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Constitution of Mornington Peninsula and Western Port Biosphere Reserve Foundation Ltd

Corporations Act 2001

Company Limited by Guarantee not having a Share Capital

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1. VISION, MISSION AND VALUES

The Biosphere Reserve was endorsed as a biosphere reserve under the UNESCO's Program on Man and the Biosphere on 19 December 2002. The nomination of the Biosphere Reserve envisaged the establishment of an organisation to formulate biosphere strategy and facilitate, promote and support biosphere programs. It was contemplated that this organisation would include representatives of State and local government, industry and the community. The incorporation of this Foundation constitutes a significant milestone in the achievement of this objective.

Guiding the functions of the Foundation is a vision of the Biosphere Reserve as a place where people attain an enduring relationship with the natural world and contribute to the needs of society as a whole by showing a way to a more environmentally, socially and economically sustainable future.

It is the Foundation's mission to lead the community to engage in sustainable practice. It is committed to:

- conserving and improving biological diversity
- building and sharing knowledge by facilitating, monitoring and utilising research;
- fostering, encouraging and facilitating project partnerships;
- engaging with, and providing education for, all elements of the Biosphere community.

Community empowerment, and the linking of environmental, social and economic elements of sustainability will be at the core of the Foundation's approach.

The Foundation values:

- the intrinsic worth of biodiversity and natural ecosystems, and acknowledge the need to protect and restore them;
- focusing on sustainable outcomes, intergenerational, cultural, economic and political equity;
- empowering people and fostering participation;
- individuality and diversity of opinion across all ages;
- co-operative networks and partnerships;
- promotion of sustainable production and consumption, using appropriate demand management and environmentally sound technologies; and
- open and transparent processes of accountability to the community.

The vision, mission, values and functions of the Foundation and the operational principles of the Board are detailed in the Charter.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Constitution unless the context requires otherwise:

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

Annual General Meeting means the annual general meeting of the Foundation.

Applicant means a person who lodges an Application under this Constitution.

Application means an application for Membership.

Auditor means the auditor or auditors of the Foundation.

Biosphere Reserve means that area of the Mornington Peninsula, the lower part of the Western Port catchment, Port Phillip and Bass Strait coastlines, together with the islands of Western Port endorsed as a biosphere reserve under the UNESCO Man and Biosphere Program.

Board means the board of Directors of the Foundation.

Business Day means Monday to Friday excluding public holidays in Victoria.

By-laws and Rules means by-laws and rules made under this Constitution.

Chairperson means the Director elected and appointed as chairperson of the Board.

Charter means the charter adopted by the Foundation and varied from time to time by the Foundation in General Meeting, detailing among other things the vision, mission, values and functions of the Foundation and the operational principles of the Board.

Constitution means this constitution, as amended.

Council has the same meaning as in the *Local Government Act 1989* (Vic).

Council Member means a Member described in clause 9.1.2.2.

Deputy Chairperson means the Director elected and appointed to this office of the Board.

Department means the Commonwealth department with responsibility for the environment.

Director means a natural person elected and appointed to the office of director of the Foundation.

Director Member means a Member described in clause 9.1.2.3.

Extraordinary Meeting means a General Meeting of Members other than an Annual General Meeting.

Foundation means Mornington Peninsula and Western Port Biosphere Reserve Foundation Ltd.

Fund means the public fund established under clause 5.1.1.

General Member means a Member described in clause 9.1.2.1.

Guidelines to the Register of Environmental Organisations means the guidelines of that name issued by the Department.

General Meeting means an Annual General Meeting or an Extraordinary Meeting of the Foundation.

Honorary Treasurer means the Director elected and appointed to this office of the Board.

Member means a person admitted to Membership in accordance with this Constitution.

Membership means membership of the Foundation.

Minister means the Commonwealth minister with responsibility for the environment.

Register means the register of Members kept in accordance with the Act.

Registered Address means the address of a Member shown in the Register.

Registered Office means the registered office of the Foundation.

Representative means a person as described in clause 10.

Roundtable means a geographic area, established in accordance with clause 8 and more particularly described in the By-Laws and Rules.

Secretary means the Director elected and appointed to this office of the Board to perform among other things the functions of secretary under the Act.

Special Resolution of the Board means a resolution passed by at least 75% of the votes cast at a meeting of the Board.

Treasurer means the federal treasurer of Australia.

UNESCO means the United Nations Educational, Scientific and Cultural Organisation.

2.2 Interpretation

In this Constitution, unless the context requires otherwise:

2.2.1 a person includes a corporate body, association, firm, partnership, or other unincorporated body;

2.2.2 a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;

- 2.2.3 this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 2.2.4 a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Constitution;
- 2.2.5 a word or phrase that is defined has the corresponding meaning in its other grammatical forms;
- 2.2.6 writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 2.2.7 the singular includes the plural and vice versa;
- 2.2.8 a gender includes all other genders; and
- 2.2.9 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Constitution.

2.3 Replaceable Rules Displaced

Each of the provisions of the Act that would apply to the Foundation as a replaceable rule but for this clause, is expressly displaced and does not apply to the Foundation.

3. NAME OF THE FOUNDATION

The name of the Foundation is Mornington Peninsula and Western Port Biosphere Reserve Foundation Ltd.

4. PURPOSES AND POWERS

4.1 Purposes

The purposes of the Foundation are to:

- 4.1.1 contribute to the conservation of landscapes, ecosystems, species and genetic variation in the Biosphere Reserve;
- 4.1.2 foster economic and human development in the Biosphere Reserve which is socio-culturally and ecologically sustainable;
- 4.1.3 support demonstration projects, environmental education and training, research and monitoring related to local, regional, national and global uses of conservation and sustainable development; and
- 4.1.4 establish and maintain a public fund for the specific purpose of supporting the environmental purposes of the Foundation.

4.2 Powers

The Foundation may exercise all powers, rights and privileges as a natural person may do or exercise, for the purpose of furthering the purposes set out above.

5. PUBLIC FUND

5.1 Establishment and Purpose of the Fund

- 5.1.1 The Foundation will establish a public fund called the Mornington Peninsula and Western Port Biosphere Reserve Foundation Fund to support the Foundation's environmental purposes.
- 5.1.2 The Fund is established to receive all gifts of money or property for this purpose and any money received because of such gifts must be credited to its bank account. The Fund must not receive any other money or property into its account and it must comply with subdivision 30-E of the *Income Tax Assessment Act 1997*.

5.2 Public Donations

The Foundation will invite members of the public to make gifts of money or property to the Fund for the environmental purposes of the Foundation.

5.3 Management of the Fund

The Foundation will appoint to administer the Fund a committee of management of no fewer than three persons, the majority of whom must be responsible persons, as defined by the Guidelines to the Register of Environmental Organisations.

5.4 Deposits and Accounting Procedures

- 5.4.1 Money from interest on donations, income derived from donated property and money from the realisation of such property is to be deposited into the Fund.
- 5.4.2 A separate bank account is to be opened to deposit money donated to the Fund, including interest accruing on such deposits, and gifts to it must be kept separate from other funds of the organisation.
- 5.4.3 Receipts must be issued in the name of the Fund and proper accounting records and procedures must be kept and used for the Fund.
- 5.4.4 The Fund will be operated on a non-for-profit basis.

5.5 No Conduit Funding

Any allocation of funds or property to other persons or organisations will be made in accordance with the established purposes of the Foundation and will not be influenced by the preference of the donor.

5.6 Notification of the Department

The Foundation must inform the Department as soon as possible if:

- 5.6.1 it changes its name or the name of the Fund;
- 5.6.2 there is any change to the membership of the committee of management of the Fund; or

- 5.6.3 there has been any departure from the model rules for public funds located in the Guidelines to the Register of Environmental Organisations.

5.7 Compliance with Ministerial Rules

The Foundation must comply with any rules that the Treasurer and the Minister make to ensure that gifts made to the Fund are only used for its principal purpose.

5.8 Statistical Information

The Foundation must provide to the Department within four months of the end of the financial year:

- 5.8.1 statistical information requested by the Department on donations to the Fund; and
- 5.8.2 an audited financial statement for the Foundation and the Fund which provides information on the expenditure of the Fund monies and the management of the Fund assets.

5.9 Winding-up of the Fund

In the case of the winding-up of the Fund, any surplus assets are to be transferred to another fund with similar objectives that is listed on the Register of Environmental Organisations.

6. LIABILITY OF MEMBERS

The liability of each Member is limited to the amount specified in clause 40.

7. APPLICATION OF INCOME

7.1 No payment or transfer to Members

All of the income and property of the Foundation must be applied solely towards the promotion of the purposes of the Foundation as set out in this Constitution. No portion of it may be paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to Members or Directors.

7.2 Payments in good faith

- 7.2.1 Notwithstanding clause 7.1 and except as provided in clauses 7.2.2 and 7.2.4 inclusive, the Foundation may make payments in good faith of remuneration to any Member, officer or employee of the Foundation in return for any services rendered to the Foundation or for goods supplied in the ordinary and usual course of business.
- 7.2.2 The Foundation must not make any payment to a Director for services rendered by that Director to the Foundation unless the provision of those services has the prior consent of the Board, the amount payable is approved by a resolution of the Board and is on reasonable commercial terms.
- 7.2.3 The Foundation must not make any payment to a Director in his or her capacity as an employee of the Foundation, in return for any services

rendered by that employee to the Foundation, unless the terms of that employment have first been approved by a resolution of the Board.

7.2.4 The Foundation may pay interest on money borrowed from any Member and may pay reasonable and proper rent for premises let by a Member to the Foundation.

7.2.5 For the purposes of clause 7.2.4, any sum paid by a Member to the Foundation as a deposit, bond or other security for the payment of fees and charges levied under the Constitution does not constitute money borrowed from a Member.

8. ROUNDTABLES

8.1 Division into Roundtables

Unless otherwise determined in accordance with clause 8.2, the Foundation is divided into the following Roundtables:

- 8.1.1 Bass Coast Roundtable;
- 8.1.2 Cardinia Roundtable;
- 8.1.3 Casey Roundtable;
- 8.1.4 Frankston Roundtable;
- 8.1.5 French Island Roundtable; and
- 8.1.6 Mornington Peninsula Roundtable.

8.2 Variation of Roundtables

The Foundation may from time to time by special resolution passed at a General Meeting vary the geographic area of any one or more Roundtables and vary the number of Roundtables.

8.3 General Member Attachment to a Roundtable

- 8.3.1 Each General Member will be attached to a Roundtable.
- 8.3.2 Except as provided in clause 8.3.3, each General Member other than a Director Member will select the Roundtable to which they wish to be attached, based on a demonstrated connection with the geographic area with that Roundtable.
- 8.3.3 The Board will determine the Roundtable to which a General Member is attached:
 - 8.3.3.1 in the event of a dispute on the issue among General Members; or
 - 8.3.3.2 if in the Board's reasonable opinion, the General Member should be attached to a Roundtable other than that selected by the General Member under clause 8.3.2.

8.4 Voting Rights

A General Member is entitled to one vote in the proceedings of the Roundtable to which they are attached to elect a nominee for appointment to the office of Director.

9. MEMBERSHIP

9.1 General

9.1.1 The following persons are Members:

- 9.1.1.1 the persons specified in the application to register the Foundation lodged under section 117 of the Act and who have consented to be Members;
- 9.1.1.2 each person who is appointed as a Director under clauses 22.3.2 - 22.3.6 immediately upon such appointment taking effect, for the duration of their tenure as a Director; and
- 9.1.1.3 any other person the Board admits to Membership in accordance with this Constitution.

9.1.2 The Foundation is divided into the following categories of Member:

- 9.1.2.1 General Members – for incorporated and unincorporated groups and individuals who are not Director Members;
- 9.1.2.2 Council Member – for those Councils whose boundaries fall partly or wholly within the Biosphere Reserve; and
- 9.1.2.3 Director Members - for individuals described in clause 9.1.1.2. Where a General Member is appointed as a Director under any of clauses 22.3.2 - 22.3.6, such person will occupy the Membership category of Director Member during such appointment.

9.1.3 The Foundation in General Meeting may at any time determine other categories of persons who will be eligible to be Members.

9.2 Membership Not Transferable

Membership may not be transferred to another person.

9.3 Voting Rights

A Member is entitled to one vote at a General Meeting.

10. REPRESENTATIVE

10.1 Nomination

Where a Member or an Applicant is not a natural person, it must appoint as its Representative a natural person.

10.2 Entry in Register

The name and address of the Representative will be entered in the Register and all correspondence and notices from the Foundation will be served on that Representative.

10.3 Powers of Representative

The nomination must set out what the Representative is appointed to do and may set out restrictions on the Representative's powers. If the appointment is made by reference to a position held, the appointment must identify the position. Unless otherwise specified, the Representative may exercise on the Member's behalf, all the powers that the Member could exercise at a meeting or in voting or a resolution.

10.4 Replacement of Representative

A Member may remove and replace a Representative where the Member gives written notice to the Board in a form approved by the Board.

11. ADMISSION TO MEMBERSHIP

11.1 Application and Assessment

11.1.1 An Application must be made in the form and accompanied by any fee prescribed by the Board.

11.1.2 An Applicant may specify the category of Membership to which they wish to belong. The Board will consider the Applicant's Membership preference and in its absolute discretion allocate a person to a Membership category it considers to be the most appropriate in accordance with this Constitution.

11.2 Admission

11.2.1 The Board will consider and in its absolute discretion accept or reject any Application. The Board is not required to give any reasons for the rejection of an Application. If the Board rejects the Application, any moneys tendered with it will be repaid to the Applicant without interest.

11.2.2 An Applicant will not become a Member until the Foundation has received any applicable fee and the name and address of the Applicant, and its Representative where applicable, are entered in the Register.

12. RESIGNATION FROM MEMBERSHIP

12.1 Notice

A Member may resign from Membership at any time by giving not less than one month's notice in writing.

12.2 Surviving Liability

Upon the expiration of the period of notice, the Member ceases to be a Member but remains liable for:

- 12.2.1 any moneys which may be owing to the Foundation; and
- 12.2.2 in the case of the Foundation being wound up within one year of the date on which the Member resigns from Membership, the relevant contribution under clause 40.

13. EXPULSION OF MEMBER

13.1 Resolution

- 13.1.1 Subject to clause 13.2, the Board may, by a Special Resolution of the Board, expel a Member or implement appropriate disciplinary action if the Member:
 - 13.1.1.1 has committed a breach of any obligation or duty under this Constitution; or
 - 13.1.1.2 has engaged in conduct detrimental to the interests of the Foundation.
- 13.1.2 No Director nominated by the Member who is the subject of a resolution under clause 13.1.1 may vote on that resolution.

13.2 Notice

- 13.2.1 At least one month before the meeting of the Board at which a resolution referred to in clause 13.1.1 is considered, the Member must be:
 - 13.2.1.1 served notice of the meeting including the particulars of the alleged act, omission or conduct complained of and the intended resolution; and
 - 13.2.1.2 given the opportunity to present in writing or orally (or both) at the meeting and before the passage of the resolution any explanation the Member thinks fit

and the Board will take the explanation into consideration.
- 13.2.2 The Board will serve the Member with notice of any Board resolution made at the above meeting. If the Board resolves to expel the Member, that Member will cease to be a Member on the service of such notice.

13.3 Removal from the Register

- 13.3.1 Where a Member is expelled from the Foundation, that Member's name must be removed from the Register.
- 13.3.2 Upon the removal of a Member's name from the Register:
 - 13.3.2.1 the Member will forfeit all rights and privileges attaching to Membership and all rights which the Member may have against the Foundation arising out of the Membership; and
 - 13.3.2.2 the Foundation will have no liability to such Member in respect of the removal from the Register.

14. REGISTER

14.1 Register of Members

The Foundation must keep and maintain the Register in accordance with the Act and otherwise as the Board determines.

14.2 Disputes

Any dispute that arises in relation to the Register must be referred to the Board, whose decision will be final and binding on all Members.

15. GENERAL MEETINGS

15.1 Annual General Meeting

The Foundation must hold its Annual General Meeting every calendar year within 5 months of the end of its financial year, at the time and place determined by the Board.

15.2 Extraordinary Meeting

The Board may convene an Extraordinary Meeting at such time and place as the Board thinks fit, but must be convened in accordance with the Act. Members may also convene an Extraordinary Meeting, but only in accordance with the Act.

16. NOTICE OF GENERAL MEETINGS

16.1 General

The Board must give not less than 21 days' written notice of a General Meeting to the Members, the Directors and the Auditor.

16.2 Contents of Notice

The notice referred to in the preceding clause must specify the following information:

- 16.2.1 the place, the day and the hour of meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- 16.2.2 the general nature of the meeting's business;
- 16.2.3 the details of any special resolutions to be proposed at the meeting; and
- 16.2.4 that Members are entitled to appoint a proxy who must be a Member.

16.3 Alteration of Procedure

With the consent of all the Members entitled to vote at some particular meeting, that meeting may be convened by such shorter notice and in such manner as those Members may think fit provided that such action complies with the Act.

16.4 Failure to Receive Notice

The accidental omission to give notice of a meeting to any Member or the non-receipt of such notice by any Member does not invalidate any resolution passed at, or proceeding of, that meeting.

17. PROCEEDINGS AT GENERAL MEETINGS

17.1 Business

The ordinary business of an Annual General Meeting may include:

- 17.1.1 the consideration of the annual financial report, the Directors' report and the Auditor's report;
- 17.1.2 the election and appointment of Directors; and
- 17.1.3 the appointment of the Auditor and the fixing of the Auditor's remuneration.

All other business transacted at an Annual General Meeting and all business transacted at an Extraordinary Meeting is deemed special business.

17.2 Quorum

No business may be transacted at any General Meeting except the adjournment of the meeting unless a quorum is present. The quorum for a General Meeting is:

- 17.2.1 20 per cent of the Members present in person or by Representative, proxy or attorney; or
 - 17.2.2 20 Members present in person or by Representative, proxy or attorney,
- whichever is the lesser.

17.3 No Quorum

If a quorum is not present within half an hour from the time appointed for a General Meeting:

- 17.3.1 if convened on the requisition of Members, the meeting will be dissolved; and
- 17.3.2 in any other case, the meeting will be adjourned to the same day in the next week at the same time and place or at such other place as the chairperson appoints. If at that adjourned meeting a quorum is not present within 15 minutes from the time appointed for holding the meeting, the Members present will be a quorum.

17.4 Chairperson

- 17.4.1 The Chairperson or in his or her absence the Deputy Chairperson will preside as chairperson at every General Meeting.
- 17.4.2 If at any General Meeting neither is present within 15 minutes after the time appointed for holding the meeting or if neither is willing to preside,

the Members present will choose a Director to preside. If no Director is present or if all Directors present decline to preside, then those persons present will choose a Member who is present to preside as chairperson.

17.5 Adjournment

17.5.1 The chairperson of a General Meeting may, with the consent of the Members entitled to vote at any meeting at which a quorum is present, and must, if so resolved by the meeting, adjourn the meeting to another time or place (or both).

17.5.2 Only unfinished business may be transacted at any meeting resumed after an adjournment of a General Meeting.

17.5.3 Where a General Meeting is adjourned for one month or more, new notice of the adjourned meeting must be given.

17.6 Show of Hands

Every item of business submitted to a General Meeting will be decided in the first instance by a show of hands of the Members present personally and entitled to vote or their Representatives, proxies or attorneys. The chairperson will not have a casting vote.

17.7 Evidence of Resolution

A declaration by the chairperson that a resolution has been passed or lost (having regard to the majority required) and an entry to that effect in the books of the Foundation, signed by the chairperson of that or the next succeeding meeting, will be conclusive evidence that the resolution has been passed or lost without proof of the number or proportion of the votes recorded in favour of or against the resolution.

17.8 Poll

17.8.1 The chairperson or any Member present personally or by Representative, proxy or attorney may demand a poll before or on the declaration of the result of a show of hands.

17.8.2 The poll will be taken in the manner and at the time and place as the chairperson of the meeting directs, either at once or after an interval or adjournment or otherwise.

17.8.3 The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.

17.8.4 The demand for a poll may be withdrawn.

17.8.5 If there is a dispute as to the admission or rejection of a vote, the chairperson will finally determine that dispute.

17.8.6 At a poll, the chairperson will not have a casting vote.

17.9 Demand for Poll

The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment will be taken at the meeting and without adjournment.

17.10 Auditor

The Auditor is entitled to:

- 17.10.1 attend any General Meeting;
- 17.10.2 receive all notices of and other communications relating to any General Meeting which a Member is entitled to receive; and
- 17.10.3 to be heard at any General Meeting which the Auditor attends on any part of the business of the meeting which concerns the Auditor in that capacity and is entitled to be heard, despite the fact that the Auditor retires at that meeting or a resolution to remove the Auditor or the agent from office is passed at that meeting.

18. APPOINTMENT OF PROXY

18.1 General

- 18.1.1 Any Member may appoint a natural person as a proxy to vote on the Member's behalf and may direct the proxy to vote either for or against each or any resolution.
- 18.1.2 A proxy must be a Member or Representative.

18.2 Instrument Appointing Proxy

The Foundation must receive the instrument appointing a proxy (and an original or certified copy of the power of attorney, if any, under which it is signed) at:

- 18.2.1 the Registered Office;
- 18.2.2 a fax number at the Registered Office;
- 18.2.3 a place, fax number or electronic address specified for such purpose in the notice of meeting

not less than 48 hours before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument is to vote.

- 18.2.4 Unless the contrary is stated on it, an instrument appointing a proxy is valid for any adjournment of the meeting to which it relates.

19. FORM OF PROXY

19.1 Required Information

An instrument appointing a proxy must contain the following information:

- 19.1.1 the Member's name and address;
 - 19.1.2 the Foundation's name;
 - 19.1.3 the category of Membership held by the Member;
 - 19.1.4 the proxy's name or the name of the office held by the proxy; and
 - 19.1.5 the meetings at which the appointment may be used
- and be signed by the appointor or the appointor's attorney.

19.2 Voting Instructions

An instrument appointing a proxy may specify the way in which the proxy is to vote for a particular resolution and if so, the proxy is not entitled to vote on the resolution except as specified in the instrument.

19.3 Authority

An instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll and will (except to the extent to which the proxy is specifically directed to vote for or against any proposal) include power to act generally at the meeting for the person giving the proxy.

20. ATTORNEYS

20.1 Appointment by Member

Any Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all or certain specified meetings of the Foundation. That power of attorney must be produced for inspection at the Registered Office or any other place the Board determines, together with evidence of the due execution of it the Board requires, before the attorney will be entitled to appoint a proxy for the Member granting the power of attorney.

20.2 Appointment by Directors

The Directors may, by power of attorney, appoint any person whether nominated directly or indirectly by the Directors to be an attorney or attorneys of the Foundation. Such appointment may be for any purposes and with powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for periods and subject to any conditions as they think fit. Any power of attorney may contain provisions for the protection and convenience of persons dealing with any attorney as the Directors think fit and may also authorise any attorney to sub-delegate all or any of the powers, authorities and discretions vested in them.

21. VOTING OF ATTORNEY OR PROXY

21.1 Definition of Principal

In this clause 21, **Principal** means a Member who has appointed a proxy in accordance with clause 19 or an attorney in accordance with clause 20.1.

21.2 Validity

A vote given in accordance with the terms of an instrument of proxy or power of attorney will be valid despite the previous death of the Principal or revocation of the proxy or power of attorney, provided no notice in writing of the death or revocation has been received at the Registered Office before the meeting.

21.3 Attendance of Principal at Meetings

The Principal attending and taking part in the meeting will not revoke a proxy, unless that Principal votes on the resolution to which the proxy applies.

22. DIRECTORS

22.1 Definition of First Director, First Chairperson and Second Chairperson

In this clause 22:

- 22.1.1 **First Director** means a person appointed as a Director under clause 22.5.
- 22.1.2 **Second Director** means a person appointed as a Director at the first Annual General Meeting after the date of registration of the Foundation.
- 22.1.3 **First Chairperson** means the person described in clause 22.7.1.
- 22.1.4 **Second Chairperson** means the person described in clause 22.7.2.1.

22.2 Number of Directors

The number of Directors comprising the Board will be no less than 8 and no more than 15.

22.3 Composition of the Board

The Board will consist of the following offices of Director:

- 22.3.1 Directors nominated by Roundtables (one nominee per Roundtable);
- 22.3.2 Directors nominated by Council Members (one nominee per Council Member);
- 22.3.3 one Director nominated by the Minister responsible for the environment in the State of Victoria;
- 22.3.4 one Director nominated by Parks Victoria, a body corporate established under the *Parks Victoria Act 1998*, or its successor in law;
- 22.3.5 one Director representing industry or commerce conducted in the Biosphere Reserve, nominated by the Board; and
- 22.3.6 one independent Director to occupy the office of Chairperson, nominated by the Board following consultation with the Minister responsible for the environment in the State of Victoria.

22.4 Alteration of Composition

Subject to the Act and this Constitution, the Foundation may from time to time by special resolution passed at a General Meeting increase or reduce the number of Directors and increase or reduce the number of Directors that may be nominated by a Membership category.

22.5 First Directors

Despite any other provision in this Constitution, the First Directors are:

22.5.1 **[##to be inserted: names of persons nominated prior to registration of the Foundation];**

22.5.2 any other person appointed by resolution of the Board prior to the first Annual General Meeting after the date of registration of the Foundation, provided that:

22.5.2.1 in making such appointments, the Board has regard to the representative composition of the Board as described in clause 22.3; and

22.5.2.2 the total number of First Directors at any one time does not exceed 15.

22.6 Term of First Directors other than First and Second Chairpersons

Except as provided in clauses 22.7 and 22.8, the term of office of a First Director commences on the date of appointment as a Director and continues until the end of the first Annual General Meeting after the date of registration of the Foundation, at which time the Director will retire..

22.7 Appointment and Term of First Chairperson

Despite any other provision in this Constitution:

22.7.1 Dr Michael Kennedy is appointed as Chairperson from the date of registration of the Foundation;

22.7.2 the term of office of the First Chairperson commences on the date of appointment and continues to the earlier of:

22.7.2.1 the nomination of a replacement Chairperson in accordance with clause 22.3.6 and the appointment of that person as a Director and Chairperson in accordance with clause 22.5.2; and

22.7.2.2 the end of the first Annual General Meeting after the date of registration of the Foundation,

at which time the First Chairperson will retire as Chairperson and Director.

22.8 Term of Second Chairperson

The term of office of the Second Chairperson commences on the date of appointment and continues up to the end of the third Annual General Meeting after the date of registration of the Foundation, at which time the Second Chairperson will retire as Chairperson and Director.

22.9 Appointment of Directors

22.9.1 A nomination by a Roundtable of a person to occupy an office of Director must be made in accordance with the By-laws and Rules. A nomination of a person to occupy an office of Director described in clauses 22.3.2 - 22.3.4 must be made with prior agreement of, and submitted in writing to, the Board and in the case of a nomination:

22.9.1.1 by Council, must be by resolution of Council;

22.9.1.2 by the Minister responsible for the environment in the State of Victoria, must be by the Minister;

22.9.1.3 by Parks Victoria, must be by the chief executive officer;

22.9.1.4 by the Board, must be by resolution of the Board.

22.9.2 The chairperson of the Annual General Meeting will declare a person nominated under this clause to be duly elected and appointed as a Director.

22.10 Term of Appointment Generally

22.10.1 Except as provided in clauses 22.6 - 22.7 (term of First Directors), 22.8 (term of Second Chairperson), 22.11.1 (term of Second Directors) and 23 (terms of casual vacancy Directors), a Director is appointed for a term commencing at the end of the Annual General Meeting at which he or she was elected up to the end of the second Annual General Meeting after that election, at which time the Director will retire.

22.10.2 Subject to clause 22.10.3, a Director retiring under any clause of this Constitution will be eligible for re-appointment.

22.10.3 No Director may serve more than 4 consecutive terms without a break of at least 2 years (measured as the period between the first and third of 3 consecutive Annual General Meetings). Any term served as a First Director (other than by a First Director who is also the Second Chairperson) or as a replacement Director appointed to a casual vacancy under clause 23 is not counted for the purposes of this clause 22.10.3.

22.11 Rotational Retirement of Second Directors

22.11.1 One half of the Second Directors excluding the Chairperson (and if that number is not a multiple of two, the odd number nearest to and greater than one half) will retire from office at the end of the second Annual General Meeting after the date of registration of the Foundation.

22.11.2 The Second Directors to retire under clause 22.11.1 will, unless they agree among themselves, be determined by lot.

- 22.11.3 The Second Directors who do not retire under clause 22.11.1 will continue to hold office until the end of the third Annual General Meeting at which time they will retire.

22.12 Other Executive Officers of the Board

- 22.12.1 At the first meeting of the Board after the date of registration of the Foundation, the Directors will elect and appoint from among their number the Deputy Chairperson, the Secretary and the Honorary Treasurer, each of whom will hold office until the end of the first Annual General Meeting.
- 22.12.2 At the first meeting of the Board after each Annual General Meeting, the Directors will elect and appoint from among their number the Deputy Chairperson, the Secretary and the Honorary Treasurer, each of whom will hold office until the end of the next Annual General Meeting.

23. CASUAL VACANCIES

- 23.1.1 If a casual vacancy arises in the office of Director, the person who, or entity which, nominated that Director is entitled to nominate their replacement, but only in accordance with the requirements of clause 22.9.1. The Board must appoint a person nominated under this clause as a Director.
- 23.1.2 Any Director appointed under this clause will hold office until such time as the vacating Director would have been required to retire from the office of Director, had the casual vacancy not arisen and is eligible for reappointment.

24. ALTERNATE DIRECTORS

- 24.1 Subject to the Act, any Director may appoint a person approved by a resolution of the Board to be an alternate Director to act in the appointing Director's place for such period of time as the appointing Director thinks fit.
- 24.2 An alternate Director is entitled to receive notice of meetings and minutes of meeting of Directors and to participate in meetings of Directors when the appointing Director is not present.
- 24.3 When an alternate Director exercises the appointing Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the appointing Director.
- 24.4 The appointing Director may terminate the alternate Director's appointment at any time.
- 24.5 An appointment or termination must be in writing and a copy given to the Foundation.

25. DISQUALIFICATION OF DIRECTORS

The office of a Director will be vacated if:

- 25.1 the Director becomes bankrupt or makes any arrangement or composition with his or her creditors or if being a director of a company which is a Member, a winding up order is made in respect of such company;
- 25.2 the Director becomes of unsound mind;
- 25.3 without leave of the Board the Director is absent from meetings of the Board for 3 consecutive Board Meetings, unless the Board makes a resolution to the contrary;
- 25.4 by notice in writing to the Foundation the Director resigns from office;
- 25.5 if the person who nominated the Director pursuant to clauses 22.3.2 - 22.3.4 notifies the Foundation in writing that they revoke the nomination; or
- 25.6 the Director ceases to hold office by reason of any order made under the Act.

26. POWERS OF THE BOARD

- 26.1 The control and direction of the Foundation and the management of its property and affairs is vested in the Board.
- 26.2 The Board may exercise all powers of the Foundation that are not required to be exercised or done by the Foundation in General Meeting, including without limitation the making of By-laws and Rules for the proper administration and management of the Foundation or in furtherance of its purposes.

27. BORROWING

The Board may raise money in any manner it thinks fit including the borrowing of money on the security of the Foundation's assets and the issuing of a security for any other purpose.

28. INVESTMENT

The Board may invest funds of the Foundation in any manner and for any period as it thinks fit.

29. NEGOTIABLE INSTRUMENTS

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Foundation will be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) for and on behalf of the Foundation, by two Directors or by one Director and some other officer authorised by the Board for that purpose or in any other manner as the Board may determine.

30. FEES IMPOSED BY THE FOUNDATION

30.1 Determination of Fees

The Board may prescribe:

30.1.1 a cost payable by Members by way of Membership fees and such other fees as the Board thinks fit; and

30.1.2 when and in what circumstances these fees are payable.

30.2 Initial Membership Fees

Notwithstanding clause 30.1, the fee for Membership for any period from the date of registration of the Foundation until the end of the first Annual General Meeting is ten dollars.

30.3 Notice of Fees

The Board must give Members not less than one month's notice of any increase in the fees payable under clause 30.1.

31. PROCEEDINGS OF THE BOARD

31.1 General

31.1.1 The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.

31.1.2 The Board must meet at least four times a year.

31.1.3 The Board may at any time, and the Secretary will, on the request of the Chairperson or the Deputy Chairperson convene a meeting of the Board by notice served upon each Director.

31.1.4 The accidental omission to give notice of a meeting to, or the non-receipt of a notice of meeting by, a Director will not invalidate proceedings at a Board meeting.

31.1.5 Unless otherwise determined by the Board, a quorum for meetings of the Board is half plus one of the Directors, or if the number of Directors is not a multiple of 2, then the odd number nearest to and greater than half of the Directors.

31.1.6 The Chairperson will be the chairperson of the Board. If the Chairperson is not present within 15 minutes after the time appointed for holding that meeting (or being present is unwilling to act), the Deputy Chairperson will preside at the meeting. If the Deputy Chairperson is not present (or being present is unwilling to act) then the Directors present will choose one of their number to be the chairperson of the meeting.

31.1.7 Questions arising at any meeting will be decided by a majority of votes and each Director present will be entitled to one vote.

31.1.8 The chairperson will not have a casting vote.

31.2 Use of technology in conferencing

31.2.1 Without limiting the discretion of the Board to regulate their meetings, the Board may, if it thinks fit, confer by radio, telephone, facsimile, computer, Internet, closed circuit television or other electronic means of audio or audio-visual communication. A resolution passed by such a

conference will, notwithstanding that the Directors are not present together in one place at the time of the conference, be deemed to have been passed at a meeting of the Board held on the day and at the time the conference was held.

- 31.2.2 The provisions of this Constitution regulating the proceedings of the Board apply so far as they are capable to such conferences.

31.3 Delegation by the Board

31.3.1 Subject to clause 31.3.2, the Board may delegate any of its powers to individual Directors or Members or to committees consisting of such Directors or Members or both as the Board thinks fit. Any individual or committee so formed must conform to any direction given to it by the Board in the execution of the delegated powers.

31.3.2 The Board may not delegate its power to delegate.

31.3.3 The meetings and proceedings of any committee will be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as applicable and so far as those provisions are not superseded by any other direction given by the Board.

31.4 Defects in Appointment

An act done in good faith by any meeting of the Board, of any committee formed by the Board or by any person acting as a Director will not be invalidated by reason of:

- 31.4.1 any defect in the election, appointment or tenure of a Director or person acting on any such committee; or
- 31.4.2 the disqualification of any of them.

32. MINUTES

32.1 Minutes to be kept

The Board must cause:

- 32.1.1 proper minutes to be made of the proceedings and resolutions of all meetings of the Foundation, the Board and committees formed by the Board;
- 32.1.2 the minutes to be entered in books kept for that purpose; and
- 32.1.3 the minutes to be signed by the chair of the meeting or by the chair of the next meeting.

32.2 Evidence of Proceedings and Resolutions

A minute that is recorded and signed in accordance with clause 32.1 is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

33. CIRCULAR RESOLUTION

33.1 General

33.1.1 If all the Directors have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Board held on the day on which the resolution was signed and at that time at which the document was last signed by a Director or, if the Directors signed the document on different days, on the day on which, and at the time at which the document was last signed by a Director.

33.1.2 Any such resolution in writing may consist of several documents in identical terms, each signed by one or more Directors and must be entered in the relevant book of minutes of the Foundation.

33.2 Exclusion of Directors Not Entitled to Vote

A reference in clause 33.1.1 to all Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.

34. REIMBURSEMENT OF EXPENSES

The Board may authorise the payment of any expenses incurred by any Director or Member in connection with the performance of their duties to the Foundation.

35. ACCOUNTS

35.1 Books of Account to be kept

The Directors will cause to be kept proper books of account in which will be kept true and complete accounts of the affairs and transactions of the Foundation. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Foundation's affairs and explain its transactions.

35.2 Location of Books of Account

The books of account will be kept at the Registered Office or place or places as the Directors think fit and will be open to the inspection of the Directors during usual business hours.

36. AUDITOR

The Foundation will observe the provisions of the Act in relation to the appointment, removal and resignation of an Auditor.

37. DUTY, TAXES AND CHARGES

37.1 Each Member will be liable for all duty and any other taxes or charges payable in respect of the Application, the Membership and any other transaction or instrument or transaction relating to such.

- 37.2 Each Member indemnifies and will keep indemnified the Foundation in respect of all and any liability for duty, taxes or other charges referred to in the preceding clause.

38. INDEMNITY

38.1 Definition of Liability and Officer

In this clause 38:

38.1.1 **Liability** means costs, losses, liabilities and expenses.

38.1.2 **Officer** means a Director, an alternate Director, secretary or other officer of the Foundation and includes a former Officer, but does not include an auditor or agent of the Foundation.

38.2 Indemnity of Officers

Every Officer must be indemnified out of the assets of the Foundation against any Liability incurred by that Officer in the person's capacity as an Officer by reason of any act or thing done or omitted to be done by that person in that capacity or in any way in the discharge of that person's duties or by reason of or relating to the person's status as an Officer, but excluding any Liability from or against which the Foundation is not permitted by the Act to exempt or indemnify the Officer.

38.3 Indemnity for Proceedings

Without limiting clause 38.2., every Officer must be indemnified out of the assets of the Foundation against any Liability incurred by that person in defending proceedings, whether civil or criminal, in respect of any act or thing done by the Officer in that person's capacity as such Officer but excluding any Liability from or against which the Foundation is not permitted by the Act to exempt or indemnify the Officer.

39. NOTICES

39.1 The Foundation may serve notice on any Member:

39.1.1 personally;

39.1.2 by sending it through the ordinary post to the Member's Registered Address;

39.1.3 by leaving at the Registered Address in an envelope addressed to the Member; or

39.1.4 by sending it to the fax number or electronic address (if any) nominated by the Member.

39.2 A notice of meeting sent by fax or other electronic means is taken to be served on the Business Day after it is sent. Any notice sent by post is taken to be served 3 days after the day it is posted. In proving such service, it is sufficient to prove that the envelope containing the notice was properly addressed and deposited as a prepaid letter at the post office or in some postal receptacle.

- 39.3 A certificate in writing signed by the Secretary or any officer of the Foundation that the envelope containing the notice was properly stamped, addressed and posted will be conclusive evidence of the service of such notice.

40. CONTRIBUTION ON WINDING-UP

- 40.1 Every Member undertakes to contribute to the property of the Foundation if it is wound up:
- 40.1.1 while that person is a Member; or
- 40.1.2 within one year after that person ceases to be a Member;
- in respect of the debts and liabilities of the Foundation contracted before that person ceases to be a Member, in respect of the costs, charges and expenses of winding-up and for the adjustment of the rights of the contributories among themselves.
- 40.2 The amount to be contributed by any Member will not exceed ten dollars.

41. DISTRIBUTION OF PROPERTY ON WINDING-UP

- 41.1 If, upon the winding-up or dissolution of the Foundation after the satisfaction of all its debts and liabilities there remains any property, this property must not be paid to or distributed among the Members.
- 41.2 Instead, this property must be given or transferred to some other institution or institutions having:
- 41.2.1 purposes similar to the purposes of the Foundation;
- 41.2.2 a constitution which prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the Foundation under clause 7 of this Constitution; and
- 41.2.3 eligibility for tax deductibility of gifts under subdivision 30-B section 30 – 55 of the *Income Tax Assessment Act 1997*.
- 41.3 This institution or institutions must be determined by:
- 41.3.1 a special resolution of the Members at or before the time of dissolution; or
- 41.3.2 if no such special resolution is passed, by a Judge of the Supreme Court or such other court of competent jurisdiction.