

**BABCOCK & BROWN
WIND PARTNERS**



Babcock & Brown Wind Partners Limited · ABN 39 105 051 616
Babcock & Brown Wind Partners Trust · ARSN 116 244 118
Babcock & Brown Wind Partners (Bermuda) Limited · ARBN 116 360 715
Level 23 The Chifley Tower · 2 Chifley Square · Sydney NSW 2000 Australia
T +61 2 9229 1800 · F +61 2 9231 5619 · www.bbwindpartners.com

ASX Release

17 August 2007

**AMENDMENT TO THE BABCOCK & BROWN WIND PARTNERS TRUST
CONSTITUTION**

Attached is an Amending Deed to the Babcock & Brown Wind Partners Trust constitution giving effect to amendments required to be made in relation to the issue of securities as consideration under the Alinta Limited Scheme of Arrangement. A consolidated constitution is also attached.

A copy of the Amending Deed has been lodged with ASIC today.

Further information in relation to the Scheme can be found on BBW's web site www.bbwindpartners.com.

ENDS

Further Information:

Rosalie Duff
Investor Relations Manager
Babcock & Brown Wind Partners
Phone: + 61 2 9216 1362

Miles George
Chief Executive Officer
Babcock & Brown Wind Partners
Phone: + 61 2 9229 1800

BABCOCK & BROWN WIND PARTNERS

About Babcock & Brown Wind Partners

Babcock & Brown Wind Partners (ASX: BBW) is a specialist investment fund focused on the wind energy sector. BBW listed on the Australian Stock Exchange on 28 October 2005 and has a market capitalisation of approximately A\$1.3 billion.

It is a stapled entity comprising Babcock & Brown Wind Partners Limited (ABN 39 105 051 616), Babcock & Brown Wind Partners Trust (ARSN 116 244 118) and Babcock & Brown Wind Partners (Bermuda) Limited (ARBN 116 360 715).

BBW's portfolio comprises an interest in 35 wind farms on three continents that have a total installed capacity of approximately 1,700MW and are diversified by geography, currency, equipment supplier, customer and regulatory regime.

BBW is managed by Babcock & Brown Wind Partners Management Pty Limited, a wholly owned subsidiary of Babcock & Brown Limited (ASX: BNB), a global investment and advisory firm with longstanding capabilities in structured finance and the creation, syndication and management of asset and cash flow-based investments. Babcock & Brown has a long history of experience in the renewable energy field and extensive experience in the wind energy sector, having arranged financing for over 3000MW of wind energy projects and companies for nearly 20 years, with an estimated value over US\$3 billion. Babcock & Brown's roles have included acting as an adviser/arranger of limited recourse project financing, arranging equity placements, lease adviser, project developer, principal equity investor and fund manager for wind energy projects situated in Europe, North America and Australia. Babcock & Brown has developed specialist local expertise and experience in the wind energy sector in each of these regions which it brings to its management and financial advisory roles of BBW.

BBW's investment strategy is to grow security holder wealth through management of the initial portfolio and the acquisition of additional wind energy generation assets.

For further information please visit our website : www.bbwindpartners.com

Amending Deed

Amending Deed Babcock & Brown Wind Partners Trust

Freehills

101 Collins Street Melbourne VIC 3000 Australia
GPO Box 128A Melbourne VIC 3001 Australia

Sydney Melbourne Perth Brisbane Singapore

Telephone +61 3 9288 1234 Facsimile +61 3 9288 1567
www.freehills.com DX 240 Melbourne

Correspondent offices in Hanoi Ho Chi Minh City Jakarta

Table of contents

	The agreement	1
	Operative part	2
1	Definitions and interpretation	2
2	Amendment of the Constitution	2
	2.1 Amendment.....	2
	2.2 Amendments not to affect validity, rights, obligations.....	3
3	Trust not confirmed	3
4	Governing law	3
5	Manager and Members bound	3
6	Severance	3
	Signing page	5

Amending Deed

Date ▶ 17 AUGUST 2007

Babcock & Brown Wind Partners Services Limited
ABN 61 113 813 997
of Level 23, The Chifley Tower, 2 Chifley Square, Sydney
NSW 2000
(Manager)

- | | |
|------------|--|
| Background | A. A trust deed constituting the Babcock & Brown Wind Partners Trust was executed on 16 June 2003 which became the constitution of the Trust on its registration as a managed investment scheme with ASIC (Constitution). |
| | B. Clause 24.1 of the Constitution provides that the Manager, subject to any approval required by law, may by deed replace or amend the Constitution. |
| | C. The Constitution was amended by supplemental deeds dated 26 November 2003, 9 September 2005 and 14 June 2006. |
| | D. The Manager wishes to amend the Constitution in the manner set out in this deed. |
-

This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed, it is agreed:

1 Definitions and interpretation

A word or phrase (except as otherwise provided) defined in the Constitution has the same meaning when used in this deed.

2 Amendment of the Constitution

2.1 Amendment

A new clause as follows is inserted as clause 6.7:

"6.7 Issue of Units to Alinta Limited's shareholders

(a) Notwithstanding anything to the contrary in this clause 6, the Manager may issue approximately 130,176,874 Units as part of BBW Securities (as defined in the Scheme) to Alinta Limited's shareholders under the Scheme (or to the Nominee as defined in the Scheme) at an Issue Price per Unit equal to 99.70% of the Value of a BBW Security (and on the basis that the Manager must also pay to Bidder (as defined in the Scheme) an amount equal to 99.70% of \$9.5 million in cash in respect of the issue of the BBW Securities and the receipt of the issue price for the BBW Securities).

(b) The Issue Price of the Units issued under this clause 6.7 may be provided in the form of either cash or promissory notes (or a combination of the two) and by any one or more parties.

(c) For the purposes of this clause 6.7:

Scheme means the scheme of arrangement between Alinta Limited and its shareholders expected to be approved by the Federal Court in or about August 2007.

Value means an amount per Unit equal to \$211 million divided by the total number of Units issued pursuant to this clause 6.7."

2.2 Amendments not to affect validity, rights, obligations

(a) An amendment to the Constitution does not affect the validity or enforceability of the Constitution.

(b) Nothing in this deed:

(1) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Constitution before the date of this deed; or

(2) discharges, releases or otherwise affects any liability or obligation arising under the Constitution before the date of this deed.

3 Trust not confirmed

- (a) Nothing expressly or impliedly contained in this deed (including the recitals) is effective to confirm, declare or otherwise acknowledge the Trust declared under the Constitution, or to impress any new or additional trusts upon property held on trust as at the date of this deed.
- (b) Nothing in this deed should be interpreted as creating any new or further trust and at all times, the Trust remains a single trust.

4 Governing law

This deed will be construed in accordance with the laws of Victoria.

5 Manager and Members bound

The Manager and the Members are bound by the terms of the Constitution as amended by this deed.

6 Severance

Any provision of, or the application of any provision of, this deed which is:

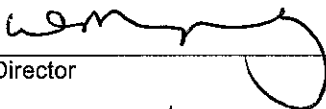
- (a) prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition; or
- (b) void, illegal or unenforceable in any jurisdiction does not effect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions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

Executed as a deed

Signed by
Babcock & Brown Wind Partners Services Limited
by

sign here ▶ 
Secretary/Director

print name JOHN REMEDIOS

sign here ▶ 
Director

print name WARREN MURPHY

Constitution of Babcock & Brown Wind Partners Trust

Dated 17 August 2007

Babcock & Brown Wind Partners Services Limited ("Manager")
(ABN 61 113 813 997, AFSL 290 710)

NOTE:

This document is a consolidated copy of the trust deed dated 16 June 2003 for Babcock and Brown Wind Partners Trust ("**Original Constitution**") as amended by the supplemental deeds dated 26 November 2003, 9 September 2005, 14 June 2006 and 17 August 2007.

This is not a legally binding document. Reference should be made to the Original Constitution and the amending deeds for the operative provisions.

Mallesons Stephen Jaques

Level 60
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
Ref: GH/BMcW

Constitution of Babcock & Brown Wind Partners Trust

Contents

1	Name of Trust	1
1.1	Name	1
1.2	If Manager retires	1
2	Assets held on trust	1
2.1	Assets held on trust	1
2.2	Assets vest in Manager	1
3	Units and Options	1
3.1	Beneficial interest divided into Units	1
3.2	Units confer equal undivided interest	1
3.3	Interest in Assets	1
3.4	Stapling provisions	2
3.5	Creation of Options	2
3.6	Issue of Options	2
3.7	Offers of Options	2
3.8	Exercise of Options	2
3.9	Rights attaching to Units and Options	2
3.10	No fractions of Units	3
3.11	Rounding of fractions	3
3.12	Rounding	3
3.13	Consolidation and division of Units and Options	3
3.14	Consolidation and division while Stapling applies	3
3.15	Transfer of Units and Options if Officially Quoted	3
3.16	Form of transfer	3
3.17	Registration	3
3.18	Manager may request holding lock or refuse to register transfer	4
3.19	Manager must request holding lock or refuse to register transfer	4
3.20	Notice of holding locks and refusal to register transfer	4
3.21	Manager must retain instruments of transfer	4
3.22	Return of refused transfers	4
3.23	Refusal to register while not Officially Quoted	4
3.24	Restricted Securities	5
3.25	Single instrument of transfer for Stapled Securities	5
3.26	Joint tenancy	5
3.27	Death, legal disability of Member	5
3.28	Number of Units	5
4	Partly Paid Units	5
4.1	Payment of Application Price by instalments	5
4.2	Must also issue partly paid Attached Securities	5
4.3	Determination of amount and timing of instalments	6
4.4	Variation or waiver of terms and conditions	6
4.5	Notice of instalments	6
4.6	Interest on instalments	6
4.7	Failure to pay instalments	7

4.8	If requirements of any notice not complied with	7
4.9	Disposal of forfeited Units	8
4.10	Holder of forfeited Units	8
4.11	Evidence of forfeiture	8
4.12	Consideration for forfeited Units	8
4.13	Deductions from consideration for forfeited Units	9
4.14	Joint holders	9
4.15	Rights and obligations attaching to a Partly Paid Unit are proportionate	9
5	Classes of Units	9
6	Application Price for Units	9
6.1	Initial Units and Units issued during initial public offer	9
6.2	While Units are not Officially Quoted	10
6.3	Determination of variables in clause 6.2	10
6.4	While Units are Officially Quoted	10
6.5	Determination of Application Price where Stapled Securities are issued	11
6.6	Initial Public Offer Period	12
6.7	Issue of Units to Alinta Limited's shareholders	13
7	Application procedure	13
7.1	Application form	13
7.2	Application for identical number of Attached Securities	13
7.3	Payment	13
7.4	Manager may reject	14
7.5	Minimum amounts	14
7.6	Manager must reject application	14
7.7	Issue Date	14
7.8	Uncleared funds	15
7.9	Register	15
7.10	Holding statements	15
8	Redemption Price of Units¹³	15
8.1	Redemption Price	15
8.2	Determination of variables	15
8.3	Rounding	16
9	Redemption procedures¹⁴	16
9.1	While Officially Quoted	16
9.2	Request for redemption	16
9.3	While the Trust is Liquid - Manager may redeem	16
9.4	While the Trust is liquid - time for payment of Redemption Price	16
9.5	Manager not obliged to pay Redemption Price out of own funds	16
9.6	Aggregate Redemption Price less than Minimum Holding amount	16
9.7	Increase of Minimum Holding amount	17
9.8	When Trust is not Liquid ¹⁶	17
9.9	Manager not obliged to make a withdrawal offer	17
9.10	Redemption request received before withdrawal offer	17
9.11	Clauses applicable whether or not the Trust is Liquid	17
9.12	Sums owed to Manager	17
9.13	Transfer of Assets	17
9.14	Manager's power of compulsory redemption	18
9.15	Buy-back of Units ¹⁹	18
9.16	Redemption while Stapling applies	18

9.17	Discretionary redemption	18
10	Valuation of Assets	18
10.1	Manager may value	18
10.2	Determination of Net Asset Value	18
10.3	Value of Assets	18
11	Income and distributions to Members	19
11.1	Manager must determine Distributable Income	19
11.2	Distributable income	19
11.3	Preparation of statutory accounts	19
11.4	Classification	19
11.5	Distribution account	19
11.6	Present entitlement	20
11.7	Income Distributions	20
11.8	Partly Paid Units	21
11.9	Satisfaction of present entitlement	21
11.10	Other distributions	22
11.11	Manager may permit or require reinvestment	22
11.12	Notification of reinvestment procedures	22
11.13	Deemed application if reinvestment applies	22
11.14	Acquisition of identical number of Attached Securities	22
11.15	Application Price while Listed if reinvestment applies	23
11.16	Money held for future reinvestment	23
11.17	Units issued on reinvestment	23
11.18	Position on transfer of Units	23
11.19	Position on transfer of Assets	24
11.20	Deductions from distributable income	24
12	Payments	24
12.1	Manner of payment to Members	24
12.2	Unpresented cheques	24
12.3	Unsuccessful transfers	24
12.4	Only whole cents to be paid	25
12.5	Payment to joint Members	25
12.6	Manager may deduct amounts	25
13	Powers of the Manager	25
13.1	General powers	25
13.2	Contracting powers ²³	25
13.3	Borrowing powers	25
13.4	Investment powers	26
13.5	Power of delegation ²⁵	26
13.6	Protection and assistance for those dealing with agents and delegates	26
13.7	Agents and delegates may be associates	26
13.8	Exercise of discretion	26
13.9	Registration of the Trust	26
13.10	Listing of the Trust	26
13.11	Power to unstaple Units	26
13.12	Power to staple additional Securities	27
14	Retirement of Manager	27
14.1	Voluntary retirement	27
14.2	Compulsory retirement	27

14.3	Release	27
14.4	Retirement benefit	27
15	Notices to Members	27
15.1	Form of notices	27
15.2	Cheques payable to Members	28
15.3	Joint Members	28
15.4	Receipt of communications	28
16	Notices to the Manager	28
16.1	Form of notices	28
16.2	When notice effective	28
16.3	Signing of notices	28
17	Meetings of Members	29
17.1	Convening of meetings	29
17.2	Manager may determine	29
17.3	Notice of meeting	29
17.4	Calculation of period of notice	29
17.5	Quorum	29
17.6	No quorum	29
17.7	Chairman	30
17.8	Role of chairman	30
17.9	Postponement or cancellation	30
17.10	Notice of Cancellation or postponement of meeting	30
17.11	Contents of notice or postponement of meeting	30
17.12	Number of clear days for postponement of meeting	30
17.13	Business at postponed meeting	31
17.14	Proxy, attorney or representative at postponed meeting	31
17.15	Proxies and voting	31
17.16	Proxies containing some of the required information	31
17.17	Adjournment of meeting	31
17.18	Notice of adjourned meeting	32
17.19	Demand for a poll	32
17.20	Declaration of poll	32
17.21	Questions decided by majority	32
17.22	Poll	32
17.23	Equality of votes - no casting vote for chairman	32
17.24	Entitlement to vote	32
17.25	Voting on a poll for Partly Paid Units	33
17.26	Joint Unitholders' vote	33
17.27	Vote of shareholder of unsound mind	33
17.28	Objection to voting qualification	33
17.29	Validity of vote in certain circumstances	33
17.30	Proxy form while Stapling applies	34
17.31	Meetings by technology	34
17.32	Other attendees	34
17.33	Joint meetings	34
17.34	Meetings of Option holders or Members of a Class	34
18	Rights and liabilities of Manager	34
18.1	Holding Units	34
18.2	Other capacities	34
18.3	Manager may rely	35

18.4	Reference to exercising power or discretion	35
19	Limitation of liability and indemnity in favour of Manager	36
19.1	Manager not liable except to the extent Corporations Act imposes liability	36
19.2	Limitation on Manager's liability	36
19.3	Indemnity in favour of Manager	36
19.4	Indemnity includes acts and omissions of an agent or delegate	36
19.5	Indemnity in addition to indemnity allowed by law	36
19.6	Indemnity unaffected by unrelated breach of trust	36
20	Liability of Members	37
20.1	Liability limited	37
20.2	Recourse limited to the Assets	37
20.3	Tax and User Pays Fees	37
20.4	Joint Members	37
20.5	Deficiency in the Assets	37
20.6	Restrictions on Members	37
21	Remuneration and expenses of the Manager	37
21.1	Management fee	37
21.2	Waiver of fees	38
21.3	Expenses	38
21.4	GST	40
21.5	Input tax credits	40
21.6	GST and expenses	41
22	Duration of the Trust	41
22.1	Initial settlement	41
22.2	Termination	41
22.3	Perpetuity period and restriction on issue and redemption of Units	41
23	Procedure on termination	42
23.1	Realisation of Assets	42
23.2	Audit of winding up	42
23.3	Distribution following termination	42
23.4	Constitution applies until date of final distribution	42
24	Amendments to this constitution	43
24.1	Manager may amend	43
24.2	Statutory requirements	43
25	Compliance committee	43
26	Complaints	43
27	Listing Rules	44
27.1	While Units Officially Quoted	44
27.2	Change in the text of the Constitution due to clause 27.1	45
28	Restricted Securities	45
28.1	Application of this clause	45
28.2	Restriction on distributions and voting rights	45

29	Small Holdings	45
29.1	Manager may sell or redeem holdings less than a marketable parcel	45
29.2	Limitations on clause 29.1	45
29.3	Notice period	45
29.4	Power lapses on announcement of full takeover	46
29.5	Costs of the sale	46
29.6	Execution of transfer	46
29.7	While Stapling applies	46
30	Stapling	46
30.1	Paramountcy of Stapling provisions	46
30.2	Maintenance of Listing and Consistency with constitutions of the Stapled Entities	46
30.3	Stapling - general intention	47
31	Restructure	47
31.1	Implementation of a Restructure Proposal	47
31.2	Express powers of Manager	47
31.3	Appointment as agent and attorney for Members	48
31.4	Manager's limitation of liability	48
31.5	Clause to prevail	48
32	References to Corporations Act and Listing Rules	48
32.1	Corporations Act	48
32.2	Listing Rules	49
33	Interpretation	49
33.1	Definitions	49
33.2	Interpretation	58
33.3	Other documents	58
33.4	Constitution legally binding ⁵⁴	59
33.5	Severance	59
33.6	Governing law	59
33.7	Other obligations excluded	59

Constitution of Babcock & Brown Wind Partners Trust

1 Name of Trust

1.1 Name

The Trust is called the Babcock & Brown Wind Partners Trust or by such other name as the Manager determines from time to time¹.

1.2 If Manager retires

If a Manager retires or is removed, its successor as Manager must, unless otherwise approved by the former Manager, change the name of the Trust to a name that does not imply an association with the former Manager or its business.

2 Assets held on trust

2.1 Assets held on trust

The Manager must hold the Assets on trust for Members².

2.2 Assets vest in Manager

The Assets vest in the Manager, but must be clearly identified as property of the Trust and held separately from the assets of the Manager and any other managed investment scheme if and to the extent that the Corporations Act so requires³.

3 Units and Options

3.1 Beneficial interest divided into Units

The beneficial interest in the Trust is divided into Units.

3.2 Units confer equal undivided interest

Each Fully Paid Unit confers an equal undivided interest and, unless this constitution states otherwise, a Partly Paid Unit confers an interest of the same nature which is proportionate according to the amount paid up on the Unit.

3.3 Interest in Assets

A Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.

¹ See Corporations Regulation 5C.1.02

² See section 601FC(2) of the Corporations Act

³ See section 601FC(1)(i)

3.4 Stapling provisions

The provisions of this constitution relating to Stapling take effect on and from the Stapling Commencement Date and apply subject to all other provisions of this constitution which may suspend, abrogate or terminate Stapling.

3.5 Creation of Options

The Manager may create and issue Options on such terms and conditions as the Manager determines. Options may be issued with Units or separately.

3.6 Issue of Options

Subject to this constitution, the Corporations Act (and the conditions of any applicable ASIC Relief from it) and, if relevant, the Listing Rules, the Manager may determine that Options will be issued:

- (a) for consideration or no consideration;
- (b) on the basis that the exercise price for a Unit to be issued on exercise of the Option is the price determined by the Manager, provided that the exercise price is less than the price that would otherwise apply under this constitution by a percentage not exceeding 50%; and
- (c) conferring on the holder of the Option such other entitlements under this constitution as the Manager determines,

and otherwise on terms and conditions and with such entitlements as determined by the Manager. The terms of issue of the Option may allow the Manager to buy back the Options.

3.7 Offers of Options

Subject to the Listing Rules and the Corporations Act (and the conditions of any applicable ASIC Relief from it), if the Manager is making an offer of Options to Members which is otherwise in proportion to their existing holdings of Units, the Manager is not required to offer Options under this clause to persons whose address on the Register is in a place other than Australia.

3.8 Exercise of Options

- (a) On exercise of an Option, the holder of the Option is entitled to subscribe for and be allotted such number of Units as the terms and conditions of issue of the Option contemplate.
- (b) While Stapling applies, an Option may only be exercised if, at the same time as Units are acquired pursuant to the Option, the same person acquires an identical number of Attached Securities, which are then Stapled to the Units.

3.9 Rights attaching to Units and Options

A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit. The holder of an Option holds the Option subject to the terms and conditions attaching to that Option.

3.10 No fractions of Units

Fractions of a Unit may not be issued by the Manager.

3.11 Rounding of fractions

Where any calculation performed under this constitution or the terms of a withdrawal offer would otherwise result in the issue or redemption of a fraction of one Unit, the number of Units to be issued or redeemed is, subject to this constitution, to be rounded down to the nearest whole Unit.

3.12 Rounding

Any excess application or other money or property which results from rounding under any provision of this constitution becomes an Asset of the Trust.

3.13 Consolidation and division of Units and Options

Subject to the Listing Rules and the Corporations Act, Units and Options may be consolidated or divided as determined by the Manager⁴.

3.14 Consolidation and division while Stapling applies

While Stapling applies, Units may only be consolidated or divided if the related Attached Securities are also consolidated or divided at the same time and to the same extent.

3.15 Transfer of Units and Options if Officially Quoted

If the Units and/or Options are Officially Quoted, Units and/or Options may be transferred in any manner permitted by the Operating Rules of a CS Facility. The Manager may require before registration of any such transfer that there be provided to the Manager any documents which the rules of the uncertificated system require or permit the Manager to require be provided to it to authorise registration. This clause 3.15 prevails over any other provision of this constitution that may be inconsistent with it but it does not permit the Manager to refuse to register a proper transfer in accordance with the Operating Rules of a CS Facility.

3.16 Form of transfer

Subject to this constitution, a Unit or Option may be transferred in any form approved by the Manager, accompanied by any evidence reasonably required by the Manager to show the right of the transferor to make the transfer and (if the Manager requires) be presented for Registration duly stamped.

3.17 Registration

A transfer is not effective until Registered.

⁴ If applicable, refer Listing Rules, Chapter 7 - reorganisations of capital.

3.18 Manager may request holding lock or refuse to register transfer

If Units or Options are Officially Quoted, and if permitted to do so by the Listing Rules, the Manager may:

- (a) request the CS Facility Operator to apply a holding lock to prevent a transfer of Units registered on the CS Facility's sub register; or
- (b) refuse to register a transfer of Units to which paragraph (a) does not apply.

3.19 Manager must request holding lock or refuse to register transfer

The Manager must:

- (a) request the CS Facility Operator to apply a holding lock to prevent a transfer of Units registered on the CS Facility's sub register; or
- (b) refuse to register any transfer of Units to which paragraph (a) does not apply;

if:

- (c) the Listing Rules require the Trust to do so;
- (d) clause 3.25(a) requires the Manager not to register the transfer; or
- (e) the transfer is in breach of clause 3.24(a).

3.20 Notice of holding locks and refusal to register transfer

If in the exercise of its rights under clause 3.18 and 3.19 the Manager requests application of a holding lock to prevent a transfer of Units on the CS Facility's sub register or refuses to register a transfer of a security they must give written notice of the request to the holder of the Units, to the transferee and the broker lodging the transfer, if any. Failure to give such notice does not invalidate the decision of the Manager.

3.21 Manager must retain instruments of transfer

The Trust must retain every instrument of transfer which is registered for such period as the Manager determines.

3.22 Return of refused transfers

If the Manager refuses to register a transfer, the transfer must be returned to the person who deposited it if demand is made within 12 months of the giving of notice of refusal to register unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.

3.23 Refusal to register while not Officially Quoted

- (a) If Units or Options are not Officially Quoted, the Manager may refuse to record any transfer in the Register without giving any reason for the refusal.

3.24 Restricted Securities

- (a) While Units or Options are Officially Quoted and the Listing Rules so require, a Member may not transfer Restricted Securities during the applicable escrow period.
- (b) During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the holder of the Restricted Securities is not entitled to any distribution or voting rights in respect of the Restricted Securities.

3.25 Single instrument of transfer for Stapled Securities

While Stapling applies and subject to the Corporations Act and the Listing Rules if the Listing Rules apply:

- (a) the Manager must not register any transfer of Units unless it is a single instrument of transfer of Stapled Securities and any provision of clauses 3.15 to 3.19 of this constitution inclusive referring to a transfer of Units will be deemed to be a reference to such a transfer; and
- (b) a reference in clauses 3.15 to 3.19 inclusive and clause 3.23 to a Unit will be deemed to be a reference to a Stapled Security.

3.26 Joint tenancy

Persons Registered jointly as the holder of a Unit or Option hold as joint tenants and not as tenants in common unless the Manager otherwise agrees.

3.27 Death, legal disability of Member

If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in any other case) will be recognised as having any claim to Units or Options Registered in the Member's name.

3.28 Number of Units

While Stapling applies, the number of issued Units at any time must equal the number of issued Attached Securities of each category.

4 Partly Paid Units

4.1 Payment of Application Price by instalments

The Application Price of Units may be payable by instalments as set out in this clause 4.

4.2 Must also issue partly paid Attached Securities

While Stapling applies, Units may not be issued on the basis that they are Partly Paid Units unless there is a contemporaneous and corresponding issue of Attached Securities which are to be partly paid. While Stapling applies any issue of Partly Paid Units shall be upon the basis that a call will not be

regarded as having been validly paid unless any amount payable at the same time in relation to the partly paid Attached Securities is also paid.

4.3 Determination of amount and timing of instalments

The Manager may determine at any time that Units to be offered for sale or subscription are to be offered on terms that the Application Price is payable by instalments of such amounts and at such times as the Manager determines or, if the Manager so determines, by a single instalment payable at such time as the Manager determines.

4.4 Variation or waiver of terms and conditions

Subject to any applicable statutory duty requiring the Manager to treat Members of the same class equally and those of different classes fairly, where Units are offered for sale or subscription on terms and conditions determined and set out in accordance with clause 4.3, those terms and conditions may be varied or compliance therewith waived only with the consent of the Manager. The variation or waiver must not take effect during the currency of the offering document pursuant to which the Units were offered for sale or subscription.

4.5 Notice of instalments

The Manager must give Members:

- (a) if the Trust is not Listed, at least 3 Business Day's notice; or
- (b) if the Trust is Listed, at least 30 Business Days' notice (but not more than 40 Business Days' notice),

of the time and date each instalment is due to be paid (the First Notice).

If the Trust is Listed:

- (c) the notice must contain such other information as is required by the Listing Rules (or ASX under the Listing Rules); and
- (d) at least 4 Business Days before the date each instalment is due to be paid, the Manager must send a second notice to all new Members and those Members whose holding has changed since the First Notice which must include any changes that have occurred in the information given in the First Notice because of a change in the holding.

4.6 Interest on instalments

If a Member does not pay an instalment by the due time and date then interest is payable on the sum due from the date payment was due to the time of payment at such rate as the Manager determines not exceeding BBSW plus 3% per annum. Interest is calculated daily and payable monthly in arrears. The Manager may waive payment of that interest in whole or part.

- (a) The Manager may revoke or postpone the payment of an instalment.

- (b) Subject to the Listing Rules, an instalment will be deemed to be due on the date determined by the Manager.
- (c) Subject to the Listing Rules, the non-receipt of a notice that an instalment is due by, or the accidental omission to give a notice that an instalment is due to, a Member, will not invalidate the instalment being due.
- (d) Subject to the Corporations Act and the Listing Rules, the Manager may extinguish in full or in part any liability of Members in respect of any moneys unpaid on Members' Units and such extinguishment will extend to any moneys unpaid on Attached Securities.
- (e) Subject to the Listing Rules, any instalment which, by the terms of issue of the Unit, becomes payable on issue of the Unit or at any date fixed by or in accordance with such terms of issue shall be deemed to be an instalment which the Manager has given Members notice of in accordance with clause 4.5. In the case of non-payment, all the provisions of this constitution as to payment of interest, forfeiture or otherwise shall apply as if such notice had been given.

4.7 Failure to pay instalments

If a Member fails to pay in full any instalment due on any Partly Paid Unit or Units on or by the day specified for payment, the Manager may, during such time as the instalment or any part of the instalment remains unpaid, serve a notice on that Member requiring payment of so much of the instalment as is unpaid, any interest owing and all reasonable expenses incurred by the Manager as a result of the non-payment. The notice must specify a further time and day (not earlier than 10 days from the date of the notice) on or by which the payment as required by the notice is to be made. The notice must also state that in the event of non payment on or by that specified time and day, the Partly Paid Units in respect of which the instalment or part instalment remains unpaid will be liable to be forfeited and an equal number of Attached Securities will also be liable to be forfeited. If Units are Officially Quoted, the notice must contain such other information as is required by the Listing Rules (or by ASX under the Listing Rules).

4.8 If requirements of any notice not complied with

If the requirements of any notice issued under clause 4.7 are not complied with:

- (a) any Partly Paid Unit in respect of which the notice has been given (together with the Attached Securities) may at any time after the date specified in the notice for payment of the amount required by the notice (and before payment of the instalment and any interest and expenses owing), be forfeited on the Manager so determining; and
- (b) subject to the Listing Rules, the Corporations Act and this constitution, all voting rights, entitlements to the distribution of income and other rights in connection with any Partly Paid Unit and the Attached Securities in respect of which the notice has been given are suspended until reinstated by the Manager.

4.9 Disposal of forfeited Units

Subject to the Listing Rules if Units are Officially Quoted, a forfeited Unit (together with the Attached Securities) may be sold or otherwise disposed of as a Fully Paid Unit or a Partly Paid Unit (together with the Attached Securities), either:

- (a) subject to any necessary ASIC Relief, at a price equal to that received from the sale of the Stapled Security in the normal course of business on ASX less the sum of 2 cents or the fair value as determined by the Manager for the Attached Securities; or
- (b) by private treaty or public auction, if ASIC has given any necessary relief from the provisions of the Corporations Act and if the Manager complies with the conditions of that relief.

At any time before a sale or disposition the forfeiture may be cancelled upon such terms as the Manager thinks fit.

4.10 Holder of forfeited Units

The holders of Partly Paid Units and Attached Securities which have been forfeited cease to be a Member in respect of the forfeited Units and ceases to be a member of each Stapled Entity in respect of the Attached Securities (and has no claims or demands against the Manager or the Trust in respect of the forfeited Units and the forfeited Attached Securities) but remains liable to pay to the Manager all moneys which at the date of forfeiture were payable by the former Member to the Manager in respect of the forfeited Units (including interest owing under 4.6 and expenses) but the former Member's liability ceases if and when the Manager receives payment in full of all such money and, if applicable, interest in respect of the forfeited Units.

4.11 Evidence of forfeiture

A statement signed by a duly authorised officer of the Manager that a Partly Paid Unit and the Attached Securities have been duly forfeited on a date stated therein is conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the forfeited Units and the Attached Securities.

4.12 Consideration for forfeited Units

Where a Partly Paid Unit and relevant Attached Securities are forfeited pursuant to this clause 4 the Manager may receive the consideration, if any, given for a forfeited Unit and forfeited relevant Attached Securities on the sale or disposal, and the Manager may execute a transfer of such Unit and relevant Attached Securities in favour of the persons to whom the Unit and relevant Attached Securities are sold or disposed of and those persons must then be registered as the holders of the Units and relevant Attached Securities and are not obliged to ensure that any part of the money which the persons have paid for the Units and relevant Attached Securities is paid to the former holder of the Units nor shall the person's title to the Units or the Attached Securities be affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Unit or the relevant Attached Securities.

4.13 Deductions from consideration for forfeited Units

Where forfeited Units are sold or disposed of for cash, the Manager must deduct from the amount of the consideration the amount of the instalment owing at the date of forfeiture together with interest (if any) payable thereon and a sum representing an amount which has been or will be incurred for commissions, stamp duties, transfer fees and other usual charges, if any, on the sale or disposal of the Unit and any expenses associated with the forfeiture or any proceedings brought against the Member to recover the instalment or part thereof owing. The Manager may retain the amounts so deducted, but the balance remaining must be paid to the Member whose Units were forfeited.

4.14 Joint holders

Joint holders of Partly Paid Units are jointly and severally liable to pay all amounts due and payable on the Partly Paid Units held by them.

4.15 Rights and obligations attaching to a Partly Paid Unit are proportionate

Subject to the Corporations Act and the provisions of this constitution, the rights and obligations attaching to a Partly Paid Unit will be in proportion to the extent to which that Unit is paid up.

5 Classes of Units

Subject to the Corporations Act, the Manager may from time to time without amending this constitution, issue Units in different Classes with different rights, obligations and restrictions attaching to them. The Manager may from time to time prescribe other rights, obligations and restrictions pertaining to those Classes which are not inconsistent with the provisions of this constitution or contrary to the Corporations Act.

6 Application Price for Units⁵

6.1 Initial Units and Units issued during initial public offer

- (a) The first 10 Units (“**Initial Units**”) to be issued on the initial settlement of the Trust⁶ in accordance with clause 22.1 will be issued at an Application Price of \$0.99 per Unit.
- (b) Unless clause 6.6 applies, all Units to be issued between the date the Trust becomes a Registered Scheme and the First Closing Date (the “**Initial Public Offer Period**”) will be issued at an Application Price of \$1.38.

⁵ Required to be included by Section 601GA(1)(a)

⁶ See “Duration of the Trust”

6.2 While Units are not Officially Quoted

- (a) Subject to Clause 6.1 and paragraph 6.2 (b), while Units are not Officially Quoted the Application Price for a Unit must be calculated as:

$$A + B$$

$$C + D$$

where

A = Net Asset Value

B = Transaction Costs

C = number of Fully Paid Units in issue

D = Paid-up Proportion

and the application price may be payable either in full on application or by such instalments as the Manager determines in accordance with clause 4.

- (b) Where, before Units are Officially Quoted, Units are to be issued to the Alinta Walkaway Sellers and to the Lake Bonney 2 Sellers under the Acquisition Agreements, the Application Price is \$1.38. The consideration for the issue of those Units, to be provided in accordance with clause 7.3, must be cash or cash equivalent, or property valued as at a time not more than one month before the Units are issued, at fair market value or using a valuation methodology approved by Resolution. This paragraph 6.2(b) ceases to apply when the Trust becomes a Registered Scheme.

6.3 Determination of variables in clause 6.2

Each of the variables in clause 6.2 must be determined as at the next Valuation Time after:

- (a) the Manager receives the application for Units; or
- (b) the Manager receives the application money, or the property against which Units are to be issued or vested in the Manager,

whichever happens later.

6.4 While Units are Officially Quoted

- (a) Subject to clause 6.1(b) and paragraphs (b) and (c) of this clause 6.4, while Units are Officially Quoted, the application price for any Unit will be equal to the Market Price for the Units or, where Stapling applies, the Market Price of Stapled Securities minus the application price of the Attached Securities, or the amount determined by the Manager in accordance with clause 6.5.
- (b) The Manager may determine a different Application Price to that which would apply under paragraph (a) of this clause 6.4 in relation

to the issue of any Units to the extent permitted by and in accordance with the Listing Rules and the conditions of any applicable ASIC Relief, in the case of:

- (i) offers made at substantially the same time to those persons who were Members on a date determined by the Manager not being more than 30 days immediately prior to the offer, where:
 - (A) all Members are offered Units at the same Application Price on a pro rata basis (whether or not the right of entitlement is renounceable); and
 - (B) the Application Price is not less than 50% of the Market Price for the Units or, where Stapling applies, the Market Price of Stapled Securities minus the application price of Attached Securities, as at the date not more than 5 Business Days prior to the date of the offer document under which the offer is made;

but, subject to the Listing Rules and any applicable ASIC Relief, the Manager is not required to offer Units under this clause to persons whose address on the Register is in a place other than Australia, and such other jurisdiction (if any) as the Manager may determine;

- (ii) a distribution reinvestment, where the Application Price is determined in accordance with clause 11.15;
 - (iii) Units issued upon the exercise of an Option, where the Application Price is determined in accordance with clause 3.6(b); or
 - (iv) a placement of Units, a security purchase plan or any other case where the terms of applicable ASIC Relief allow.
- (c) While Units are Officially Quoted, if any further Units are to be issued to the persons referred to in clause 6.2(b) under the Acquisition Agreements the Application Price for those Units is \$1.38.

6.5 Determination of Application Price where Stapled Securities are issued

Where:

- (a) Stapling applies;
- (b) as a consequence, a Unit is to be issued as part of a Stapled Security; and
- (c) this constitution contains a provision for the calculation or determination of the application price for the Stapled Security but not for the Unit,

the Manager must determine what part of the application price of a Stapled Security is to represent the Application Price of a Unit for the purposes of this constitution.⁸

Unless otherwise agreed between the Manager and the Stapled Entities the application price of a Stapled Security will be allocated between the Application Price of the Unit and the application price of the Attached Securities in the ratio that the net assets (adjusted for the net market value of their investments) of each of the Trust and the Stapled Entities at the end of the relevant period immediately prior to the issue bears to the amount of the aggregate net assets (adjusted for the net market value of their investments) of the Trust and the Stapled Entities at that time.

6.6 Initial Public Offer Period

- (a) This clause 6.6 applies from the later of:
 - (i) the time ASIC Relief is granted that permits Units to be issued in accordance with this clause; and
 - (ii) the time the Manager decides that the Application Price for Units issued during the Initial Public Offer Period will be determined under this clause 6.6 rather than under clause 6.1(b).
- (b) The Manager may at any time issue Units to any person during the Initial Public Offer Period at a price and on terms determined by it, provided that:
 - (i) the Manager complies with any Listing Rules applicable to the issue and any applicable ASIC Relief;
 - (ii) while Stapling applies, the same persons are at the same time offered identical numbers of Attached Securities which will be Stapled to the Units offered;
 - (iii) the price is at least equal to the Initial Public Offer Institutional Price;
- (c) Where Units to be issued under this clause 6.6 are to be quoted as part of a Stapled Security and it is proposed to issue Stapled Securities at an application price less than the aggregate of the NAV Prices of the Unit and the Attached Securities, the aggregate of the relevant Application Price and the application price of the Attached Securities must be not less than 90% of the aggregate NAV Prices of the Unit and the Attached Securities as at a date not more than 5 ASX Business Days prior to the date on which the Offer Document pursuant to which the offer is made is lodged with ASIC.
- (d) In all other cases, where Units are to be issued under this clause 6.6 and it is proposed to issue the Units at an Application Price less than the NAV Price of a Unit, the relevant Application Price must be not

⁸ NB: This requires ASIC relief

less than 90% of the NAV Price of a Unit as at a date not more than 5 ASX Business Days prior to the date on which the Offer Document pursuant to which the offer is made is lodged with the ASIC.

While Stapling applies, an offer of Units under this clause 6.6 may only be accepted if at the same time the offeree accepts that offer of Units and the offer of Attached Securities referred to above in this clause 6.6.

6.7 Issue of Units to Alinta Limited's shareholders

- (a) Notwithstanding anything to the contrary in this clause 6, the Manager may issue approximately 130,176,874 Units as part of BBW Securities (as defined in the Scheme) to Alinta Limited's shareholders under the Scheme (or to the Nominee as defined in the Scheme) at an Issue Price per Unit equal to 99.70% of the Value of a BBW Security (and on the basis that the Manager must also pay to Bidder (as defined in the Scheme) an amount equal to 99.70% of \$9.5 million in cash in respect of the issue of the BBW Securities and the receipt of the issue price for the BBW Securities).
- (b) The Issue Price of the Units issued under this clause 6.7 may be provided in the form of either cash or promissory notes (or a combination of the two) and by any one or more parties.
- (c) For the purposes of this clause 6.7:

Scheme means the scheme of arrangement between Alinta Limited and its shareholders expected to be approved by the Federal Court in or about August 2007.

Value means an amount per Unit equal to \$211 million divided by the total number of Units issued pursuant to this clause 6.7.

7 Application procedure

7.1 Application form

An applicant for Units must complete a form approved by the Manager if the Manager so requires. The form may be transmitted electronically if approved by the Manager.

7.2 Application for identical number of Attached Securities

While Stapling applies, on making an application for Units, the same person must at the same time make an application for an identical number of Attached Securities.

7.3 Payment

Payment in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or a custodian appointed by it (accompanied by a recent valuation of the property, if the Manager requires), must:

- (a) accompany the application;
- (b) be received by or made available to the Manager or the custodian within such period before or after the Manager receives the application form as the Manager determines from time to time or as the terms of issue of the relevant Partly Paid Unit contemplate; or
- (c) comprise a reinvestment of a distribution in accordance with this constitution⁹.

If the Manager accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property must be paid by the Member either directly or by deducting them from the market value of the property before the number of Units to be issued is calculated, as the Manager decides.

7.4 Manager may reject

The Manager may reject an application in whole or in part without giving any reason for the rejection¹⁰.

7.5 Minimum amounts

The Manager may set a minimum application amount and a minimum holding for the Trust and alter or waive those amounts at any time¹¹.

7.6 Manager must reject application

While Stapling applies, the Manager must reject an application for Units if the applicant does not apply at the same time for an identical number of Attached Securities or if an identical number of Attached Securities will not be issued to the applicant at the same time as the issue of Units to the applicant.

7.7 Issue Date

Except in the case of a reinvestment of distribution in accordance with this constitution, Units are taken to be issued when:

- (a) the Manager accepts the application; or
- (b) the Manager receives the application money, or the property against which Units are to be issued is vested in the Manager,

whichever happens later.

Units which are issued on a reinvestment of distribution in accordance with this constitution are taken to be issued on the day the distribution is applied in payment for the Units.

⁹ See "Income and distributions to Members"

¹⁰ Refer Listing Rule 10.11 if the Trust is Listed - restriction on issue of Units to related parties.

¹¹ If the Trust is Listed, see "Small holdings".

Subject to the Corporations Act¹², the Manager may hold applications without accepting them for such period as it determines and, in particular, may hold applications received prior to the First Closing Date until the First Closing Date.

7.8 Uncleared funds

Units issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if the funds are not subsequently cleared or the property does not vest in the Manager within 1 month of receipt of the application.

7.9 Register

Subject to the Corporations Act, a single register may be kept in which details of the holders of Units and the holders of Attached Securities are recorded.

7.10 Holding statements

Subject to the Corporations Act, while the Trust is admitted to an uncertificated trading system, a joint holding statement may be issued to evidence the holding of Stapled Securities comprising Units and Attached Securities.

8 Redemption Price of Units¹³

8.1 Redemption Price

A Unit must only be redeemed at a Redemption Price calculated as:

$$\frac{A - B}{C + D}$$

less in the case of a Partly Paid Unit, the amount of the Application Price which has not been paid, where:

A = Net Asset Value

B = Transaction Costs

C = number of Fully Paid Units in issue

D = Paid-up Proportion.

8.2 Determination of variables

Each of the variables in clause 8.1 must be determined:

- (a) while the Trust is Liquid, as at the close of business on the day before the payment of the Redemption Price; or

¹² Section 1017E(4)

¹³ Required to be included by Section 601GA(4) if the Manager wishes to offer Members a right to withdraw from the scheme.

(b) while the Trust is not Liquid, at the time the withdrawal offer closes.

8.3 Rounding

The Redemption Price may be rounded down to the nearest whole cent.

9 Redemption procedures¹⁴

9.1 While Officially Quoted

While Units are Officially Quoted, none of the provisions of this clause 9 apply, except this clause 9.1 and clauses 9.14, 9.15, 9.16 and 9.17.

9.2 Request for redemption

A Member may make a request for the redemption of some or all of their Units in any manner approved by the Manager and, while the Trust is Liquid, the Manager may (but is not required to) give effect to that request at the time and in the manner set out in this clause 9.

9.3 While the Trust is Liquid - Manager may redeem

While the Trust is Liquid, the Manager may decide to satisfy a Redemption Request either in relation to all or some of the Units which are the subject of the request.

9.4 While the Trust is liquid - time for payment of Redemption Price

While the Trust is Liquid, if the Manager decides to satisfy a Redemption Request¹⁵ in respect of a Unit it must pay from the Assets the Redemption Price calculated in accordance with this constitution. The payment must be made within 60 days of the Manager's decision.

9.5 Manager not obliged to pay Redemption Price out of own funds

The Manager is not obliged to pay any part of the Redemption Price out of its own funds.

9.6 Aggregate Redemption Price less than Minimum Holding amount

While the Trust is Liquid, if compliance with a Redemption Request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current Minimum Holding amount, the Manager may treat the Redemption Request as relating to the balance of the Member's holding.

¹⁴ These procedures must be fair to all Members: Section 601GA(4)

¹⁵ There is no legal requirement to offer a right of withdrawal. When setting up a new trust the Manager can choose whether or not to offer such a right. For a registered scheme, if a right is offered, it must be specified in the constitution.

9.7 Increase of Minimum Holding amount

While the Trust is Liquid, if the Manager increases the Minimum Holding amount, the Manager may after giving 30 days' notice to a Member who holds Units with an aggregate Redemption Price less than the then current Minimum Holding amount redeem that Member's holding without the need for a Redemption Request.

9.8 When Trust is not Liquid¹⁶

While the Trust is not Liquid¹⁷, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Manager which, if the Trust is a registered scheme, is in accordance with the provisions of the Corporations Act¹⁸. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.

9.9 Manager not obliged to make a withdrawal offer

The Manager is not at any time obliged to make a withdrawal offer.

9.10 Redemption request received before withdrawal offer

If the Manager receives a Redemption Request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

9.11 Clauses applicable whether or not the Trust is Liquid

Clauses 9.12 and 9.13 apply whether or not the Trust is Liquid.

9.12 Sums owed to Manager

The Manager may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer (if applicable) any money due to it by the Member.

9.13 Transfer of Assets

The Manager may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a Redemption Request, pursuant to a withdrawal offer (if applicable) or in payment of a distribution. These Assets with any cash paid must be of equal value to the total amount due to the Member pursuant to the Redemption Request, withdrawal offer or distribution (based on a valuation done within one month before the date of the proposed transfer). The costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

¹⁶ Required to be included by Section 601GA(4)(c) if Members are to have right to withdraw

¹⁷ For definition of a liquid scheme see Section 601KA(1)

¹⁸ Refer sections 601KB to 601KE

9.14 Manager's power of compulsory redemption

Subject to the Listing Rules, while the Trust is Liquid the Manager may redeem the Units of any Member without the need for a Redemption Request if the Member holds less than the Minimum Holding.

9.15 Buy-back of Units¹⁹

While the Trust is Listed, the Manager may, subject to and in accordance with the Corporations Act (including the conditions of any applicable ASIC Relief) and any requirements under the Listing Rules, purchase Units or where Stapling applies, Stapled Securities and cause the Units which in part comprise those Stapled Securities to be cancelled. No Redemption Price is payable upon cancellation of the Units. Where the Units comprise part of Stapled Securities the Manager may only buy back and cancel the Units if the Attached Securities are also the subject of contemporaneous buy-back and cancellation. Where Units are purchased as part of a Stapled Security pursuant to a buy-back arrangement, the Manager must determine what proportion of the price paid for the Stapled Security is to be paid from the Assets of the Trust.

9.16 Redemption while Stapling applies

While Stapling applies the Manager may not redeem a Unit unless each Stapled Entity also redeems or buys back and cancels the corresponding Attached Securities or the Attached Securities are unstapled from the Unit to be redeemed.

9.17 Discretionary redemption

Subject to the Corporations Act and the Listing Rules, if the Manager is not obliged to give effect to a Redemption Request, it may redeem some or all of the Units which are the subject of the request.

10 Valuation of Assets

10.1 Manager may value

The Manager may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act.²⁰

10.2 Determination of Net Asset Value

The Manager may determine Net Asset Value at any time, including more than once on each day.

10.3 Value of Assets

- (a) Subject to paragraph 10.3(b), the value of an Asset for the purpose of calculating Net Asset Value will be its Market Value²¹.

¹⁹ See Listing Rule 7.36

²⁰ See section 601FC(j) for Scheme Operator's obligations concerning valuation

- (b) If ASIC grants relief from the requirements of the Corporations Act to allow the Manager to determine in its discretion whether an item should be recognised and the amount attributable to that particular item for the purpose of calculating Net Asset Value, then the Manager may, subject to the conditions of the relief (if any) make those determinations.

11 Income and distributions to Members

11.1 Manager must determine Distributable Income

The Manager must determine the distributable income of the Trust for each Distribution Period (“**Distributable Income**”). The Manager may do this by way of a standing determination of principles for calculating the Distributable Income, and may change the principles from time to time.

11.2 Distributable income

If no determination is made or to the extent to which no determination is made under clause 11.1 prior to the end of the Distribution Period, Distributable Income for that Distribution Period will be:

- (a) subject to (b), the net income of the Trust calculated in accordance with Accounting Standards; but
- (b) not less than the amount which if distributed would prevent the Manager being liable to tax on the income of the Trust if the Distribution Period were a Financial Year.

11.3 Preparation of statutory accounts

The preparation of the accounts of the Trust in accordance with current Australian accounting standards and generally accepted accounting principles is not to be regarded as a determination of the method for calculating the Distributable Income of the Trust pursuant to clause 11.1.

11.4 Classification

The Manager may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

11.5 Distribution account

The Distributable Income of the Trust in respect of a Distribution Period may be transferred to a special account in the name of the Manager or its agent²² and designated a distribution account. Any amount in the distribution account does not form part of the Assets but must be held by the Manager, on trust for distribution among the Members entitled to that Distributable Income. Members entitled to that Distributable Income are not entitled to any

²¹ ASIC Policy Statement 134, paragraph 29: constitution should set out how scheme property will be valued.

²² The custodian or registrar for the Trust

income earned by the Manager by investing any money standing to the credit of the distribution account pending disbursement. The Manager may invest any moneys standing to the credit of the distribution account pending disbursement and the Manager shall have the same powers and responsibilities in relation to the management of such moneys as it has in relation to the Assets. Income earned from the investment is deemed to be income of the Trust and must be dealt with accordingly.

11.6 Present entitlement

A person who at any time during the Financial Year is or has been a Member, is presently entitled as at midnight on the last day of the Financial Year to the Distributable Income of the Trust for the Financial Year, in the proportion that the Income Distributions made (or allocated under the clause next following) to the Member in respect of the Financial Year bear to the sum of the Income Distributions made (or allocated under the clause next following) to all persons who are or have been Members at any time during the Financial Year.

11.7 Income Distributions

An Income Distribution in respect of a Member means an amount calculated by the Manager as follows:

- (a) subject to clauses 11.8, 11.10(b) and 28 and the terms of issue of any Units, in respect of a Distribution Period ending on a Distribution Calculation Date other than 30 June in any year, an amount calculated as follows:

$$\frac{A \times C}{B}$$

where

A is the aggregate of the number of Units held by the Member as at the close of business on the last Business Day of that Distribution Period

B is the aggregate of the number of Units on issue as at the close of business on that last Business Day of that Distribution Period

C is an estimate of the Distributable Income for the Distribution Period calculated as if the Distribution Period were a year of income; and

- (b) subject to clauses 11.8 and 28 and the terms of issue of any Units, in respect of a Distribution Period ending on 30 June in any year, an amount calculated as follows:

$$\frac{A \times C}{B}$$

where

- A is the aggregate of the number of Units held by the Member as at the close of business on the last Business Day of that Distribution Period
- B is the aggregate of the total number of Units on issue as at the close of business on that last Business Day of that Distribution Period
- C is the amount (if any) by which the Distributable Income for the Financial Year exceeds the aggregate of the estimates of Distributable Income calculated for the purposes of variable C in paragraph (a) above in respect of the previous Distribution Periods of the Financial Year.

11.8 Partly Paid Units

The rights of a Member to receive distributions of income in respect of Partly Paid Units they hold are as determined by the Manager and provided in the terms of issue of the relevant Units. The Manager may determine that either:

- (a) a Unit which is a Partly Paid Unit participates in the distribution of income as if it were a Fully Paid Unit; or
- (b) a Unit which is a Partly Paid Unit for any part of a Distribution Period participates in the distribution of income for that Distribution Period, subject to the terms of issue of the Unit, according to:
 - (i) the proportion or different proportions of the Application Price paid up on the Unit; and
 - (ii) the length of time during the Distribution Period for which the proportion or different proportions of the Application Price were paid up.

For the purposes of these calculations, if an instalment of the Application Price of a Partly Paid Unit is paid into the Trust, that Unit may be eligible for increased participation in income at a date determined by the Manager but at the latest from the first day of the month immediately following the date set for payment of the instalment; or

- (c) a Unit which is a Partly Paid Unit participates in the distribution of income as the terms of its issue provide;

but if the Manager does not make such a determination, paragraph (a) will apply.

11.9 Satisfaction of present entitlement

The present entitlement of a Member to Distributable Income of the Trust for a Financial Year will be satisfied by the payment of the Income Distributions to the Member in respect of the Financial Year. Income Distributions must be paid to a Member within three months after the Distribution Calculation Date.

11.10 Other distributions

- (a) Subject to paragraph 11.10(b), the Manager may at any time distribute any amount of capital to Members pro rata according to the number of Fully Paid Units held plus the number obtained by multiplying the number of Partly Paid Units held by the proportion to which those units are paid up, as at a time decided by the Manager, or distribute income to Members in accordance with the proportions in clause 11.7. The distribution may be in cash or by way of additional Units (including Units which are components of Stapled Securities).
- (b) Without limiting paragraph 11.10(a), the Manager may distribute any amount of capital and/or income pro rata to persons who are Members as at a date determined by the Manager which is before the First Closing Date. The Manager must pay this distribution (if any) to each Member entitled to participate in the distribution on the latest of:
 - (i) the date the Member or persons for whom the Member acts as nominee submit one or more valid application forms under the Offer Document for the number of Stapled Securities which equals the amount of the distribution divided by the applicable Application Price;
 - (ii) the date the Member gives an irrevocable payment direction to the Manager to apply the Member's distribution towards the Application Price for the Stapled Securities; and
 - (iii) the First Closing Date,

but the time for payment of the distribution must be not later than the next following 30 June after the Manager's determination is made.

11.11 Manager may permit or require reinvestment

The Manager may decide whether to permit or require the Members to reinvest some or all of any distribution to acquire Units.

11.12 Notification of reinvestment procedures

If the Manager decides to permit or require reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.

11.13 Deemed application if reinvestment applies

If reinvestment applies, the Manager is deemed to have received and accepted an application to reinvest the distribution after the deduction of any Tax which the Manager is required to deduct on the date upon which the distribution is to be paid.

11.14 Acquisition of identical number of Attached Securities

While Stapling applies no reinvestment may occur unless contemporaneously with the reinvestment in additional Units the same person subscribes for or purchases an identical number of Attached Securities which when issued or

acquired (respectively) are then Stapled to the additional Units. The Manager may make provision for and make payment of the subscription or purchase price for such Attached Securities out of the distribution or income (as applicable) which is otherwise available for reinvestment.

11.15 Application Price while Listed if reinvestment applies

- (a) If reinvestment applies, while the Units in the Trust are Listed the aggregate of the Application Price for each additional Unit and the application price for the Attached Securities upon reinvestment is the average VWAP for Stapled Securities over the 10 Trading Days ending on the Trading Day which is 3 Trading Days before the allotment date for the Stapled Securities for the relevant Distribution Period (unless the Manager believes that this calculation does not provide a fair reflection of the market price of the Stapled Securities during this period in which event there shall be substituted for the amount so calculated the market price of the Stapled Security as determined by an expert independent of the Manager whose identity and instructions will be determined by the Manager) less such discount, if any, not exceeding 10% as the Manager may determine.

The allocation of the application price for a Stapled Security between the Application Price for each Unit and the application price for the Attached Securities is to be determined in accordance with clause 6.5. If the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the money representing the fraction (rounded down to the nearest cent) will be held for future reinvestment on behalf of the relevant Stapled Security Holder in the Trust and the Stapled Entities at the next time that reinvestment is to occur, in such proportions as the Manager and the Stapled Entities may determine. If Stapling ceases to apply the Application Price for each Unit is to be calculated in the manner above but based on the sale price of the Units.

- (b) If reinvestment applies while the Units are not Listed, the Application Price on reinvestment is the price that would otherwise apply to the issue of a Unit under clause 6.

11.16 Money held for future reinvestment

Whenever under this constitution or by law money is held on behalf of a Member for future reinvestment the money so held may in the discretion of the Manager be aggregated and on each occasion on which the aggregated amount reaches the Application Price of a Unit and the application price of the Attached Securities be applied in the subscription for a new Unit and new Attached Securities for issue to the Stapled Security Holder.

11.17 Units issued on reinvestment

Units issued under clauses 11.11 to 11.17 inclusive are to participate fully for income in respect of the Distribution Period in which they are issued.

11.18 Position on transfer of Units

Income to which a Member is presently entitled when a transfer or transmission of Units is Registered remains credited to the transferor.

11.19 Position on transfer of Assets

The Manager may effect a distribution to Members by transferring Assets to all Members rather than paying in cash or issuing additional Units. If the Manager wishes to do so, it must effect the distribution to all Members in the same way. The Assets transferred to each Member must be of the same type, have the same rights and be fully paid. The Assets transferred may comprise solely a beneficial interest in tangible or intangible property. In each case, where Assets other than cash are to be transferred to Members (or a nominee on behalf of a Member), each Member authorises the Manager:

- (a) to act as their agent to agree to obtain the Assets; and
- (b) where the Assets comprise shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme.

The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the distribution (based on a valuation done within one month before the date of the proposed transfer). If the Manager requires, the costs involved in transfer of those Assets must be paid by the Member or deducted from the distribution due to the Member.

11.20 Deductions from distributable income

The Manager may deduct from any distributable income or other distribution payable to a Member any sums of money presently payable by the Member to the Manager on account of an instalment due in respect of Units or otherwise.

12 Payments

12.1 Manner of payment to Members

Money payable by the Manager to a Member may be paid in any manner the Manager decides.

12.2 Unpresented cheques

Cheques issued by the Manager that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money is to be held by the Manager for the Member or paid by the Manager in accordance with the legislation relating to unclaimed money unless the Manager in its discretion decides to reinvest the money in Units and Attached Securities in which event the provisions of clauses 11.11 to 11.17 will apply.

12.3 Unsuccessful transfers

Where the Manager attempts to make a payment to a Member by electronic transfer of funds or any other means and the transfer is unsuccessful, the money may be held for the Member as a non-interest bearing deposit until it is claimed or required to be dealt with in accordance with applicable laws relating to unclaimed moneys.

12.4 Only whole cents to be paid

Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.

12.5 Payment to joint Members

A payment to any one of joint Members will discharge the Manager in respect of the payment.

12.6 Manager may deduct amounts

The Manager may deduct from any amount to be paid to a person who is or has been a Member, or received from a person who is or has been a Member:

- (a) any amount of Tax (or an estimate of it); or
- (b) any other amount owed by the Member to the Manager or any other person,

which the Manager is required or authorised to deduct in respect of that payment or receipt by law or by this constitution or which the Manager considers should be deducted.

13 Powers of the Manager

13.1 General powers

Subject to this constitution, the Manager has all the powers in respect of the Trust that it is possible under the law to confer on a trustee as though it were the absolute owner of the Assets and acting in its personal capacity.

13.2 Contracting powers²³

Without limiting the effect of clause 13.1, the Manager in its capacity as trustee of the Trust has power to:

- (a) incur all types of obligations and liabilities including guarantees; and
- (b) enter into an arrangement with a person to underwrite the subscription or purchase of Units or Options on such terms as the Manager determines. Unless the agreement between the Manager and the underwriter expressly states the contrary, the underwriter will not be an agent or delegate of the Manager.

13.3 Borrowing powers

Without limiting the effect of clause 13.1 or clause 13.2, the Manager in its capacity as trustee or responsible entity of the Trust has power to borrow and raise money (whether or not on a secured basis and in any manner whatsoever including all forms of financial accommodation and/or debt facilities, hedging arrangements, convertible notes and derivatives), to grant all types of security (whether for obligations of the Manager or another person) and to incur all types of obligations and liabilities, including guarantees and indemnities.

13.4 Investment powers

Without limiting the effect of clause 13.1, the Manager may in its capacity as trustee or responsible entity of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.²⁴

13.5 Power of delegation²⁵

The Manager may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Manager's power, including the power to appoint in turn its own agent or delegate.

13.6 Protection and assistance for those dealing with agents and delegates

The Manager may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Manager thinks fit.

13.7 Agents and delegates may be associates

The agent or delegate may be an associate of the Manager.²⁶

13.8 Exercise of discretion

The Manager may in its absolute discretion decide how and when to exercise its powers.

13.9 Registration of the Trust

Without limiting the effect of clause 13.1, the Manager may in its capacity as trustee of the Trust apply for registration of the Trust as a registered scheme and for this purpose the Manager is authorised on its own behalf and on behalf of each Member to do all things necessary to effect registration.

13.10 Listing of the Trust

The Manager may apply for the Trust to be Listed and Units to be Officially Quoted, including as Stapled Securities, at any time after the First Closing Date and for this purpose the Manager is authorised on its own behalf and on behalf of each Member and holder of Attached Securities to do all things necessary to effect a Listing.

13.11 Power to unstack Units

If Units comprise part of Stapled Securities, subject to the Corporations Act and, while the Units are Officially Quoted, the Listing Rules and approval by Resolution, the Manager may at any time apply to have the Stapled Securities unstacked and, if the Stapled Securities are Officially Quoted, removed from quotation.

²⁴ Subject to Section 601FC(4)

²⁵ See also Section 601FB

²⁶ Subject to Part 5C.7

13.12 Power to staple additional Securities

The Manager may, subject to the Corporations Act and, while the Units are Officially Quoted, the Listing Rules, cause the Stapling of any other security or securities to the Units.

14 Retirement of Manager

14.1 Voluntary retirement

Subject to law, the Manager may on one month's notice to Members, retire as the trustee or responsible entity of the Trust²⁷. If permitted by law or by any relief from the Corporations Act granted by the ASIC, the Manager may appoint its successor by deed.

14.2 Compulsory retirement

The Manager must retire as the responsible entity of the Trust when required by law²⁸.

14.3 Release

When it retires or is removed, the Manager is released from all obligations in relation to the Trust arising after the time it retires or is removed.²⁹

14.4 Retirement benefit

Subject to the Corporations Act³⁰, the Manager is entitled to agree with the incoming manager to be remunerated by, or to receive a benefit from, the incoming manager in relation to:

- (a) entering into an agreement to submit a proposal for its retirement to a meeting of Members, and nominating to the Members the incoming manager as its replacement, or
- (b) its retirement as Manager,

and is not required to account to Members for such remuneration or benefit.

15 Notices to Members

15.1 Form of notices

Subject to the Corporations Act, a notice or other communication required under this constitution to be given to a Member must be given in writing (which includes a fax) or in such other manner as the Manager determines,

²⁷ See Section 601FL. The change does not take effect until the ASIC alters its records: Section 601FJ

²⁸ See Section 601FM and 601FA.

²⁹ See section 601FR for the Scheme Operator's obligation to transfer records, etc. Section 601FS restricts this release.

³⁰ See sections 601FC(1)(c) and 601FD(1)(c).

and be delivered or sent to the Member at the Member's physical or electronic address last advised to the Manager for delivery of notices.

15.2 Cheques payable to Members

A cheque payable to a Member may be posted to the Member's physical address or handed to the Member or a person authorised in writing by the Member³¹.

15.3 Joint Members

In the case of joint Members, the physical or electronic address of the Member means the physical or electronic address of the Member first named in the Register.

15.4 Receipt of communications

A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax (except a fax containing a notice of meeting of Members) is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the Corporations Act³², the Manager may determine³³ the time at which other forms of communication will be taken to be received.

16 Notices to the Manager

16.1 Form of notices

A notice required under this constitution to be given to the Manager must be given in writing (which includes a fax), or in such other manner as the Manager determines.

16.2 When notice effective

The notice is effective only at the time of receipt.

16.3 Signing of notices

The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member³⁴ unless the Manager dispenses with this requirement.

³¹ See "Manager may rely" under "Rights and liabilities of Manager"

³² See Section 601FC(1)(d)

³³ See Section 252G(4)

³⁴ See "Manager may rely" under "Rights and liabilities of Manager"

17 Meetings of Members

17.1 Convening of meetings

The Manager may at any time convene a meeting of Members, or of Members of a Class, and must do so if the Corporations Act requires.³⁵

17.2 Manager may determine

Subject to the specific provisions of this constitution relating to meetings of Members and to the Corporations Act³⁶, the Manager may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted.

17.3 Notice of meeting

- (a) While the Trust is not a Registered Scheme, the Manager may convene a meeting by giving Members 5 Business Days' notice.
- (b) While the Trust is a Registered Scheme, notice of a meeting of Members must be given in accordance with the Corporations Act.

17.4 Calculation of period of notice

In computing the period of notice under clause 17.3, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

17.5 Quorum

The quorum for a meeting of Members is at least 2 Members present in person or by representative or proxy holding or representing the holders of at least 10% of the Units on issue unless the Trust has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.

17.6 No quorum

If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:

- (a) if convened on the requisition of Members - dissolved; or
- (b) otherwise - adjourned to the same day in the next week and same time and place, or to such other day, time and place as the Manager decides by notice to the Members and others entitled to notice of the meeting.

At any adjourned meeting, those Members present in person or by proxy constitute a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

³⁵ Refer Part 2G.4

³⁶ Refer Part 2G.4

17.7 Chairman

Subject to the Corporations Act³⁷ the Manager may appoint a person to chair a meeting of Members.

17.8 Role of chairman

The chairman of a meeting of Members:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting; and
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting.

and a decision by the chairman under this clause 17.8 is final.

17.9 Postponement or cancellation

The chairman has power to cancel a meeting or postpone a meeting for any reason to such place and time as the chairman thinks fit.

17.10 Notice of Cancellation or postponement of meeting

Notice of cancellation or postponement of a meeting of Members must state the reason for cancellation or postponement and be given:

- (a) to each Member individually; and
- (b) to each other person entitled to be given notice of a meeting of Members under the Corporations Act.

17.11 Contents of notice or postponement of meeting

A notice of postponement of a meeting of Members must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

17.12 Number of clear days for postponement of meeting

The number of clear days from the giving of a notice postponing the holding of a meeting of Members to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by this constitution or the Corporations Act.

³⁷ Refer Part 2G.4 and Section 601FC(1)

17.13 Business at postponed meeting

The only business that may be transacted at a meeting of Members the holding of which is postponed is the business specified in the notice convening the meeting.

17.14 Proxy, attorney or representative at postponed meeting

Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a representative, a proxy or an attorney or a representative is authorised to attend and vote at a meeting of Members to be held on a specified date or at a meeting of Members to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of representative,

then, by force of this clause, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of a representative unless the Member appointing the proxy, attorney or representative gives to the Manager notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

17.15 Proxies and voting

The provisions of the Corporations Act governing proxies and voting for meetings of members of registered schemes apply to the Trust.

17.16 Proxies containing some of the required information

The Manager may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

17.17 Adjournment of meeting

The chairman of a meeting of Members may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.

In exercising this discretion, the chairman may, but need not, seek the approval of the Members present. Unless required by the chairman, no vote may be taken or demanded by the Members present in respect of any adjournment.

Only unfinished business is to be transacted at a meeting resumed after an adjournment.

17.18 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

17.19 Demand for a poll

A poll may be demanded by at least 5 Members entitled to vote on the resolution, Members with at least 5% of the votes that may be cast on the resolution on a poll or by the chairman. A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

17.20 Declaration of poll

Unless a poll is properly demanded and the demand is not withdrawn, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Trust, is conclusive evidence of the fact. Neither the chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

17.21 Questions decided by majority

Subject to the requirements of the Corporations Act and the Listing Rules (if the Listing Rules apply), a resolution is taken to be carried if a simple majority of the votes cast on the resolution by Members entitled to vote on the resolution are in favour of it.

17.22 Poll

If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is the resolution of the meeting at which the poll was demanded.

A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately.

A demand for a poll may be withdrawn.

17.23 Equality of votes - no casting vote for chairman

If there is an equality of votes, either on a show of hands or on a poll, subject to the Corporations Act, the proposed resolution is to be taken as having been lost. The chairman of the meeting is not entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or proxy or attorney or representative.

17.24 Entitlement to vote

Subject to any rights or restrictions for the time being attached to any Class or Classes of Units and to this constitution:

- (a) on a show of hands, each Member present in person and each other person present as a proxy, attorney or representative of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote for each one dollar of the value of the Units held by the Member and each person present as proxy, attorney or representative of a Member has one vote for each one dollar of the value of the Units held by the Member that the person represents.

A Member is not entitled to vote at a general meeting in respect of Units which are the subject of a current Restriction Agreement for so long as any breach of that agreement subsists.

17.25 Voting on a poll for Partly Paid Units

If a Member holds Partly Paid Units, the number of votes the Member has in respect of those Units on a poll is one vote for every dollar of the value of the Partly Paid Units.

17.26 Joint Unitholders' vote

If a Unit is held jointly and more than one Member votes in respect of that Unit, only the vote of the Member whose name appears first in the Register counts.

17.27 Vote of shareholder of unsound mind

If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, then the Member's committee or trustee or any other person who properly has the management of the Member's estate may exercise any rights of the Member in relation to a meeting of Members as if the committee, trustee or other person were the Member.

17.28 Objection to voting qualification

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

17.29 Validity of vote in certain circumstances

A vote cast by a person as a proxy, attorney or representative is valid even if:

- (a) the previous revocation of that person's authority by the death of the holder of the Units in respect of which the vote is cast or otherwise;
or

(b) the execution of a transfer of those Units by that holder,

unless a notice in writing of the revocation or transfer has been received by the Manager or by the chairman of the meeting before the vote is cast.

17.30 Proxy form while Stapling applies

While Stapling applies, subject to the Corporations Act, the form of proxy used may be the same form as the Stapled Security Holder uses to appoint a proxy to vote on their behalf in respect of the Attached Securities which they hold.

17.31 Meetings by technology

A meeting of Members or any class of Members may be held by means of such telephone, electronic or other communication facilities as permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.

17.32 Other attendees

While Stapling applies, the Manager, the auditor of the Trust and the representatives of each Stapled Entity may attend and speak at any meeting, or invite any other person to attend and speak.

17.33 Joint meetings

While Stapling applies, meetings of Members may be held in conjunction with meetings of the holders of Attached Securities and, subject to the Corporations Act, the Manager may make such rules for the conduct of such meetings as the Manager determines.

17.34 Meetings of Option holders or Members of a Class

If any meeting of Option holders or Members holding a Class of Units is required to be held the foregoing provisions of this clause 17 will apply with any necessary amendments.

18 Rights and liabilities of Manager

18.1 Holding Units

The Manager and its associates may hold Units in the Trust, or hold interests or co-invest with the Trust in any related trust, partnership, company or other entity, in any capacity³⁸.

18.2 Other capacities

Subject to the Corporations Act³⁹, the Manager (or its associates) may:

³⁸ See Section 601FG, Section 253E and Part 5C.7

³⁹ Refer Part 5C.7

- (a) deal with itself (as trustee of the Trust or in another capacity), the Stapled Company and any other Stapled Entity, an associate or with any Member, including to redeem Units it has acquired as a result of forfeiture under clause 4.8;
- (b) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), the Stapled Company or any other Stapled Entity, an associate or with any Member or (when acting in a capacity other than as trustee of the Trust) retain for its own benefit any profits or benefits derived from any such contract or transaction; or
- (c) act in the same or a similar capacity in relation to any other managed investment scheme.

18.3 Manager may rely

The Manager may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Manager, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Manager who are in each case believed by the Manager in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Manager believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Trust; and
- (d) any other document provided to the Manager in connection with the Trust upon which it is reasonable for the Manager to rely;

and the Manager will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

18.4 Reference to exercising power or discretion

The reference to exercising any power or discretion includes carrying out the Manager's functions and duties and identifying Members' rights and interests.

19 Limitation of liability and indemnity in favour of Manager

19.1 Manager not liable except to the extent Corporations Act imposes liability

The Manager is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust except to the extent that the Corporations Act imposes such liability.

19.2 Limitation on Manager's liability

Subject to the Corporations Act, the liability of the Manager to any person other than a Member in respect of the Trust (including in respect of any contracts entered into as trustee of the Trust or in relation to any Assets) is limited to the Manager's ability to be actually indemnified from the Assets for that liability.

19.3 Indemnity in favour of Manager

The Manager is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust⁴⁰.

19.4 Indemnity includes acts and omissions of an agent or delegate

To the extent permitted by the Corporations Act⁴¹, the indemnity under clause 19.3 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.

19.5 Indemnity in addition to indemnity allowed by law

This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Manager retires or is removed from the office it holds in relation to the Trust.

19.6 Indemnity unaffected by unrelated breach of trust

The Manager may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy a liability to any creditor of the Manager (as trustee of the Trust) notwithstanding that the Trust may have suffered a loss or may have diminished in value as a consequence of any unrelated act, omission or breach of trust by the Manager or by any delegate or agent appointed by the Manager.

⁴⁰ See Section 601GA(2)

⁴¹ See Sections 601FB(2) and 601GA(2)

20 Liability of Members

20.1 Liability limited

Subject to clauses 20.2 and 20.3, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.

20.2 Recourse limited to the Assets

In the absence of separate agreement with a Member, the recourse of the Manager and any creditor is limited to the Assets.

20.3 Tax and User Pays Fees

The Manager is entitled to be indemnified by a Member or former Member to the extent that the Manager incurs any liability for Tax or User Pays Fees as a result of the Member's action or inaction, or as a result of an act or omission requested by the Member or former Member. The Manager may redeem some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

20.4 Joint Members

Joint Members and former joint Members are jointly and severally immediately liable in respect of all payments including payments of Tax to which clause 20.3 applies, and User Pays Fees.

20.5 Deficiency in the Assets

A Member need not indemnify the Manager if there is a deficiency in the Assets or meet the claim of any creditor of the Manager in respect of the Trust.

20.6 Restrictions on Members

Except as otherwise set out in this constitution, a Member:

- (a) must not interfere with any rights or powers of the Manager under this constitution;
- (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; or
- (c) may not require an Asset to be transferred to the Member.

21 Remuneration and expenses of the Manager

21.1 Management fee

Subject to the Corporations Act, the Manager is entitled to be paid out of the Assets a management fee of 2% per annum of the value of the Group Assets calculated daily and payable in arrears in respect of each Quarter or part

thereof, from the date the Trust commences to the date of final distribution in accordance with clause 23.3.

21.2 Waiver of fees

The Manager may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.

21.3 Expenses

All expenses incurred by the Manager in relation to the proper performance of its duties in respect of the Trust⁴² are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act. This includes expenses connected with:

- (a) this constitution and the formation of the Trust and registration of the Trust as a registered scheme;
- (b) the preparation, review, distribution and promotion of any prospectus or offering memorandum in respect of Units and/or Stapled Securities and other promotion of the Trust or the Stapled Entities;
- (c) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (d) any proposed acquisition, disposal or other dealing with an investment;
- (e) the investigation, negotiation, acquisition (including any costs associated with the establishment of an entity to hold property), development, registration, custody, holding, management, supervision, repair, maintenance, insurance, valuation, sale of or other dealing with property in which the Trust has a direct or indirect interest (or attempting or proposing to do so) and the receipt, collection or distribution of income or other Assets;
- (f) the services of asset managers, property managers, project managers, leasing agents, sales agents and collection agents appointed in respect of any property in which the Trust has a direct or indirect interest, which may include an associate of the Manager;
- (g) the administration or management of the Trust or its Assets and Liabilities including expenses in connection with the Register or the valuation of any Asset or the Trust as a whole;
- (h) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (i) underwriting of any subscription or purchase of Units and/or Stapled Securities including underwriting fees, handling fees, costs and expenses (including marketing and roadshow costs, travel and accommodation expenses and legal fees), amounts payable under

⁴² Refer Section 601GA(2)(b)

indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Manager of its obligations, representations or warranties under any such underwriting agreement;

- (j) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members and attending any meeting of the Stapled Entities;
- (k) Tax, including any amount charged by a supplier of goods or services, or both, to the Manager by way of or as a reimbursement for GST;
- (l) financial institution fees;
- (m) the engagement of agents (including real estate agents and managing agents), valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Manager;
- (n) the BBWS Management Agreement, including remuneration and expenses payable under that agreement by the Manager in its capacity as responsible entity of the Trust;
- (o) accounting and preparation and audit of the taxation returns, accounting records and accounts of the Trust;
- (p) termination of the Trust and the retirement or removal of the Manager and the appointment of a replacement;
- (q) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Manager, except to the extent that the Manager is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this paragraph (q) must be repaid;
- (r) all damages, expenses, payments, legal and other costs and disbursements incurred by the Manager in relation to or in connection with any claim, dispute or litigation (Claim) arising as a result of or in connection with any untrue representation or warranty contained in any document relating to any investment by the Trust including any project document in connection with the investment and any offering document or borrowing document in connection with the Trust except where the Claim arises out of the fraud or wilful default of the Manager;
- (s) the compliance committee established by the Manager in connection with the Trust (if any), including any fees paid to, or insurance premiums⁴³ in respect of, compliance committee members;

⁴³ See Section 601JG

- (t) while there is no compliance committee, any costs and expenses associated with the board of directors of the Manager carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- (u) the preparation, implementation, amendment and audit of the compliance plan;
- (v) the appointment of any compliance officer to undertake compliance work for the Trust;
- (w) the preparation of reports including compliance reports;
- (x) fees payable to any audit committee for the Trust appointed in accordance with any corporate governance guidelines adopted from time to time;
- (y) the promotion of the Trust generally;
- (z) recording, responding to and dealing with any complaints from Members in connection with the Trust, and membership of an external dispute resolution facility;
- (aa) complying with any law, and any request or requirement of the ASIC; and
- (bb) the admission of the Trust to any stock exchange, the Official Quotation of Units or Stapled Securities and compliance with the rules of such an exchange.

21.4 GST

The User Pays Fees and the fees payable out of the Assets to the Manager under this constitution do not include any amount referable to GST. If the Manager is or becomes liable to pay GST in respect of any supply under or in connection with this constitution (including, without limitation, the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Manager in respect of the supply, the Manager is entitled to be paid out of the Assets an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and (other than where the consideration for the supply is User Pays Fees) the Manager shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.

21.5 Input tax credits

In the event that the Manager is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Manager by any person, or payable by the Manager by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this constitution, the Manager is entitled to recover from the Trust by

way of reimbursement an additional amount equivalent to the amount of such input tax, and the recovery of such additional amount shall comprise part of the consideration for a supply by the Manager to the Trust treated as separate entities in accordance with Division 184 of the GST Act and for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the Manager's right of indemnity from the Assets for other purposes of this constitution and the Corporations Act.

21.6 GST and expenses

Where an expense covered by clause 21.4 is paid from the Assets to the Manager, the payment shall comprise part of the consideration for a supply by the Manager to the Trust treated as separate entities in accordance with Division 184 of the GST Act and for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the Manager's right of indemnity from the Assets for other purposes of this constitution and the Corporations Act.

22 Duration of the Trust

22.1 Initial settlement

The Trust commences when the Manager's nominee subscribes \$9.90 for Units in the Trust. The Manager's nominee must be issued with 10 fully paid Units in return for that payment.

22.2 Termination

The Trust terminates on the earliest of:

- (a) the date specified by the Manager as the date of termination of the Trust in a notice given to Members; and
- (b) the date on which the Trust terminates in accordance with another provision of this constitution or by law⁴⁴.

22.3 Perpetuity period and restriction on issue and redemption of Units

The perpetuity period for the purposes of section 5 of the Perpetuities and Accumulations Act 1968 (Vic) is the period of 80 years from the day prior to the commencement of the Trust. Despite any other provision in this constitution, no Units may be issued or redeemed after the 80th anniversary of the day before the Trust commenced, unless that issue or redemption would not offend the rule against perpetuities or any other rule of law or equity. The specification of a perpetuity period in this clause 22.3 does not require that the Trust terminate on the expiration of that period.

⁴⁴ See Part 5C.9 on winding up

23 Procedure on termination

23.1 Realisation of Assets

Following termination, the Manager must realise the Assets. This must be completed in 180 days if practical and in any event as soon as possible after that.

23.2 Audit of winding up

If and to the extent that ASIC policy so requires, the Manager must arrange for independent review or audit of the final accounts of the Trust by a registered company auditor.

23.3 Distribution following termination

The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, must be distributed to Members in accordance with the following formula:

$$\frac{(A + X) \times B}{C} - Y$$

Where:

A = the amount remaining in the Trust after deduction of the Liabilities and expenses referred to in this clause 23.3;

B = the aggregate of the number of Units held by the Member as at termination, including both Fully Paid Units and Partly Paid Units; and

C = the aggregate of the total number of Units in issue as at termination, including both Fully Paid Units and Partly Paid Units;

X = the aggregate of the amounts remaining unpaid on all Partly Paid Units in issue (if any); and

Y = the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the Member (if any) as at termination.

If the calculation of the entitlement to distribution of capital in respect of a particular Member in accordance with the formula in this clause 23.3 results in a negative dollar amount, then that Member must pay to the Manager within 30 days of the date of a written request to do so that dollar amount, and the amount so required to be paid will become an Asset available for distribution on the winding up of the Trust.

The Manager may distribute proceeds of realisation in instalments.

23.4 Constitution applies until date of final distribution

Subject to the Corporations Act, the provisions of this constitution continue to apply from the date of termination until the date of final distribution under

clause 23.3, but during that period the Manager may not accept any applications for Units from a person who is not an existing Member.

24 Amendments to this constitution

24.1 Manager may amend

If the Corporations Act allows⁴⁵, this constitution may be amended:

- (a) by Resolution⁴⁶; or
- (b) by deed executed by the Manager.

If the constitution is amended by Resolution, the Manager may give effect to the amendments by executing a supplemental deed.

24.2 Statutory requirements

If the Corporations Act or any relief from the provisions of the Corporations Act granted by the ASIC requires that this constitution contain certain provisions, then those provisions are deemed to be incorporated into this constitution at all times at which they are required to be included and prevail over any other provisions of this constitution to the extent of any inconsistency. Clause 24.1 does not apply to provisions deemed by this clause 24.2 to be incorporated in the constitution.

25 Compliance committee

If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act⁴⁷.

26 Complaints

While the Trust is a Registered Scheme, if a Member submits to the Manager a complaint alleging that the Member has been adversely affected by the Manager's conduct in its management or administration of the Trust, the Manager:

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Manager as appropriate to handle complaints;

⁴⁵ See Section 601GC for power to amend the constitution. While the Trust is registered, the amendment cannot take effect until a copy of the modification is lodged with the ASIC

⁴⁶ The required majority for such a Resolution under section 601GC(1)(a) is 75%.

⁴⁷ See section 601JF

- (c) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- (d) may in its discretion give any of the following remedies to the complainant:
 - (i) information and explanation regarding the circumstances giving rise to the complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (e) must communicate to the complainant in relation to the complaint as soon as practicable and in any event not more than 45 days after receipt by the Manager of the complaint:
 - (iv) the determination in relation to the complaint;
 - (v) the remedies (if any) available to the Member; and
 - (vi) information regarding any further avenue for complaint.

27 Listing Rules

27.1 While Units Officially Quoted

While the Units are Officially Quoted, the following applies.

- (a) Notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act shall not be done.
- (b) Nothing contained in this constitution prevents an act being done that the Listing Rules require to be done.
- (c) If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
- (d) If the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision.
- (e) If the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision.
- (f) If any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.

27.2 Change in the text of the Constitution due to clause 27.1

In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this constitution because of the operation of clause 27.1 is not a modification of, or the repeal or replacement of the constitution for the purposes of subsection 601GC(1) and (2) of the Corporations Act. Clause 24.1 does not apply to changes in the text of the constitution because of the operation of clause 27.1.

28 Restricted Securities

28.1 Application of this clause

Clause 28.2 only operates:

- (a) while Units are Officially Quoted and the Listing Rules require this constitution to contain a provision to the effect of clause 28.2; and
- (b) to the extent that it is not inconsistent with the Corporations Act.

28.2 Restriction on distributions and voting rights

During a breach of the Listing Rules or of a restriction agreement relating to Units which are Restricted Securities, the Member who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights, in respect of those Units.

29 Small Holdings

29.1 Manager may sell or redeem holdings less than a marketable parcel

Subject to the provisions of this clause 29, while the Trust is Listed, the Manager may, without request by the Member, sell or redeem any Units where the Units held by that Member comprise less than a marketable parcel as provided in the Listing Rules.

29.2 Limitations on clause 29.1

The Manager may only sell or redeem Units pursuant to this clause 29 on one occasion in any 12 month period. The Manager must notify the Member of its intention to sell or redeem Units under this clause 29.

29.3 Notice period

The Manager will not sell or redeem the relevant Units:

- (a) before the expiry of 6 weeks from the date of the notice given under this clause 28; or
- (b) if, within the 6 weeks allowed under clause 29.3(a):
 - (i) the Member advises the Manager that the Member wishes to retain the Units; or

- (ii) the market value of the Units or Stapled Securities held by the Member increases to at least a marketable parcel as provided in the Listing Rules.

29.4 Power lapses on announcement of full takeover

The Manager's power to sell or redeem the Units lapses following the announcement of a takeover but the procedure may be started again after the close of the offers made under the takeover.

29.5 Costs of the sale

The Manager or the purchaser of the Units must pay the costs of the sale as the Manager decides. The proceeds of the sale or redemption will not be sent until the Manager has received the certificate (if any) relating to the Units, or is satisfied that it has been lost or destroyed.

29.6 Execution of transfer

The Manager is entitled to execute on behalf of a Member any transfer of Units under this clause 29.

29.7 While Stapling applies

While Stapling applies:

- (a) the references to Units in this clause 29 apply to Stapled Securities held by the Member; and
- (b) no redemption or sale under this clause 29 may occur unless, at the same time as Units are redeemed or sold, an identical number of Attached Securities are also redeemed or sold.

30 Stapling

30.1 Paramourncy of Stapling provisions

Subject to clauses 24.2 and 27.1, the provisions of this constitution relating to Stapling prevail over all other provisions of this constitution including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules (if the Listing Rules apply) or any other law.

30.2 Maintenance of Listing and Consistency with constitutions of the Stapled Entities

The Manager must use every reasonable endeavour to procure that if the Stapled Securities are and continue to be Listed as one joint security, that the Stapled Securities are dealt with under this constitution in a manner consistent with the provisions relating to the Attached Securities in the constitutions of the Stapled Entities.

30.3 Stapling - general intention

While Stapling applies, the Units are each intended to be stapled to Attached Securities in the ratio of one Unit to one Attached Security in each Stapled Entity. The intention is that, so far as the law permits, a Unit and Attached Securities which are Stapled together shall be treated as one security. If further Attached Securities are from time to time Stapled to the Units the intention is that, so far as the law permits, that parcel of Attached Securities shall be treated as one Security.

31 Restructure

31.1 Implementation of a Restructure Proposal

Without limiting any provision of clause 13, the Manager has power to do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Restructure Proposal.

31.2 Express powers of Manager

Without limiting clause 31.1 (or any other provision of this constitution) and despite any other provision in this constitution, the Manager has power to:

- (a) suspend Stapling and cause the Stapling Provisions to cease to apply for a specified time or until a specified event occurs;
- (b) issue Units to the sellers under the Acquisition Agreements;
- (c) acquire and distribute to Members in accordance with clause 11.19, shares in the Stapled Foreign Company;
- (d) cause Stapling to recommence, with Stapled Securities then comprising additional Attached Securities in the form of shares in the Stapled Foreign Company;
- (e) change the name of the Trust to “Babcock & Brown Wind Partners Trust”;
- (f) effect any consolidation or division of Units that is necessary or desirable in preparation for step (h) below;
- (g) retire as trustee of the Trust and accept appointment as custodian of the Assets;
- (h) on retirement, appoint as the new trustee of the Trust Babcock & Brown GWP Services Limited ACN 113 813 997 (which has applied for an Australian financial services licence suitable to operate the Trust as a Registered Scheme) which will then become the Manager under this constitution with power to carry out the balance of the Restructure Proposal (including the matters in paragraphs (i) to (m) below);
- (i) apply for the Trust to become a Registered Scheme;

- (j) offer Units to the public as part of Stapled Securities under the Offer Document;
- (k) apply to ASX for the Stapled Securities to be Officially Quoted;
- (l) issue any further Units to the persons referred to in paragraph (b) of this clause 31.2 required under the Acquisition Agreements;
- (m) take any other specific step in connection with the Restructure Proposal that is approved by Resolution; and
- (n) execute any documents and take any other steps reasonably incidental to or required in relation to the Restructure Proposal or any of the matters listed in this clause 31.2.

31.3 Appointment as agent and attorney for Members

Without limiting clause 31.1, and subject to any approvals required under contractual arrangements to which the Manager and the Members are party, for the purpose of giving effect to the Restructure Proposal the Manager is irrevocably appointed the agent and attorney for each Member to execute all documents and do all things which it reasonably considers are necessary or desirable to be executed or done on behalf of the Member to give effect to the Restructure Proposal.

The Manager is authorised to execute the documents and do all things under clauses 31.1 and 31.2 without needing further authority or approval from Members and may do so even if it or an associate has an interest in the outcome of the exercise of such authority.

31.4 Manager's limitation of liability

Without derogating from any limitation of the Manager's liability under this Constitution, the Manager has no liability of any nature whatsoever beyond the Assets to Members arising, directly or indirectly, from the Manager doing or refraining from doing any act (including the execution of any document) in exercising its powers pursuant to this clause 31 in connection with the implementation of the Restructure Proposal.

31.5 Clause to prevail

The provisions of this clause 31 apply despite any other provision of this constitution and prevail over any other provisions of this constitution to the extent of any inconsistency.

32 References to Corporations Act and Listing Rules

32.1 Corporations Act

Any provision of this constitution which is expressed to apply subject to the Corporations Act shall only be read as subject to the Corporations Act while the Trust is a registered scheme.

32.2 Listing Rules

Any provision of this constitution which is expressed to apply subject to the Listing Rules shall only be read as subject to the Listing Rules while the Trust is Listed.

33 Interpretation

33.1 Definitions

In this constitution these words and phrases have the following meaning unless the contrary intention appears:

Accounting Standards: Australian accounting standards in force and generally accepted accounting principles applicable as at 31 December 2004.⁴⁸

Acquisition Agreements: the Alinta Walkaway Acquisition Agreement and the Lake Bonney 2 Acquisition Agreement.

Alinta Walkaway Acquisition Agreement: the acquisition agreement to be entered into between the Company and the Manager (as buyers) and the Alinta Walkaway Sellers (as sellers) in respect of all of the shares and all of the units in the entities which own the RPV Investment Trust.

Alinta Walkaway Sellers: the persons who indirectly hold 100% of the units in the RPV Investment Trust which in turn owns 25% of the share capital of Walkaway Pty Limited (ACN 071 221 479).

Application Price: the application price for a Unit calculated in accordance with this constitution⁴⁹.

Approved Valuer: any person, independent of the Manager, who is duly qualified to value any Assets of the Trust.

ASIC: the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

ASIC Relief: a declaration, modification or exemption from the provisions of the Corporations Act granted by ASIC.

Assets: all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid or any amount in the distribution account.

ASX: the Australian Stock Exchange Limited or the market operated by it as the context requires.

⁴⁸ This takes an approach consistent with ASIC's Class Order 04/1575, relating to the implementation of IFRS, issued on 22 December 2004.

⁴⁹ See "Application Price for Units"

ASX Business Days: has the meaning given to “business days” in the Listing Rules.

Attached Securities: means a Stapled Share and any other security or securities (including a Stapled Foreign Share) which are from time to time Stapled to each Unit.

BBSW: means for each period of 90 days, the rate set by the Manager in good faith for that period having regard to the extent possible to the rates otherwise bid for bills of 90 days at or around 10.30am on the first day of the period (including any displayed on the “BBSW” page of the Reuters Monitor System).

BBW Manager: Babcock & Brown Infrastructure Management Pty Limited ACN 113 585 229.

BBWS Management Agreement: an agreement between the Manager and the BBW Manager whereby the BBW Manager agrees to provide general management and investment services to the Trust.

Business Day: a day other than a Saturday or Sunday on which banks are open for general banking business in Sydney and Melbourne but if the Units are Officially Quoted has the meaning given to that term in the Listing Rules.

Class: a class of Units.

Compliance Committee Member: a member of a compliance committee established by the Manager in connection with the Trust.

Corporations Act: the Corporations Act 2001 (Cth).

CS Facility has the same meaning as “prescribed CS facility” in the Corporations Act⁵⁰.

CS Facility Operator: the operator of a CS Facility.

Distributable Income: has the meaning given in clause 11.1

Distribution Calculation Date: the last day of each Financial Year and such other days as the Manager designates.

Distribution Period:

- (a) for the first distribution period, the period from the establishment of the Trust to the next Distribution Calculation Date;
- (b) for the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.

⁵⁰ See CA 761A, 1074A and reg 7.1.03.

Financial Year means:

- (a) for the first financial year, the period from the establishment of the Trust to the next Financial Year Termination Date;
- (b) for the last financial year, the period the day after the preceding Financial Year Termination Date to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the period from the day after the preceding Financial Year Termination Date to the next occurring Financial Year Termination Date.

Financial Year Termination Date means:

- (a) 30 June; and
- (b) the day on which the Trust becomes a “subsidiary unit holder” of a “consolidated group” or “consolidatable group” (as defined in the Tax Act); and
- (c) the day on which the Trust ceases to be a “subsidiary unit holder” of a “consolidated group” or “consolidatable group” (as defined in the Tax Act).

First Closing Date: means the date of issue of Stapled Securities pursuant to the first offering document which is both a prospectus and a PDS pursuant to which Stapled Securities are offered (and if there is more than one issue date for Stapled Securities under the first offering document, the last such issue date).

Fully Paid Unit: a Unit on which the Application Price has been fully paid.

Group Assets: the Assets (as that term is defined in this clause 33.1) plus the gross assets of all Stapled Entities.

GST: a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

GST Act: A New Tax System (Goods and Services Tax) Act 1999 (Cwlth).

Income Distribution: in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under clause 11.7.

Initial Public Offer Institutional Price: the price at which Stapled Securities are offered to institutional investors under the Offer Document, or where the Offer Document does not set out a fixed price, the price at which institutional bids for Stapled Securities are accepted in respect of the initial public offer made under the Offer Document.

Initial Public Offer Period: has the meaning given in clause 6.1(b).

Lake Bonney 2 Acquisition Agreement: the acquisition agreement to be entered into between the Company (as buyer) and the Lake Bonney 2 Sellers

(as sellers) in respect of all of the shares and units in the Lake Bonney 2 Entities.

Lake Bonney 2 Entities: a company and a trust which together own the rights to develop, construct and operate Stage 2 of the Lake Bonney wind farm project in Sough Australia.

Lake Bonney 2 Sellers: the persons who hold 100% of the shares and units in the Lake Bonney 2 Entities.

Liabilities: all present liabilities of the Trust including any provision taken into account in accordance with Accounting Standards in determining the liabilities of the Trust, but not liabilities:

- (a) to applicants for Units in respect of application money or property in respect of which Units have not yet been issued; or
- (b) to Members, arising by virtue of the right of Members to request redemption of their Units or to participate in the distribution of the Assets on winding up of the Trust.

Liquid: has the same meaning as in the Corporations Act⁵¹.

Listed:

- (a) in the case of the Trust, the trust being listed on the ASX; and
- (b) in the case of the Units or the Stapled Securities, those securities being Officially Quoted,

and **Listing** has a corresponding meaning.

Listing Rules: the listing rules of the ASX and any other rules of the ASX which are applicable while the Trust is admitted to the official list of the ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by the ASX.

Manager:

- (a) until the Trust is registered with ASIC as a managed investment scheme, Babcock & Brown Asset Holdings Pty Limited ACN 002 332 345 or any replacement manager appointed following the retirement of Babcock & Brown Asset Holdings Pty Limited (or its successors) in accordance with this constitution; and
- (b) from the time the Trust is registered with ASIC as a managed investment scheme, the company which is registered with the ASIC as the single responsible entity for the Trust under the Corporations Act.

Market Price: of a Security on a particular day is:

⁵¹ Refer Part 5C.6

- (a) subject to paragraphs (b) and (c), the volume weighted average price per Security for sales on the ASX (excluding any special crossings) for the period of 10 Trading Days immediately prior to the relevant day (whether or not a sale was recorded on any particular day); or
- (b) if:
 - (i) Securities have not been Officially Quoted for at least 10 consecutive Trading Days before the relevant day; or
 - (ii) in the Manager's opinion a determination under paragraph (a) of this definition would not provide a fair reflection of the current market value of the Security,

the price per Security that an independent valuer appointed by the Manager determines to be the market price of the Security on the relevant day. The independent valuer may be an independent investment bank with relevant market experience in determining a market price in circumstances similar to those in which the determination of the market price of the Security is required to be made. The independent investment bank may, in its discretion, determine the price per Security using the method of a bookbuild in accordance with usual market practice in the Australian equity market. Matters to which the independent investment bank may have regard in making its determination include:

- (A) the nature of the proposed offer of Securities for which purpose the market price of a Security is being calculated;
- (B) the circumstances in which the proposed offer of Securities will be made;
- (C) the level and quality of institutional demand at various price points;
- (D) the desire for an orderly aftermarket; and
- (E) prevailing market conditions.

Where paragraph (b)(ii) is applicable, the price per Security determined under paragraph (b) must represent no more than a 12.5% discount to the price which would otherwise be determined under paragraph (a).

- (c) Where Securities are to be issued to the BBW Manager or any of its related bodies corporate as part payment of fees pursuant to the BBWS Management Agreement or any other management services agreement to which a Stapled Entity or the Manager is a party, the volume weighted average price per Security for sales on the ASX (excluding any special crossings) over the first 20 Trading Days following the end of the relevant period.

Market Value of an Asset at a particular time means:

- (a) in the case of an Asset that is cash or a deposit with an Australian ADI, at face value plus any accrued interest;
- (b) in the case of an Asset that is a financial product traded on a financial market, the latest bid price on that market that is readily available to the Manager, unless the Manager reasonably believes that the bid price does not represent the true value of the Asset, in which case paragraph (d) will apply;
- (c) in the case of an Asset that is an interest in a managed investment scheme that is not listed or quoted for dealing on any financial market, the redemption price of the interest as quoted by the manager, trustee or responsible entity of the scheme on such date plus any income entitlements accrued at that date as advised by the manager, trustee or responsible entity or, if information about the redemption price and accumulated income entitlements is not available for that date, the latest earlier date for which that information is available. Where the scheme is operated by the Manager or a related body corporate of the Manager, the redemption price of the interest (excluding any allowance for transaction costs) and the accumulated income entitlements must be determined in accordance with the constitution governing the scheme;
- (d) in the case of any other Asset, the value of the Asset determined in accordance with generally accepted accounting principles or, if the Manager is of the opinion that such valuation does not truly reflect the value of the Asset, such value as last determined by an Approved Valuer approved by the Manager at the expense of the Trust.

Member: the person Registered as the holder of a Unit (including persons jointly Registered) and where required by the Corporations Act or the context includes the holder of an Option.

Minimum Holding: means the amount from time to time determined by the Manager pursuant to clause 7.5.

NAV Price: in respect of a Unit or an Attached Security, means a price calculated in accordance with clause 6.2, or the equivalent provision in the constitution for a Stapled Entity.

Net Asset Value: the value of the Assets calculated in accordance with clause 10 less the Liabilities.

Offer Document: the combined PDS and prospectus under which Stapled Securities are offered during the Initial Public Offer Period.

Officially Quoted: quoted on the official list of the ASX, including when quotation is suspended for a continuous period of not more than 60 days.

Operating Rules means the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated securities as amended, varied or waived (whether in respect of the Trust or generally) from time to time.

Option: an option granted by the Manager in respect of an unissued Unit.

Paid-up Proportion: the number obtained by multiplying the number of Partly Paid Units on issue as at the date of calculation by the fraction obtained by dividing the aggregate of all amounts paid or due but unpaid in respect of all Partly Paid Units in issue as at the date of calculation by the total of the Application Prices of those Partly Paid Units.

Partly Paid Unit: a Unit on which the Application Price has not been paid in full.

PDS: product disclosure statement as defined in the Corporations Act.

Quarter: each 3 month period ending on the Quarter End Date or such shorter period of time if the period ends on the date of Termination of this Trust or the date of retirement of the Manager or commences on the date of commencement of the Trust.

Quarterly: is to be interpreted accordingly.

Quarter End Date: each 31 March, 30 June, 30 September and 31 December and if the effective date of termination of the Trust or retirement of the Manager is another date, that date.

Redemption Price: the redemption price of a Unit calculated in accordance with this constitution⁵².

Redemption Request: a written request to the Manager to redeem Units and, while Stapling applies, to redeem also the Attached Securities Stapled to the Units to be redeemed.

Register: the register of Members kept by the Manager under the Corporations Act.

Registered Scheme: a managed investment scheme registered under Section 601EB of the Corporations Act

Registered: recorded in the Register.

Registration: recording in the Register.

Resolution:

- (a) a resolution passed at a meeting of Members in the Trust (or of Members holding Units in a Class):
 - (i) on a show of hands, by the required majority of Members (or Members holding Units in a Class, as the case may be) present in person or by proxy and voting on the show of hands; or
 - (ii) on a poll, by the required majority of votes cast by Members (or Members holding Units in a Class, as the case may be) present in person or by proxy and voting on the poll; or

⁵² See "Redemption Price of Units"

- (b) where the law allows, a resolution in writing signed by Members:
- (i) in the case of a resolution by Members of a Class, holding the required majority of the Units in that Class; or
 - (ii) in any other case, holding the required majority of the Units in the Trust.

Except where this constitution or any applicable law provides otherwise, the “required majority” is a simple majority⁵³.

Restriction Agreement: means a restriction agreement within the meaning and for the purposes of the Listing Rules.

Restricted Securities: has the same meaning as in the Listing Rules.

Restructure Proposal means a proposal under which the Trust will prepare for and proceed to initial public offer and Listing, including undertaking steps pursuant to which the Manager in its capacity as responsible entity of the Trust will do some or all of the following:

- acquire direct or indirect interests in the Alinta Walkaway wind farm project in Western Australia, Stage 2 of the Lake Bonney wind farm project in South Australia and/or other assets in Europe and/or North America
- staple Units to units and/or shares in other entities whether established or incorporated in Australia or overseas;
- apply for the Trust to become a Registered Scheme, offer Units to the public as part of Stapled Securities pursuant to the Offer Document, and apply to ASX for those Stapled Securities to be Officially Quoted;
- any other steps related or incidental to the foregoing.

Security: means while the Units are Stapled a Stapled Security and while the Units are not Stapled a Unit.

Stapled Company: means Global Wind Partners Management Pty Limited (which it is proposed to rename as Babcock & Brown Wind Partners Limited) (ACN 105 051 616).

Stapled Entity: means the Stapled Company, the Stapled Foreign Company and any other trust, body corporate or managed investment scheme whose securities are Stapled to the Units.

Stapled Foreign Company: means Babcock & Brown Wind Partners (Bermuda) Limited.

⁵³ Circumstances where a special resolution is required include a vote on amendments to this constitution if necessary (see section 601GC(1)(a)). For voting on winding up by Members and choosing a new responsible entity see sections 601FL and 601NB.

Stapled Foreign Share: means an ordinary share in the Stapled Foreign Company that is Stapled to a Unit.

Stapled Security: means a Unit and each Attached Security which are Stapled together and registered in the name of the same person.

Stapled Security Holder: means the Member under this constitution and the holder of Attached Securities.

Stapled Share: means an ordinary share in the Stapled Company.

Stapling: means the linking together of a Unit and Attached Securities, so that one may not be transferred, or otherwise dealt with, without the other or others and which, if quoted on ASX, are quoted on the ASX jointly as a “stapled security” or such other term as the ASX permits. **Stapled** has a corresponding meaning.

Stapling Commencement Date: means the date upon which Stapling is to commence as determined by the Manager in cooperation with the Stapled Entities.

Tax: means all kinds of taxes, duties, imposts, deductions and charges imposed by a government including GST or any amount recovered from the Manager by way of reimbursement of GST or any amount included either expressly or impliedly in an amount paid or payable by the Manager on account of GST, together with interest and penalties.

Tax Act: means the Income Tax Assessment Act 1936 (*1936 Act*), the Income Tax Assessment Act 1997 (*1997 Act*) or both the 1936 Act and the 1997 Act, as appropriate.

Trading Day: has the same meaning as in the Listing Rules.

Transaction Costs:

- (a) when calculating the Application Price of a Unit, 1% of the total cost of acquiring the Assets; and
- (b) when calculating the Redemption Price of a Unit, 1% of the total cost of selling the Assets.

Trust: the trust constituted under or governed by this constitution.

Unit: an undivided share in the beneficial interest in the Trust as provided in this constitution.

User Pays Fees: any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Member; or
- (b) any act or omission requested by a Member,

which the Manager considers should be borne by that Member.

Valuation Time: a time at which the Manager calculates Net Asset Value.

VWAP: in respect of a Stapled Security for a Trading Day, the volume weighted average of the Stapled Security prices for that Trading Day for all sales of Stapled Securities recorded on ASX for the day, but excluding sales that occur otherwise than in the ordinary course of trading on ASX, such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the after hours adjust phase, and any overseas sales or sales pursuant to the exercise of options over Stapled Securities, any overnight crossings and any other sales which the Manager reasonably considers may not be fairly reflective of natural supply and demand; and in respect of a Unit, VWAP has a corresponding meaning.

33.2 Interpretation

Unless the contrary intention appears, in this constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the words “includes” or “including”, “for example” or “such as” when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (e) amend includes delete or replace;
- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
- (g) the cover page, contents, headings (except in so far as they are used as a means of cross reference), footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution;
- (h) a reference to a year (other than a Financial Year) or month means a calendar year or calendar month respectively;
- (i) a reference to dollars or \$ is a reference to the currency of Australia.

33.3 Other documents

A document does not become part of this constitution by reason only of that document referring to this constitution or vice versa, or any electronic link between them.

33.4 Constitution legally binding⁵⁴

This constitution binds the Manager and each present and future Member and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this constitution.

33.5 Severance

If all or part of any provision contained in this constitution is void or invalid or would otherwise result in all or part of this constitution being void or invalid for any reason, then such part is to be severed from this constitution without affecting the validity or operation of any other provision of this constitution.

33.6 Governing law

This constitution is governed by the law of Victoria.

33.7 Other obligations excluded

Except as required by the Corporations Act all obligations of the Manager which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any obligation of the Manager in its capacity as trustee of the Trust arising under any statute.

EXECUTED as a deed

⁵⁴ Refer Section 601GB

Constitution of Babcock & Brown Wind Partners Trust

Finding list

This list is included to assist the ASIC in identifying the provisions in this constitution which satisfy the requirements of the Corporations Act for constitutions of registered managed investment schemes.

Corporations Law	Constitution
601GA	
(1)(a)	6.1 - 6.5
(1)(b)	13.1 - 13.4
(1)(c)	26
(1)(d)	23
(2)	19.3 - 19.6, 21.1 - 21.5
(3)	13.3
(4)(a)	9.2, 9.4, 9.8
(4)(b)	9.3 - 9.7, 8.1 - 8.3
(4)(c)	9.8 - 9.10
601GB	33.4