) a declaration by the Chairperson that a resolution is passed or lost on a show of hands having regard to any particular majority required; and
- (b) an entry to that effect in the minutes of the meeting signed by the Chairperson,

is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

9.5 *How poll taken*

If a poll is duly demanded, the Chairperson may direct:

- (a) the manner in which the poll is to be taken; and
- (b) that the poll be taken at once or after an interval or adjournment except that a poll on the election of a Chairperson or on a question of adjournment must be taken immediately.

9.6 *No casting vote*

The Chairperson of the meeting does not have a second or casting vote whether on a show of hands or on a poll.

10. Votes of members

10.1 Entitlement to vote

- (a) Each member who is present at a meeting of members may vote at the meeting unless the member is disqualified from voting under this Constitution.
- (b) A member is disqualified from voting at any time when the member owes to the Company any amount which is more than thirty (30) days over due for payment.

10.2 Voting entitlements

Each member may exercise the number of votes conferred on the member under Rule 6.

10.3 Objection to votes

- (a) A member may object to any vote being allowed at the meeting or adjourned meeting at which the vote is given or tendered.
- (b) A member can not object to any vote being allowed in any other way.
- (c) The Chairperson of the meeting must rule on any objection and the ruling is final and conclusive.
- (d) Every vote allowed at the meeting is valid for all purposes.

11. Proxies

11.1 Appointment

A member may appoint a proxy in writing signed by the appointer or the appointer's attorney.

11.2 Validity of appointment

An appointment of a proxy is not valid at any general meeting or the resumed part of an adjourned general meeting unless:

- (a) at least forty eight (48) hours before the meeting or the resumed part of an adjourned general meeting is to be held:
 - (i) the instrument appointing the proxy; and
 - (ii) any power of attorney or other authority under which it is signed or a certified copy of that power or authority,
are deposited at the office of the Company; or
- (b) the Chairperson of the meeting determines otherwise.

11.3 Form of proxy

An instrument appointing a proxy:

- (a) may be in any usual form or in any other form which the Directors approve; and
- (b) must only name one proxy.

11.4 *Proxy may demand poll*

A proxy may demand or join in demanding a poll.

11.5 *Validity of things done under proxy*

A vote given under a proxy is valid despite the principal:

- (a) dying;
- (b) becoming insane; or
- (c) revoking the appointment,

if the Company does not receive notice in writing of such death, insanity, revocation or transfer at the office before the meeting or the resumed part of an adjourned meeting at which the vote is given.

PART 5 - DIRECTORS

12. Make up and appointment

12.1 *Number of Directors*

- (a) There will not be less than five (5) or more than seven (7) Directors.
- (b) After the first annual general meeting of the Company, not more than six (6) Directors may be members of the Company.

12.2 *Initial directors*

The initial directors of the Company and the initial term of their appointment are as follows:

Richard John Beswick	From incorporation of the Company until the first annual general meeting of the Company
Alan John Davenport	From incorporation until the first annual general meeting of the Company.
Gregory McCallum Green	From incorporation of the Company until the second annual general meeting of the Company
Helen Shirley Carins	From incorporation of the Company until the second annual general meeting of the Company
John Douglas Carins	From incorporation of the Company until the first annual general meeting of the Company
Anthony John Cruickshank	From incorporation of the Company until the first annual general meeting of the Company
Frank Jan Wagner	From incorporation of the Company until the second annual general meeting of the Company

12.3 *Appointment of Directors*

- (a) At each election for Directors, every Member entitled to vote may vote for as many candidates as there are Directors to be appointed and each of the candidates for whom the Member votes will be taken to have received the number of votes which the Member is entitled to exercise.

- (b) The candidates receiving successively the highest number of votes will be appointed as Directors until the number of Directors to be appointed have been appointed.
- (c) If two candidates receive equal numbers of votes they will be separated by drawing lots.

12.4 *Qualification*

Each Director must be:

- (a) appointed on incorporation of the company;
- (b) a member of the Company who, except during the first two (2) years after the Company is incorporated, is a member of at least two (2) years standing; or
- (c) a person approved as a candidate by a resolution of the members passed at the general meeting at which the person is a candidate for election by a two thirds majority.

12.5 *Nomination of Directors*

- (a) To be eligible for election as a Director by the members, a candidate must lodge with the Company at least fourteen (14) days before the meeting at which the election is to be held, a nomination signed by:
 - (i) the candidate; and
 - (ii) at least two members who nominate the candidate for election.
- (b) The Company must notify members of the name of all nominees for election as a Director at least seven (7) days before the meeting at which the election is to take place.

12.6 *The Chairperson*

At the first meeting of Directors after incorporation and after each annual general meeting of the Company, the Directors must elect one of the Directors to be the Chairperson of Directors to hold that office until the end of the next annual general meeting of the Company.

12.7 *Term of office*

Unless this Constitution provides otherwise, each Director holds office:

- (a) as provided under Rule 12.9(b) if he or she is appointed to fill a position arising as a result of a casual vacancy;
- (b) otherwise until the second annual general meeting after appointment;
or
- (c) until he or she dies or vacates office under Rule 12.10 earlier.

12.8 *Removal and replacement of director*

The Company may by resolution:

- (a) remove any Director; and

- (b) appoint a Director to hold office in place of the Director removed for the remainder of the original term of the replaced Director.

12.9 *Filling casual vacancies*

- (a) The Directors may appoint a Director to fill a casual vacancy among the Directors whether the vacancy exists through vacation of the office of a Director or because insufficient candidates offer themselves for election at an annual general meeting.
- (b) A Director appointed under Rule 12.9(a) holds office until the next annual general meeting and, if the appointment is confirmed at that meeting, for the remainder of the original term of the Director replaced or not appointed as the case may be.

12.10 *Vacation of director's office*

The office of a Director is vacated if the Director:

- (a) ceases to be a Director under the Act;
- (b) fails to attend two consecutive meetings of Directors without:
 - (i) leave from the Directors; or
 - (ii) having a good reason to be absent and notifying the Secretary of the Director's inability to attend before the meeting;
- (c) is prohibited from being a Director by the Act;
- (d) becomes bankrupt or makes any general arrangement or composition with the Director's creditors;
- (e) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health;
- (f) resigns by notice in writing to the Company; or
- (g) is removed by a resolution of the Company.

13. Powers and duties of Directors

13.1 *General powers*

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

13.2 *Subsequent general meeting*

The Company in general meeting can not invalidate any prior act of the Directors that would have otherwise been valid except to the extent allowed by:

- (a) this Constitution;
- (b) the Act; or

- (c) any regulation consistent with this Constitution and the Act prescribed by the Company in general meeting.

13.3 *Specific powers to borrow and provide security*

Without limiting Rule 13.1, the Directors may exercise the Company's powers to:

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

13.4 *Power to appoint attorney*

The Directors may:

- (a) appoint any attorney of the Company on terms the Directors think fit as long as the powers granted to the attorney do not exceed the Directors powers and
- (b) authorise any such attorney to delegate all or any of the powers granted to the attorney.

14. Proceedings of directors

14.1 *Meetings*

The Directors:

- (a) must meet at least once in each three (3) months; and
- (b) may meet, adjourn and regulate their meetings as they think fit.

14.2 *Method of meeting*

The Directors may meet by communicating with each other in any way which allows them simultaneously to hear each other and participate in discussion and in connection with such a meeting:

- (a) notice of the meeting may be given by telephone;
- (b) a Director who is present at the start of the meeting is conclusively presumed to remain present and form part of the quorum during the rest of the meeting unless the Chairperson consents to the Director leaving; and
- (c) if the Chairperson certifies a minute of such a meeting as correct, that minute is sufficient evidence that all necessary formalities were observed.

14.3 *Convening of meetings*

The Chairperson may, and the Secretary must on the requisition of two (2) Directors, convene a Directors' meeting.

14.4 *Notice of meeting*

- (a) Notice of meetings must be given to all Directors.
- (b) Rule 7.5 applies to the giving of notice under Rule 14.4(a) as if a reference to a member is a reference to a Director unless the Directors otherwise determine.

14.5 *Quorum*

A quorum of Directors is three (3) Directors.

14.6 *Decisions*

- (a) Questions arising at a Director's meeting are decided by a majority of votes of the Directors present and voting.
- (b) The Chairperson has a deliberative vote but no casting vote.

14.7 *Where some Directors' positions vacant*

- (a) As long as there is a quorum of Directors, the Directors may act even though some Directors' positions are vacant.
- (b) If the number of Directors is less than a quorum, the Directors can act only to:
 - (i) appoint a Director; or
 - (ii) convene a general meeting.

14.8 *Acting Chairperson*

If the Chairperson is not present at any meeting within fifteen minutes after the time when the meeting is to begin, the Directors present must elect one of their number to be Chairperson of the meeting.

14.9 *Committees*

- (a) The Directors may delegate to a committee any of their powers other than those which by law they can not delegate.
- (b) The Directors may revoke a delegation at any time.
- (c) A committee must have at least one Director as a member.
- (d) A committee must conform with the directions of the Directors in exercising its powers.
- (e) Meetings of a committee are to be held in accordance with the provisions of these Rules governing Directors' meetings as far as applicable.
- (f) The Directors are taken to have exercised any power exercised by a committee in compliance with the delegation.

14.10 *Delegations*

The Directors may delegate any of their powers to one of the Directors who must in exercising the powers so delegated conform to any regulations which the Director impose.

14.11 *Written resolutions*

- (a) A resolution in writing signed by all the Directors who may attend and vote on the resolution is taken to have been passed at a Directors' meeting held when the resolution is last signed.
- (b) Any such resolution may consist of identical copies of the document each signed by one or more Directors.

14.12 *Validity of acts*

If it is discovered that a Director or a member of a Directors' committee was:

- (a) appointed defectively; or
- (b) disqualified,

all acts of the Directors or the Directors' committee before the discovery are as valid as if the person had been validly appointed or was not disqualified.

15. Remuneration of Directors

15.1 *Remuneration*

- (a) Subject to this Constitution and the Corporations Act, the Company may remunerate the Directors for acting as a Director.
- (b) The Directors may fix:
 - (i) the annual remuneration the Company will provide to each Director; and
 - (ii) subject to the Corporations Act, the way in which the remuneration is to be provided.

15.2 *Expenses*

The Directors may reimburse the Directors as the Directors think appropriate for any expenses they properly incur on behalf of the Company:

- (a) in attending:
 - (i) meetings of the Directors;
 - (ii) meetings of any committee of Directors; or
 - (iii) general meetings of the Company; and
- (b) in connection with the business of the Company.

15.3 *Special services*

The Company may remunerate any Director who with the agreement of the other Directors performs services which the Directors consider are outside the scope of the ordinary duties of a Director.

16. Directors dealing with company

16.1 *Director not disqualified*

A Director is not disqualified by the Director's office and the fiduciary relationship established by it from holding any office or place of profit, other than that of Auditor, under the Company or from entering any contract or arrangement with the Company.

16.2 *Directors not liable to account*

A Director is not liable to account to the Company for any remuneration or other benefits accruing from:

- (a) holding any office or place of profit under the Company; or
 - (b) being involved in a contract or arrangement with the Company; or
- just because of the fiduciary relationship resulting from acting as a Director.

16.3 *Directors acting in professional capacity*

A Director or a firm of which the Director is a partner or employee may act in a professional capacity, other than as Auditor, for the Company or any related body corporate and a Director or a Director's firm is entitled to remuneration for professional services as if the relevant Director were not a Director.

16.4 *Directors must disclose interest*

Each Director must disclose that Director's interests to the Company in accordance with the Corporations Act.

16.5 *Voting where Directors have interest*

A Director who has a material personal interest in a matter that is being considered at a meeting of the Directors may:

- (a) vote on the matter (or in relation to a proposed resolution specified in section 195(3) of the Corporations Act in relation to the matter, whether in relation to that or a different Director); or
- (b) be present while the matter (or a proposed resolution of that kind) is being considered at the meeting,

only in circumstances specified in sections 195(1), 195(2) or 195(3) of the Corporations Act. Except as provided by this Rule 16.5, a Director is not disqualified from voting on account of interest or from being present at a meeting of Directors.

16.6 *Effect on quorum*

The Director may be counted in the quorum present at any Directors' meeting at which the contract, proposed contract or arrangement or other matter is considered if the Director is permitted by the Corporations Act to be present during the consideration.

16.7 *Directors' and officers insurance*

For the purposes of Rule 16.5, a Director does not have an interest in a matter relating to an existing or proposed contract of insurance merely because the contract insures, or would insure, the Director against a liability incurred by the Director as an officer of the Company or of a related body corporate. This Rule does not apply if the Company is the insurer.

16.8 *Relaxation of restrictions*

The restrictions contained in Rule 16.5 may at any time or times be suspended or relaxed to any extent and either prospectively or retrospectively by resolution of the Company in general meeting, if that is permitted by the Corporations Act.

16.9 *Director may execute documents despite interest*

A Director may, notwithstanding the Director's interest, and whether or not the Director is entitled to vote, or does vote, participate in the execution of any instrument by or on behalf of the Company and whether through signing or sealing the same or otherwise.

PART 6 – ADMINISTRATIVE PROVISIONS

17. Secretary

17.1 *Appointment*

The Directors must appoint at least one Secretary for such term, at such remuneration and on such conditions as they decide.

17.2 *Removal of secretary*

The Directors may suspend, remove or dismiss any Secretary subject to the terms of the Secretary's employment.

18. Minutes

18.1 *Keeping of minutes*

The Directors must cause minutes to be made:

- (a) of all appointments of officers;
- (b) of the names of the Directors present at each meeting of the Directors and of any committee of the Directors;
- (c) of all resolutions and proceedings at all meetings of members of the Company and of the Directors and of committees of Directors and of all resolutions determined on without meetings; and
- (d) of all other matters required by the Act.

18.2 *Signing of minutes*

Except in the case of documents deemed to constitute minutes under the Act and resolutions signed in accordance with the provisions of Rule 18.1(c), all minutes must be signed by the Chairperson of the meeting at which the proceedings were held or by the Chairperson of any succeeding meeting.

19. Accounts

19.1 *Keeping accounts*

The Directors must:

- (a) keep proper books of account;
- (b) distribute copies of financial statements and reports as required by the Act;
- (c) determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of

the Company or any of them are be open to the inspection of members not being Directors.

19.2 *Inspection of books*

No member (not being a Director) has any right to inspect any account, book or paper of the Company except as conferred by the Act or authorised by the Directors or by the Company in general meeting.

20. Notices

20.1 *Method of giving notice*

The Company may give notice to any member:

- (a) personally;
- (b) by sending it by post to the member at the member's registered address or to any alternative address nominated by the member; or
- (c) by sending it to the fax number or electronic address (if any) nominated by the member.

20.2 *Notice by facsimile*

The Company may resolve that notice may be given by facsimile.

20.3 *Receipt of notice by post*

Where a notice is sent by post, service of the notice is taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected in the case of a notice of a meeting on the day after the date of its posting and in any other case at the time at which the letter would be delivered in the ordinary course of post.

20.4 *Receipt of notice by facsimile*

Where a notice is given by facsimile or to another electronic address, service of the notice is taken to be effected if the facsimile or other communication is properly addressed and sent and to have been effected on the business day after it is sent.

20.5 *Notice of meetings*

Where the Company must give notice of a general meeting, the Company may do so in any manner authorised by this Constitution to:

- (a) every member except those members who have not supplied to the Company an address for the giving of notices to them;
- (b) the Auditor for the time being of the Company; and
- (c) such other persons as required by the Act.

20.6 *Entitlement to notice*

No person other than those referred to in Rule 20.5 is entitled to receive notices of general meetings.

21. Protection of Officers

21.1 *General indemnity*

Each Officer is, to the maximum extent permitted by law, indemnified out of the property of the Company against any liability (other than a liability for costs and expenses) the Officer may incur to another person (other than the Company or a related body corporate of the Company) as such an Officer unless:

- (a) the liability arises out of conduct involving a lack of good faith; or
- (b) the liability is for a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the Corporations Act.

21.2 *Indemnity for cost incurred in defending proceedings*

Each Officer is, to the maximum extent permitted by law, indemnified out of the property of the Company against any liability for costs and expenses incurred by the Officer as such an Officer:

- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer or in which the Officer is acquitted; or
- (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to the Officer under the Corporations Act.

21.3 *Separate indemnities*

Rules 21.1 and 21.2 are separate and independent indemnities.

21.4 *How indemnity given effect*

Where an Officer becomes liable to pay any amount in respect of which the Officer is indemnified under this Rule 21, the Company must indemnify the Officer by paying that amount to the person to whom that amount is due within 30 days from the date that the Officer provides satisfactory evidence to the Company that the Officer is liable to pay that amount. Nothing in this Rule 21 requires the Company to pay an amount, whether by way of indemnity or as an advance under Rule 21.6(d) greater than the amount for which the Officer is liable.

21.5 *Notice to Company*

An Officer must:

- (a) give notice to the Company promptly upon becoming aware of any Claim against the Officer that may give rise to a right to be indemnified or a right to be advanced an amount by the Company under this Rule 21; and
- (b) take such action as the Company reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim; and

- (c) not make any admission of liability in respect of or settle any Claim without the prior written consent of the Company; and
- (d) allow the Company or its insurers to assume the conduct, negotiation or defence of any Claim and, upon request by the Company, render all reasonable assistance and cooperation to the Company or its insurers in the conduct of any Claim, including, without limitation, providing the Company or its insurers with any documents, authorities and directions that the Company or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim; and
- (e) upon request by the Company or its insurers, do everything necessary or desirable which the Company reasonably requests to enable the Company or its insurers (so far as it is possible) to be subrogated to and enjoy the benefits of the Officer's rights in relation to any counterclaims or cross-claims or any claims against any third party and render such assistance as may be reasonably requested by the Company or its insurers for that purpose; and
- (f) notify any Claim to an insurer or any other person who may be liable to indemnify the Officer in respect of that Claim and promptly take all reasonable steps to enforce all the Officer's rights against the insurer or other person.

21.6 *Where officer not entitled to indemnity*

- (a) If, in relation to a Claim, it is established to the satisfaction of the Company that:
 - (i) an Officer is not entitled to be indemnified under Rules 21.1 or 21.2, the Company is thereupon relieved from each and every obligation under Rules 21.1 and 21.2 in respect of that Claim and the Officer must refund to the Company all amounts paid by the Company under Rules 21.1 and 21.2 in respect of that Claim within 30 days of the Company providing to the Officer details of such amounts; or
 - (ii) an Officer has failed to perform an obligation referred to in Rule 21.4 and that failure has materially prejudiced the Company in relation to that Claim, the Company is thereupon relieved from each and every obligation under this Rule 21 in respect of that Claim.
- (b) If the Company has pursuant to this Rule 21 paid an amount for costs and expenses incurred by an Officer and judgment is not subsequently given in favour of the Officer, the Officer is not subsequently acquitted or the Court does not grant relief to the Officer under the Corporations Act, the Officer must pay the Company an amount equal to the amount so paid by the Company, the payment by the Officer to be made within 30 days of the Company providing to the Officer details of the amount and its payment by the Company.

- (c) Rule 21.6(b) does not apply to a payment made by the Company pursuant to Rule 21.2 or which could lawfully have been made pursuant to Rule 21.2.
- (d) If an Officer becomes liable to pay any amount in respect of any liability, cost or expense for which:
 - (i) the Officer would, but for Rule 21.6(e), be indemnified under this Rule 21; and
 - (ii) the Officer is insured or has rights against another person (not being the Company or a person indemnified by the Company) in respect of that liability, cost or expense,

then the Company must advance to the Officer that amount within 30 days from the date that the Officer provides satisfactory evidence to the Company that the Officer is liable to pay that amount. The advance is repayable in full if and when and to the extent that payment in respect of that liability, cost or expense is received by the Officer from that insurer or other person.

- (e) If an Officer receives payment in respect of any liability, cost or expense from any insurer of the Officer or from a person (other than the Company) legally obliged to make that payment, the Company is not required to indemnify the Officer in respect of that liability, cost or expense to the extent of that payment.

21.7 *Severing unlawful provisions*

If any provision of this Rule 21 is unlawful or unenforceable, the unlawfulness or unenforceability of that provision does not affect the lawfulness, enforceability, operation, construction or interpretation of any other provision of this Rule 21, with the intent that the unlawful or unenforceable provision shall be treated for all purposes as severable from this Rule 21.

21.8 *Interpretation in this Rule*

In this Rule 21:

- (a) “Claim” means:
 - (i) any writ, summons, cross-claim, counterclaim application or other originating legal or arbitral process against an Officer as such an Officer;
 - (ii) any hearing, complaint, enquiry, investigation, proceeding or application however commenced or originating against an Officer as such an Officer; or
 - (iii) any written or oral demand or threat that might result in the Officer reasonably believing that any such process, hearing, complaint, enquiry, investigation, proceeding or application referred to in (i) or (ii) above may initiated.
- (b) “Officer” means:

- (i) a person who is or has been a Director, Secretary or executive officer of the Company or a wholly owned subsidiary of the Company; and
- (ii) a person who is or has been a Director, Secretary or executive officer of a related body corporate of the Company (other than a wholly owned subsidiary of the Company) while also a Director or an employee of the Company or a wholly owned subsidiary of the Company.

21.9 Insurance premium

The Company may pay a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate against:

- (a) any liability, incurred by that person as such a Director, Secretary or executive officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of section 182 or section 183 of the Corporations Act; and
- (b) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal, and whatever the outcome.

Constitution of Winnaleah Irrigation Scheme Limited

Agreement to this Constitution

The people named below are the initial members of the Company and by signing agree to this Constitution.

Dated

Richard John Beswick

Alan John Davenport

Gregory McCallum Green

Helen Shirley Carins

John Douglas Carins

Anthony John Cruickshank

Frank Jan Wagner