

7.1.2 Following the initial one year term from Commencement Date, the members of the Management Committee shall comprise not less than 3 nor more than 5 persons who are appointed at the Annual General Meeting in each subsequent year to be members until the next Annual General Meeting.

7.1.3 The appointment of Management Committee members at each Annual General Meeting shall be conducted as follows:

- (a) Written nominations for nominees, accompanied by the written consent of each nominee, shall be received by the Secretary not less than 1 calendar month before the date of the Annual General Meeting.
- (b) Not less than 14 days before the date of the Annual General Meeting, the Secretary shall post to all Owners a voting paper listing all the nominees for the Management Committee and such information (not exceeding one side of an A4 sheet of paper) as may be supplied to the Secretary or by or on behalf of each nominee in support of the nomination.
- (c) If there are insufficient valid nominations received under subclause (a) above, but not otherwise, further nominations may be received from the floor at the Annual General Meeting.
- (d) Votes shall be cast in such manner as the chairperson of the Annual General Meeting shall determine.
- (e) Two Owners (who are not nominees) designated by the chairperson of the Annual General Meeting shall act as scrutineers for the counting of the votes and destruction of any voting papers.
- (f) In the event of any vote being tied, the tie shall be resolved by the remaining members of the incoming Management Committee.

7.2 Appointment of Secretary

The Owners hereby jointly and severally appoint Berry & Walker Limited as Secretary of the Management Committee for a term of one year from the Commencement Date. The Owners acknowledge that any person appointed in substitution for the Secretary in accordance with this Deed must be a suitably qualified chartered accountant (who may or may not be an Owner) unless the Owners agree otherwise.

7.3 No Owner involvement

No Owner, unless a member of the Management Committee, will, during the continuance of the Scheme:

- (a) interfere in the management or administration of the Scheme; or
- (b) enter into any contracts on behalf of the Scheme.

7.4 Powers of Management Committee

The Management Committee will have the following powers and authorities in relation to the Scheme and the Property:

- (a) to carry on the business for which the Scheme has been established, as described in this Deed;
- (b) to procure the Nominee to purchase the Property and any rights, privileges or easements over and in respect of the Property and to grant Occupation Licences to Owners in respect of the Interests they hold;
- (c) to allocate the particular site to which an Occupation Licence applies;

- (d) to amend, from time to time, the rules set out in Schedule 4 to the Occupation Licence;
- (e) to manage the Occupation Licences, the Property and the Scheme on a daily basis;
- (f) to recommend the level of Annual Levies to be levied on Owners in relation to the Property;
- (g) to receive all money coming into the hands of the Scheme, including all Annual Levies, from the Scheme's business on behalf of the Nominee and to:
 - (i) pay the Annual Scheme Costs from such money, in accordance with this Deed; and
 - (ii) give valid and effectual receipts for all money coming into the Management Committee's hands on behalf of the Scheme;
- (h) to open and operate a bank account or accounts with a registered bank into which all Annual Levies and any income of the Scheme and all other money payable to or held on behalf of the Scheme is to be paid as soon as practicable and to make deposits and withdrawals therefrom and to sign cheques drawn on such bank account in respect of any expenditure authorised by this Deed. The authority to operate any bank account shall include not less than 2 members of the Management Committee jointly;
- (i) to negotiate and complete contracts and arrangements relating to the Property and the Scheme in the name of the Nominee where consistent with the objects of the Scheme and which will benefit the Scheme. The Nominee acknowledges and confirms this authority given to the Management Committee by the Nominee is subject to the proviso that such authority only extends to any negotiations, contracts and arrangements which are in full compliance with all legal obligations of the Nominee and its directors and provided prior written approval has been given by the majority of the Management Committee to all such negotiations, contracts and arrangements;
- (j) to recover money due from Owners under the terms of this Deed and the Occupation Licences;
- (k) to employ agents, advisers and contractors (including subcontractors) and other persons and to negotiate and enter into contracts with agents, advisers, contractors and other persons as independent contractors in respect of the business of the Scheme as the Management Committee may consider necessary or desirable;
- (l) to pay, from Annual Levies and any income of the Scheme, all rates, taxes (other than income tax), interest, insurance premiums, wages, commission, legal and accounting fees and expenses and all other outgoings, expenses, charges and costs payable in respect of the establishment, business, management, administration, supervision and termination of the Scheme or arising from any exercise of the Management Committee's powers and authorities conferred by this Deed;
- (m) to attend and vote for and represent the Scheme at any meeting or meetings of creditors of any bankrupt or insolvent person or on the winding up or liquidation of any person or in respect of any debt or claim which the Scheme may have or in which the Scheme may be interested;
- (n) to undertake maintenance improvements in respect of the Property up to an amount of \$10,000 per set of improvements at its discretion and for improvements in excess of \$10,000 as are authorised by Ordinary Resolution and which are funded by Annual Levies;
- (o) to prove debts and receive compensation or dividends;
- (p) to take or join in taking proceedings for having any debtor adjudicated bankrupt or for obtaining a winding up order in respect of any company, corporation, association or syndicate, and for all purposes to sign, make and do all notices, applications,

declarations, petitions and things as the Management Committee may consider necessary or expedient. The Management Committee may appoint a proxy (or proxies) for the purpose of signing all necessary documents;

- (q) for the purpose of exercising the Management Committee's powers and authorities, to employ solicitors, accountants or other professional persons as the Management Committee may think is necessary or expedient. The Management Committee will arrange to pay all fees and charges in respect of employment as are customary and reasonable for work of that nature;
- (r) to terminate an Owner's entitlement pursuant to clause 12.10;
- (s) to determine the remuneration of the Auditor and the Secretary;
- (t) to sign, execute, deliver and give in the name of the Scheme or the Nominee any contract, agreement, memorandum or other document which may be necessary or desirable in the exercise of any of the powers or remedies conferred on the Management Committee by this Deed or otherwise in respect of the Management Committee complying with its obligations under this Deed. Each such document shall be executed by any 2 members of the Management Committee (but excluding the Secretary);
- (u) subject to the provisions of this Deed, to do or perform any other matter or thing which may seem to the Management Committee in its absolute discretion to be expedient in the interests of the Scheme and which may be necessary or desirable in the exercise of any of the powers or remedies conferred on the Management Committee by this Deed or otherwise in respect of the Management Committee complying with its obligations under this Deed. The Management Committee will not pay out or invest or apply any money belonging to the Scheme for any purpose that is not directed or authorised by this Deed;
- (v) to enter into any transaction or do or perform any matter, act or thing previously approved by an Extraordinary Resolution;
- (w) to appoint a Secretary on such terms as it may determine from time to time and to remove any Secretary so appointed at any time; and
- (x) to appoint any person to be a Management Committee member to fill a casual vacancy on the Management Committee arising from a member dying, resigning or ceasing to be an Owner, provided that any such appointment shall continue only until the next Annual General Meeting.

7.5 Limitation on power

Notwithstanding any other provision of this Deed, the Management Committee may not sell or otherwise dispose of the Property without the approval of an Extraordinary Resolution.

7.6 Power-of attorney for Management Committee

The Owners hereby jointly appoint the Management Committee as their attorney to act on behalf of the Scheme for the purposes of exercising its powers and authorities as described in clause 7.4. No person dealing with the Management Committee is to be concerned to see or enquire as to the propriety or expediency of any act, deed, matter or thing which the Management Committee may do perform or execute as the attorney.

7.7 Reasonable endeavours and due diligence

- (a) The Management Committee will:
 - (i) use all reasonable endeavours and skill to ensure that the affairs of the Scheme are conducted in a proper and efficient manner; and

- (ii) use due diligence and vigilance in the exercise and performance of its functions, powers and duties as the manager of the Scheme.
- (b) If the Management Committee performs its duties diligently and reasonably at all times, the Management Committee will not be liable in any way to the Owners for any diminution in the capital of the Scheme or in the income from the business of the Scheme or any other loss, cost, claim, damage, expense or inconvenience of, any nature which may result from any act or omission of the Management Committee.
- (c) The Management Committee will not be deemed to be in breach of any of its obligations under this Deed if the fulfilment and performance of its obligations are prevented or delayed by factors or events beyond the Management Committee's reasonable control.

7.8 Obligations of Management Committee

The Management Committee covenants with the Owners that:

- (a) in relation to the Secretary:
 - (i) Berry & Walker has been appointed as Secretary on reasonable and industry standard terms that also include its covenant to comply in all respects with all covenants on the part of the Secretary under this Deed, including as a member of the Management Committee, and as if the Secretary were a party to this Deed; and
 - (ii) any new Secretary will be appointed on such terms in the future;
- (b) it will ensure that:
 - (i) prior to the entry into a Subscription Contract each Owner is provided with a written statement signed by the Offeror's director, containing the information prescribed in Schedules 1 and 2 of the Exemption Notice, in accordance with sections 5(2)(e) and 5(2)(f) of that Exemption Notice;
 - (ii) a term of the Subscription Contract is that the Nominee will hold the certificate of title to the Property on behalf of all Owners;
 - (iii) no subscriptions for Interests are accepted other than pursuant to a Subscription Contract;
 - (iv) all subscriptions for Interests are deposited into and retained in the Trust Account until:
 - subscriptions for Interests up to the Minimum Amount have been received by the Offeror; and
 - on payment of the purchase price for the Property through the subscriptions for Interests, registrable title to the Property is immediately transferred to the Nominee, acting on behalf of Owners and in accordance with this Deed; and
 - (v) every Owner is provided, annually, with audited annual financial statements in respect of the performance, financial position and cash flows of the Scheme, no later than 3 months after the balance date of the Scheme;
- (c) pay all accounts of contractors and claims for wages and salaries for services rendered as and when they become payable. The Management Committee will use its best endeavours to keep the Scheme's assets free from any liens and encumbrances resulting from such operations;

- (d) manage the Property in accordance with best industry standards in relation to properties of a similar type and value as the Property, to the advantage Of the Owners;
- (e) effect and maintain in full force any and all insurances as may be reasonably necessary. All insurance is to be at the expense of the Scheme and for the benefit of the Scheme (in the name of the Nominee) and is to include general third party public liability insurance against all usual risks for not less than \$2,000,000 in respect of anything that might be undertaken by the Management Committee on behalf of the Scheme In performing its duties under this Deed;
- (f) compromise, settle or defend any and all claims and suits by third parties arising out of the conduct of the Scheme business to the extent that such claims are not covered by insurance at the expense of the Scheme;
- (g) cause all work required to manage and maintain the Property in accordance with this Deed to be carried out in a proper manner and in accordance with:
 - (i) recognised commercial practice;
 - (ii) such skill and effort as is reasonable in the circumstances; and
 - (iii) the terms and conditions of any applicable legislation,and devote such time as is necessary to faithfully and diligently perform Its duties under this Deed;
- (h) maintain and provide proper accounting records and provide the , Scheme with the annual balance sheet, profit and loss accounts and cash flows In accordance with clause 10;
- (i) supervise the collection of Annual Levies and other money payable .to the Scheme;
- (j) ensure compliance with all applicable legislation and regulations in respect of the Property and the Scheme;
- (k) keep an up to date Register which will contain, without limitation, the following information:
 - (i) the name and address of each Owner (or, in the case of joint Owners, the address of the first-named Owner of the Interest(s));
 - (ii) the number of Interests held by each Owner;
 - (iii) the date on which each person was entered in the Register as an Owner;
 - (iv) the date on which each Owner acquired or transferred his or her Interest(s), and
 - (v) an entry made by the Management Committee in the Register will be deemed to be accurate and conclusive, except in the case of manifest error;
- (l) convene meetings of Owners in accordance with clause 11 of this Deed;
- (m) receive and respond to complaints about the Scheme from Owners; and
- (n) register the Scheme for.GST with effect from the Commencement Date.

7.9 Meetings of the Management Committee

Schedule 5 governs the proceedings at meetings of the Management Committee except where otherwise agreed by all Management Committee members in relation to a particular meeting or meetings.

7.10 Written Resolutions of Management Committee Permitted

A Resolution in writing signed or assented to by a majority of the Management Committee members then entitled to receive notice of a meeting of the Management Committee and who together would constitute a quorum at a meeting shall be as valid and effective as if it had been passed at a meeting of the Management Committee duly convened and held. Within 5 Business Days of a Resolution being passed in accordance with this clause, the Secretary shall send a copy of the Resolution to every Management Committee member who did not sign the Resolution.

7.11 Vacation of Office

The office of a Management Committee member is vacated if the person holding that office:

- (a) dies; or
- (b) becomes disqualified from being a Management Committee member pursuant to clause 7.12 below; or
- (c) resigns that office by written notice to the Management Committee; or
- (d) is removed from office by Ordinary Resolution of Owners at a meeting of the Scheme or by written Resolution pursuant to clause 11.4.

7.12 Disqualified Persons

The following persons are disqualified from being appointed or holding office as a Management Committee member:

- (a) a person who is under 18 years of age;
- (b) a person who is an undischarged bankrupt;
- (c) a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company;
- (d) a person who is subject to a Property Order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988;
- (e) a person who is not a sole or joint owner of an Interest in the Scheme.

7.13 Interested Members of Management Committee**(i) Management Committee members must disclose their interests**

As soon as a Management Committee member becomes aware of the fact that he or she is interested in a transaction or proposed transaction with the Scheme, then unless the Owners have by Ordinary Resolution or by written Resolution pursuant to clause 11.4 agreed to the transaction being entered into, that member must disclose to the Management Committee:-

- (1) the nature and monetary value of his or her interest (if the monetary value of the interest is able to be quantified); or
- (2) the nature and extent of his or her interest (if the monetary value of the interest cannot be quantified).

(ii) General disclosure in certain cases will suffice

For the purpose of subclause 7.13(i), a general notice disclosed to the Management Committee to the effect that a member:-

- (1) is a shareholder, director, officer, or trustee of a named company or other person; and
- (2) is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person,
shall be a sufficient disclosure of that interest in relation to such transactions.

(iii) Failure to disclose does not affect validity of transaction

Any failure by a Management Committee member to comply with subclause 7.13(i) does not affect the validity of a transaction entered into by the Management Committee or the member. However, the transaction may be avoided under subclause 7.13(iv).

(iv) Management Committee may avoid transaction if Management Committee member interested

Where the Management Committee enters into a transaction in which a Management Committee member is found to be interested without prior disclosure and approval as required under subclause (i) above, the Management Committee, if it is permitted to do so at law, may avoid that transaction. However, if after being made aware of such interest, the Owners by Extraordinary Resolution or by written Resolution pursuant to clause 11.4 have agreed to the Management Committee entering into such a transaction, then this clause will not apply.

(v) Interested Management Committee member may vote

A Management Committee member who is interested in a transaction entered into, or to be entered into, by the Management Committee may:-

- (1) vote on a matter relating to the transaction;
- (2) attend a meeting of the Management Committee at which a matter relating to the transaction arises, and be included among the Management Committee members present at the meeting for the purpose of a quorum;
- (3) sign a document relating to the transaction on behalf of the Management Committee;
- (4) do anything else as a member in relation to the transaction as if he or she were not interested in the transaction.

7.14 Indemnity for Management Committee

The Owners shall indemnify the Management Committee members for any liability in respect of:

- (a) liability to any person other than the Nominee or the Scheme for any act or omission in his or her capacity as a Management Committee member; or
- (b) costs incurred by that Management Committee member in defending or settling any claim or proceeding relating to any such liability;

not being criminal liability or liability in respect of that Management Committee member failing to act in good faith and in what the Management Committee member believes to be in the best interests of the Scheme.

7.15 Insurance for Management Committee

The Owners agree that the Management Committee may effect liability insurance for its members for any liability or costs for which a member may be accountable and for which the

Owners are obliged to indemnify the Management Committee member on such reasonable terms and conditions as the Management Committee may consider prudent from time to time.

7.16 **Remuneration of the Management Committee**

The Management Committee may authorise the payment of remuneration or the provision of other benefits by the Scheme to a Management Committee member for services as a Management Committee member or in any other capacity, and the entering into of a contract to that effect, only if the relevant action has been approved by an Ordinary Resolution of Owners or by a written Resolution pursuant to clause 11.4. This clause does not apply to the payment of remuneration or the provision of other benefits to a member in his or her capacity as a consultant or in respect of any professional services provided by that member to the Management Committee or the Nominee.

8 RETIREMENT/REMOVAL OF MANAGEMENT COMMITTEE MEMBERS

8.1 Removal of a member of the Management Committee

A member of the Management Committee is to cease to be a member if -

- (a) the Member is removed by the Owners by an Extraordinary Resolution; or
- (b) the Member resigns under clause 8.2; or
- (c) the Member, being an Owner member, ceases to be an Owner; or
- (d) the Member, being the Secretary, cease to be the Secretary.

8.2 Resignation of Member

A member of the Management Committee may resign from office by giving at least three months' written notice to each Owner. A member's resignation will not be effective until a replacement member has been duly appointed.

8.3 New Member

If a member ceases to hold or is removed from office according to clause 8.1 or resigns from office according to clause 8.2 or dies or is otherwise incapacitated to an extent so as to be unable to perform in the capacity of member, a successor member must be appointed by Owners by means of an Ordinary Resolution (except in the case of the Secretary member, who is appointed by the other members of the Management Committee).

8.4 Deemed covenant

Any new member appointed by the Scheme according to clause 8.3 will upon acceptance of such appointment be deemed to have undertaken to the Nominee and each of the Owners to be bound by all of the covenants of the Management Committee under this Deed from the date of the appointment, and all members hereby, by their execution of this Deed, acknowledge the application of such deemed covenant should they be so appointed.

9 ANNUAL LEVIES AND OTHER EXPENSES

9.1 Annual Levies

- (a) Each Owner will pay the Annual Levies in respect of the Occupation Licence it holds and in accordance with the terms of that Occupation Licence, and in instalments in advance in such frequency as may from time to time be resolved by the Management Committee (but unless resolved otherwise, the instalments will be paid quarterly in advance), commencing on the Commencement Date.

- (b) The Owners' obligation to pay Annual Levies is a contractual obligation agreed by them in their capacity as licensee under an Occupation Licence and is in addition to an Owner's obligation to pay Site Outgoings under an Occupation Licence.
- (c) The level of Annual Levies payable in each financial year will be determined by the Management Committee prior to the commencement of each financial year of the Scheme and the Management Committee shall provide to Owners such reports, projections and other information as is reasonably necessary to support the projected level of Annual Levies for the following financial year.
- (d) If, for any financial year, the Annual Levy proves to be in excess of the amount required to meet the requirements of the Scheme for the year, the Management Committee may rebate the excess to Owners (including by way of holding it in trust for the benefit of Owners to be applied in satisfying part of the Annual Levy obligation for a subsequent financial year).

9.2 Initial costs

Each Owner acknowledges that in respect of the Scheme certain Scheme establishment costs and other related expenditure have been incurred in respect of the Scheme before the Commencement Date as detailed in the Offeror's Statement and each of the Owners hereby notifies and confirms such costs and expenditure have been made on behalf of the Scheme and that the Subscription Amount includes an amount for these expenses.

9.3 Additional Levies

Each Owner will pay in respect of the Occupation Licence which such Owner holds and in accordance with the terms of that Occupation Licence, such Additional Levies as may from time to time be resolved by the Management Committee as payable as and when may be required by the Management Committee in each instance in respect of any extraordinary unforeseen expenditure arising in relation to the Scheme or the Property.

10 ACCOUNTING

10.1 Accounting records

The Secretary, on behalf of the Management Committee will keep accounting records which correctly record and explain the performance, financial position and cashflows of the Scheme and will enable the financial statements referred to in clause 10.2 to be prepared and conveniently and properly audited. The accounts will contain such other information as may be required to be contained in the accounts under the Exemption Notice, the Financial Reporting Act 1993, or otherwise as required by law.

10.2 Financial statements

The Management Committee will ensure that a statement of financial position and performance and such other accounts as are usually produced in accordance with generally accepted accounting practice are produced in respect of the Scheme's business at the end of each financial year of the Scheme's business.

10.3 Final accounts

On dissolution of the Scheme the Management Committee will cause final accounts of the business of the Scheme to be drawn up and audited and will furnish a copy of the accounts to each Owner.

10.4 Accounting expenses

The Scheme will meet the professional charges of the Secretary, the Auditor or any chartered accountant appointed by the Scheme in respect of the keeping of accountancy records, the production of the Scheme statement of financial position and performance and any other accounts and any audit of these accounts, as expenses of the business of the Scheme.