Agenda

For the Special Council Meeting

Location: Council Chambers, Municipal Offices
62-68 Ovens Street, Wangaratta

Date: Monday, 29 January 2018

Time: 6pm
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1. **ACKNOWLEDGEMENT OF TRADITIONAL OWNERS**

   We acknowledge the traditional owners of the land on which we are meeting. We pay our respects to their Elders and to Elders from other communities who may be here today.

2. **OPENING PRAYER**

   Almighty God, we humbly ask thee to bless and guide this council in its deliberations so that we may truly preserve the welfare of the people whom we serve. Amen

3. **PRESENT**

4. **ABSENT**

5. **ACCEPTANCE OF APOLOGIES & GRANTING OF LEAVE OF ABSENCE**

6. **ORDER OF BUSINESS**

   **CONFLICT OF INTEREST DISCLOSURE**

   In accordance with sections 77A, 77B, 78 and 79 of the *Local Government Act 1989* Councillors are required to disclose a ‘conflict of interest’ in a decision if they would receive, or could reasonably be perceived as receiving, a direct or indirect financial or non-financial benefit or detriment (other than as a voter, resident or ratepayer) from the decision.

   Disclosure must occur immediately before the matter is considered or discussed.

   **PRESENTATION OF REPORTS**
OFFICERS’ REPORTS

7. CORPORATE SERVICES

7.1 WANGARATTA SALEYARDS

Meeting Type: Special Council Meeting
Date of Meeting: 29 January 2018
Author: Governance and Risk Advisor
File Name: PROJECT MANAGEMENT - Projects - 2017 - Saleyards - Management
File No: F17/360

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Executive Summary

This report is presented to Council to recommend the next steps in relation to the incorporation of the Wangaratta livestock exchange. The most recent step in this process is the completion of a risk assessment report that is required by section 193 of the Local Government Act 1989 (the Act). This report has been prepared and is now provided to Council for consideration.

RECOMMENDATION:

That Council, having received and considered the s193 Risk Assessment Report as provided by Maddocks Solicitors and prepared by Pitcher Partners:

1. Continues with the formation of a company to independently operate the Wangaratta Livestock Exchange.

2. Adopts the constitution for the Wangaratta Livestock Exchange (refer attachment)

3. Adopts the Management Services Agreement (refer attachment) subject to the inclusion of a plan which highlights the area of land to be licenced to the Wangaratta Livestock Exchange and the interim budget and strategic plan which will be presented to Council prior to the appointment of Directors.

4. Approves the “Information for Applicants – Wangaratta Livestock Exchange Pty Ltd – Director” information pack and commences the advertising process to enable expressions of Interest from suitably qualifies persons to be received
Background

Earlier this year, Council resolved to agree in principle to develop a management structure for the Wangaratta saleyards which would be a Council owned entity, to ensure the facility has the flexibility to maximise its full commercial potential.

A subsequent resolution sought public feedback regarding Council’s intention to change the management and business structure of the Wangaratta Saleyards business to a company limited by shares, wholly owned by Council.

The consultation period was completed and feedback received has been very favourable towards the proposed change.

In addition Council’s Agriculture and Agribusiness Advisory Committee has also reviewed the proposal and at its meeting of 25 July 2017 provided the following endorsement:

“The Agriculture and Agribusiness Committee endorses the proposed new management structure for the Wangaratta Saleyards. It should be a skills based board with a rigorous effort to ensure flexibility around the allocation and number of board members. The committee recommends that this process is undertaken with a high priority and as a matter of urgency.”

Following this, at its 22 August 2018 meeting, Council resolved as follows:

1. to progress with the establishment of a new company limited by shares, wholly owned by the Wangaratta Rural City Council (the Council), to be called the ‘Wangaratta Livestock Exchange Pty Ltd’ (WLX) in accordance with the Corporations Act 2001 (Cth) and the Local Government Act 1989 (the Act);

2. authorises the Chief Executive Officer (CEO) to:
   a. undertake the business planning and risk assessment process required under section 193 of the Act and in accordance with the Ministerial Guidelines and seek any approvals as required;
   b. determine and recommend to Council:
      i. the amount to be capitalised into WLX;
      ii. the form of WLX’s constitution which will include a prohibition on WLX from borrowing funds;
      iii. the appointment of initial directors based on their skills subject to seeking a balance of skills on the board of WLX; and
      iv. the management agreement governing the relationship between Council and WLX.
   c. report on and advise in relation to any alternative proposals or options for the future operation of the Wangaratta Saleyards.

3. requires the CEO to report the outcomes of the processes undertaken under paragraph 2 above at a future meeting for Council to consider the relevant reports and recommendations and for final determination of whether to establish the company limited by shares.
The section 193 risk assessment was completed and a summary appears below under the Risk Management section.

Council also has received the final draft of the constitution and management services agreement, which are now presented to Council for adoption.

**Company Constitution (refer attachment)**

1. The purpose of the Constitution is to govern the internal affairs of the wholly-owned entity following incorporation. The Constitution contains rules relevant to the company itself, the company and its directors and the company and its shareholder (i.e. Council).

2. The Constitution’s rules relate to matters such as directors’ powers, appointing company officers, calling meetings and issues relating to the company’s shares.

**Management Services Agreement (refer attachment)**

The purpose of the Agreement is to govern the relationship between Council and its wholly-owned entity. Amongst other things, the Agreement sets out the company’s right to receive income, the responsibilities of each party for the term of the Agreement, and the requirement to develop strategic plans, annual plans and budgets.

There has been feedback received from Council’s legal representatives relating to these documents and council officers are now satisfied that they provide Council with both the legal and operational frameworks that will enable the WLE to operate with the independent appointed board.

The Management Services agreement will require a plan to be included which will highlight the area of land to be licenced to the company and in addition an interim strategic plan and budget will need to be prepared and adopted by the Council.

It is proposed that the interim strategic plan and budget will be prepared in consultation with the proposed Directors of the company prior to the company being operational.

**Appointing Directors**

1. Council at its briefing of the 13th November was advised that Maddocks have provided advice regarding the appointment and selection of directors

2. The draft ‘Information for Applicants’ document for the purpose of inviting applications for director positions was provided. It has used the Guidelines and other guidance material from the Australian Institute of Company Directors (AICD) and ASX Corporate Governance Council

3. The selection panel including the Mayor, the Chief Executive Officer and the Director Development Services will be used for the appointment process which will culminate with a selection report and recommendation to Council.
4. It is suggested that Council commence advertising for expressions of interest for suitably qualified persons who wish to become board members. It is anticipated that the following timetable for board appointments will be undertaken.

- 31 January 2018 – commence advertising for board membership
- 21 February 2018 – expressions of interest close
- 20 March 2018 – Council meeting to appoint selected together with the required paperwork
- April 2018 board operational
- July 2018 Board assume control of the livestock exchange.

**Transitional arrangements and the new business start-up**

1. With any new business there is considerable work to be undertaken in establishing the business.

2. Council has completed a new business start-up checklist for the board and preliminary work will commence to establish the business.

3. As Council currently undertakes a number of functions and provides various services for the existing saleyards, work has commenced on costing these functions and services and due to the timeframes, Council may be required to provide these services during the transition from Council owned and operated saleyards to independent operation.

**Implications**

**Policy Considerations**

There are no specific Council policies or strategies that relate to this report.

**Financial/Economic Implications**

Officers have previously advised council estimated legal, incorporation and board remuneration costs for 2017/18 of $60,000. This amount is included in the 2017/18 revised budget.

Other costs, including capitalising the entity, have been allowed for in the 2017/18 budget.

**Legal/Statutory**

Council must meet the following legal requirements in establishing a company limited by shares:

- The relevant provisions of the *Corporations Act 2001*; and
- The entrepreneurial powers provisions established under section 193 of the Act.
From a legal perspective the following key documents required are:

1. The Company’s Constitution
2. The Management Services Agreement between Council and the Company

Social

The incorporation of the Wangaratta Saleyards will assist in securing the long-term viability of livestock exchange within the Wangaratta municipality. This will provide all stakeholders involved with a place to congregate, socialise and do business.

Environmental/Sustainability Impacts

There are no environmental/ sustainability impacts identified for this subject of this report.

2017 – 2021 Council Plan

This report supports the 2017-2021 Council Plan:

Goal

We are Established

Our saleyards will be managed in an appropriate structure to ensure business growth and longevity

Risk Management

Section 193 of the Local Government Act states the following:

193    Entrepreneurial powers

(1) For the purpose of performing any function or exercising any power conferred on a Council by or under this Act or any other Act a Council may—

(a) participate in the formation and operation of a corporation, trust, partnership or other body; and
(b) subscribe for or otherwise acquire and dispose of shares in or debentures or other securities of, a corporation; and
(c) become a member of a company limited by guarantee; and
(d) subscribe for or otherwise acquire and dispose of units in a trust; and
(e) acquire and dispose of an interest in a partnership or other body; and
(f) enter into partnership or into any arrangement for sharing of profits, union of interest, co-operation, joint venture, reciprocal concession or otherwise, with any person or corporation carrying on or engaged in, or
about to carry on or engage in, any business or transaction capable of being conducted so as to directly or indirectly benefit the Council.

It further states:

(5A) If the Council proposes to exercise any power under subsection (1), the Council must assess the total investment involved and the total risk exposure.

and:

5C) If the sum assessed under subsection (5A)—

(a) exceeds whichever is the greater of $100,000 or 1% of the Council’s revenue from rates and charges levied under section 158 in the preceding financial year, the Council must consider a risk assessment report (including appropriate reporting arrangements) from an appropriately qualified person;

(b) exceeds whichever is the greater of $500,000 or 5% of the Council’s revenue from rates and charges levied under section 158 in the preceding financial year, the Council must—

(i) consider a risk assessment report (including appropriate reporting arrangements) from an appropriately qualified person; and

(ii) obtain the approval of the Minister;

(c) exceeds $5,000,000, the Council must—

(i) consider a risk assessment report (including appropriate reporting arrangements) from an appropriately qualified person; and

(ii) obtain the approval of the Minister; and

(iii) obtain the approval of the Treasurer.

Therefore it was a requirement that Council appoint an appropriately qualified person to undertake the risk assessment. Council appointed Pitcher Partners to undertake this assessment and a copy of the final report is attached (refer attachment)

The executive summary from the report is as follows.

The migration of the saleyard from one owned and operated by council, to that of an independent company, in itself appears to be reasonably straightforward and in many respects considered a reasonable and straightforward undertaking. From a risk perspective, while there are a number of potential benefits in gaining a truly commercial perspective on running the business and its operations there are also a number of potential risks, notably the impact on potential viability as well as community reaction to possible changes in pricing and operating manner. The manner in which the new company transitions from a council operated entity to an independent operating company will considerably influence its ability to function in a sustainable manner in the future. From our risk analysis presented below, we have estimated a potential annual risk exposure of $87,000.
The requirement of the Act is that the Council consider this report prior to resolving to proceed with the appointment of an independent board.

**Consultation/Communication**

Council has consulted with Victorian Farmer’s Federation Wangaratta Branch and the Wangaratta Associated Stock Agents in relation to the progress of the incorporation.

**Options for Consideration**

Council may resolve to proceed with or abandon the proposal to incorporate the Wangaratta Saleyards.

**Conclusion**

Council officers are progressing towards the incorporation of the Wangaratta Livestock Exchange. A key element in this project is the completion of the Risk Assessment Report by an appropriately qualified person. This report is now presented to Council for its consideration.

**Attachments**

1. Constitution WLE
2. Management Services Agreement
3. Information for Applicants Directors WLE
4. S193 Risk Assessment Report
8. CLOSURE OF MEETING

ATTACHMENTS
Constitution

CORPORATIONS ACT 2001 (CTH)
COMPANY LIMITED BY SHARES

Wangaratta Livestock Exchange Pty Ltd
ACN ##

[DRAFT]
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SHARE CLASSES

1. Classes of Shares

2. Rights and restrictions applicable to Shares of different classes

   2.1 Ordinary Shares

   2.2 'A', 'B' and 'C' Class Shares

   2.3 'D', 'E' and 'F' Class Shares

   2.4 'G' Class Shares

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3. Special provisions applicable to redeemable preference Shares

   3.1 Redeemable Preference Shares

   3.2 Redemption of RP Shares

   3.3 Notice

STATEMENT BY PERSONS WHO HAVE CONSENTED TO BE MEMBERS

Maddocks
Constitution

CORPORATIONS ACT 2001 (CTH)

Wangaratta Livestock Exchange Pty Ltd ACN [##]

A Company limited by Shares

1. Definitions

In this Constitution:

Act means the Corporations Act 2001 (Cth).

ASIC means the Australian Securities and Investment Commission.

Business Day means a day (other than a Saturday or Sunday) on which banks (as defined in the Banking Act 1959 (Cth)) are generally open for business.

Constitution means this Constitution and any supplementary, substitute or amended Constitution for the time being in force.

Company means the abovenamed company.

Delegate means a person appointed as a delegate of the Directors in accordance with clause 17.8.

Director means a Director for the time being of the Company including an attorney for a Director or alternate Director.

Directors means all Directors for the time being of the Company and if there is only one Director, that Director.

Holding Company has the meaning given in section 9 of the Act.

Member means a holder of Shares.

Members means all Members for the time being of the Company and if there is only one Member, that Member.

Nominated Interest Rate means the interest rate per annum calculated as the National Australia Bank Limited Base Rate plus 2% per annum.

Seal means the common seal of the Company and includes any official seal of the Company.

Secretary means any person appointed to perform the duties of a secretary of the Company.

Shares means shares in the capital of the Company.
Except so far as the contrary intention appears in this Constitution, an expression has, in a
provision of this Constitution that deals with a matter dealt with by a particular provision of
the Act, the same meaning as in that provision of the Act.

2. Name of the Company

The name of the Company is specified at the top of page one of this Constitution.

3. Liability of Members

The liability of Members is limited.

4. Limitations on Company

4.1 Members

The Company limits to not more than 50 the number of its Members, counting joint holders of
Shares as one person and not counting any person who is employed by the Company or any
of its subsidiaries or any person who was while so employed and since then has continued
to be, a Member of the Company.

4.2 Subscription

The Company prohibits:

4.2.1 any invitation to the public to subscribe for; and

4.2.2 any offer to the public to accept subscriptions for,

any Shares in, or debentures of, the Company.

4.3 Deposits

The Company prohibits any invitation to the public to deposit money with, and any offer to
the public to accept deposits of, money with the Company for fixed periods or payable at call,
whether bearing or not bearing interest.

4.4 Prohibition on Borrowing

The Company must not borrow money or charge any property or business of the Company
or issue debentures or give any other security for a debt, liability or obligation of the
Company.

5. Replaceable Rules

Each of the sections or sub-sections of the Act which would apply to the Company as a
replaceable rule within the meaning of the Act, if not for this clause, are displaced and do not
apply to the Company.
6. Share capital and variation of rights

6.1 General

6.1.1 Shares in the Company do not have a par value. The Directors will unanimously determine the issue price of all Shares issued.

6.1.2 Shares issued will be of a class specified in the Schedule or any other class permitted by this Constitution, provided that the directors unanimously agree as to the class of shares to be issued.

6.1.3 Without prejudice to any special rights previously conferred on the holders of any existing Shares or class of Shares but subject to the Act, Shares may only be issued with the unanimous approval of the Directors and any such Shares may be issued with such preferred, deferred or other special rights or such restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the Directors unanimously determine.

6.1.4 Subject to the Act and this Constitution, in particular, clauses 6.1.1, 6.1.2 and 9, Shares shall be under the control of the Directors, so that only with the unanimous approval of the Directors:

(a) Shares may be allotted or disposed of and options may be granted in respect of Shares, to such persons and on such terms and conditions and at such time, and upon such terms of payment, whether in cash or otherwise, as the Directors may unanimously determine; and

(b) Shares may be issued as fully or partly paid and may be issued or allotted as part payment for any property acquired by the Company or in return for any services rendered to the Company.

6.2 Preference Shares

Subject to the Act and this Constitution, the Directors may by unanimous agreement issue any preference Shares on the terms that they are, or at the option of the Company are, liable to be redeemed.

6.3 Class Rights

6.3.1 The rights attached to Shares in a class of shares may be varied or cancelled only by special resolution of the Company and:

(a) by special resolution passed at a meeting of the class of Members holding Shares in the class; or

(b) with the written consent of Members with at least 75% of the votes in the class.

6.3.2 If the Shares in a class of Shares are divided into further classes, and after division the rights attached to all of those Shares are not the same:

(a) the division is taken to vary the rights attached to every Share, that was in the class existing before the division; and

(b) Members who hold Shares to which the same rights are attached after the division form a separate class.
6.3.3 If the rights attached to some of the Shares in a class of Shares are varied:

(a) the variation is taken to vary the rights attached to every other Share that was in the class existing before the variation; and

(b) Members who hold Shares to which the same rights are attached after the variation form a separate class.

6.4 Recognition of Shares Held on Trust

6.4.1 Except as required by the Act, the Company shall not recognise a person as holding a Share upon any trust.

6.4.2 The Company is not bound by or compelled in any way to recognise (whether it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any Share or unit of a Share or (except as otherwise provided by this Constitution or by the Act) any other right in respect of a Share except an absolute right of ownership in the registered holder.

6.5 Brokerage or Commission

The Company may pay brokerage or commission to a person in respect of that person or another person agreeing to take up Shares in the Company.

6.6 Entitlement to Share Certificates

6.6.1 A person whose name is entered as a Member in the register of Members is entitled to receive a certificate in respect of his or her Shares in accordance with the Act but, in respect of a Share or Shares held jointly by several persons, the Company is not bound to issue more than one certificate.

6.6.2 Delivery of a certificate for a Share to one of several joint holders is sufficient delivery to all such holders.

6.7 Lost or Destroyed Certificates

Upon the loss or destruction of a Share certificate, it may be renewed upon payment of a fee not exceeding the prescribed amount pursuant to the Act and on provision of:

6.7.1 a statement in writing that the certificate has been lost or destroyed, and has not been pledged, sold or otherwise disposed of and, if lost, that proper searches have been made; and

6.7.2 an undertaking in writing that if it is found or received by the owner it will be returned to the Company.

7. Liens

7.1 First and Paramount Liens

7.1.1 The Company has a first and paramount lien on every Share (not being a fully paid Share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that Share.

7.1.2 The Company also has a first and paramount lien on all Shares (other than fully paid Shares) registered in the name of a sole holder for all money presently payable by him or her or his or her estate to the Company.
7.1.3  The Directors may at any time exempt a Share wholly or in part from the provisions of this clause.

7.1.4  The Company's lien (if any) on a Share extends to all dividends payable in respect of that Share.

7.2 Sale of Shares Over Which Company Has a Lien

7.2.1  Subject to clause 7.2.2, the Company may sell, in such manner as the Directors agree and think fit, any Shares on which the Company has a lien.

7.2.2  A Share on which the Company has a lien shall not be sold unless:

(a)  the Directors unanimously agree to the sale;

(b)  a sum in respect of which the lien exists is presently payable; and

(c)  the Company has, not less than 14 days before the date of the sale, given to the registered holder for the time being of that Share or the person entitled to that Share by reason of the death or bankruptcy of the registered holder, a notice in writing setting out, and demanding payment of, such part of the amount in respect of which the lien exists as is presently payable.

7.3 Method of Sale

7.3.1  For the purpose of giving effect to a sale referred to in clause 7.2, the Directors may authorise a person to transfer the Shares sold to the purchaser of the Shares.

7.3.2  The Company shall register the purchaser as the holder of the Shares comprised in any such transfer and the purchaser is not bound to see the application of the purchase money.

7.3.3  The title of the purchaser to the Shares is not affected by any irregularity or invalidity in connection with the sale.

7.4 Proceeds of Sale

The proceeds of a sale referred to in clause 7.2 shall be applied by the Company in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue (if any) shall (subject to any like lien for sums not presently payable that existed over the Shares before the sale) be paid to the person entitled to the Shares at the date of the sale.

8. Calls on Shares

8.1 General

8.1.1  The Directors may make calls upon the Members in respect of any money unpaid on their Shares, provided that any call is in accordance with the terms on which the Shares are on issue and that no call exceeds one-quarter of the sum of the nominal values of the Shares or will be payable earlier than one month from the date fixed for the payment of the last preceding call.

8.1.2  Each Member shall, upon receiving at least 14 days' notice specifying the time or times and place of payment, pay to the Company at the time or times and place so specified the amount called on his or her Shares.
8.1.3 The Directors may revoke or postpone a call.

8.2 When Call Made

A call shall be deemed to have been made at the time when the resolution of the Directors authorising the call was passed and may be required to be paid by instalments.

8.3 Calls on Joint Holders

The joint holders of a Share are jointly and severally liable to pay all calls in respect of the Share.

8.4 Interest on Unpaid Calls

If a sum called in respect of a Share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at such rate not exceeding the Nominated Interest Rate as the Directors determine; but the Directors may waive payment of that interest wholly or in part.

8.5 Deemed Calls

Any sum that, by the terms of issue of a Share, becomes payable on allotment or at a fixed date shall for the purposes of this Constitution be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and, in case of non-payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

8.6 Discretion regarding Calls

The Directors may, on the issue of Shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

8.7 Payments Made Without Calls

8.7.1 The Directors may accept from a Member the whole or a part of the amount unpaid on a Share although no part of that amount has been called up.

8.7.2 The Directors may authorise payment by the Company of interest upon the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the prescribed rate, as is agreed upon between the Directors and the Member paying the sum.

8.7.3 For the purposes of clause 8.7.2, the prescribed rate of interest is:

(a) if the Company has, by resolution, fixed a rate, the rate so fixed; and

(b) in any other case, the Nominated Interest Rate.

9. Transfer of Shares

9.1 General

9.1.1 A member may only transfer all or any of his or her Shares upon obtaining the unanimous approval of the Directors to the proposed transfer.
9.1.2 Subject to this Constitution, a Member may transfer all or any of his or her Shares by instrument in writing in any usual or common form or in any other form that the Directors unanimously approve.

9.1.3 An instrument of transfer referred to in clause 9.1.2 shall be executed by or on behalf of both the transferor and the transferee.

9.1.4 A transferor of Shares remains the holder of the Shares transferred until the transfer is registered and the name of the transferee is entered in the register of Members in respect of the Shares.

9.2 Mechanism for Transfers

The instrument of transfer must be left for registration at the registered office of the Company, together with such fee (if any) not exceeding the prescribed amount pursuant to the Act as the Directors require, accompanied by the certificate of the Shares to which it relates and such other information as the Directors properly require to show the right of the transferor to make the transfer, and thereupon the Company will, subject to any powers vested in the Directors by this Constitution, register the transferee as a Member.

9.3 Directors’ Discretion

The Directors may refuse to register a transfer of Shares, without being bound to assign any reason for such refusal and may also decline to register any transfer of Shares on which the Company has a lien or any transfer which is not accompanied by the certificate for the Shares to which the transfer relates.

9.4 Suspension of Registration of Transfers

The registration of transfers may be suspended at such times and for such periods as the Directors from time to time determine not exceeding in the whole 90 days in any year.

9.5 Notice of Refusal to Register Transfer

If the Company refuses to register a transfer of Shares it shall within 2 months after the date on which the transfer was lodged send the transferee a notice of the refusal.

9.6 Instruments of Transfer

All instruments of transfer which are registered by the Company shall be retained by the Company, but any instrument of transfer which the Directors have refused to register shall, except in the case of fraud, be returned to the person who deposited it with the Company.

10. Transmission of Shares

10.1 General

In the case of the death of a Member, the survivor where the deceased was a joint holder, and the legal personal representatives of the deceased where he or she was a sole holder, shall be the only persons recognised by the Company as having any title to his or her interest in the Shares, but this clause 10.1 does not release the estate of a deceased joint holder from any liability in respect of a Share that had been jointly held by him or her with other persons.
10.2 Registration of Transmission

10.2.1 Subject to the Bankruptcy Act 1966 (Aust), a person becoming entitled to a Share in consequence of the death or bankruptcy of a Member may, upon such information being produced as is properly required by the Directors, elect either to be registered him or herself as holder of the Share or to have some other person nominated by him or her registered as the transferee of the Share.

10.2.2 If the person becoming entitled elects to be registered him or herself, he or she shall deliver or send to the Company a notice in writing signed by him or her stating that he or she so elects.

10.2.3 If he or she elects to have another person registered, he or she shall execute a transfer of the Share to that other person.

10.2.4 All the limitations, restrictions and provisions of this Constitution relating to the right to transfer Shares and the registration of transfers of Shares are applicable to any such notice or transfer, subject to the Act, as if the death or bankruptcy of the Member had not occurred and the notice or transfer were a transfer signed by that Member.

10.3 Right to Dividends

10.3.1 Where the registered holder of a Share dies or becomes bankrupt, his or her personal representative or the trustee of his or her estate, as the case may be, shall, upon the production of such information as is properly required by the Directors, be entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting or otherwise), to which the registered holder would have been entitled if he or she had not died or become bankrupt.

10.3.2 Where 2 or more persons are jointly entitled to any Share in consequence of the death of the registered holder, they shall, for the purpose of this Constitution, be deemed to be joint holders of the Share.

11. Forfeiture of Shares

11.1 General

11.1.1 If a Member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the Directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him or her requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued.

11.1.2 The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that, in the event of non-payment at or before the time appointed, the Shares in respect of which the call was made will be liable to be forfeited.

11.2 Non-Compliance with Notice

11.2.1 If the requirements of a notice served under clause 11.1 are not complied with, any Share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.
11.2.2 Such a forfeiture shall include all dividends declared in respect of the forfeited Shares and not actually paid before the forfeiture.

11.3 Directors' Discretion

A forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Directors unanimously agree and think fit, and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the Directors think fit.

11.4 Liability of Member Whose Shares Are Forfeited

A person whose Shares have been forfeited ceases to be a Member in respect of the forfeited Shares, but remains liable to pay to the Company all money that, at the date of forfeiture, was payable by him or her to the Company in respect of the Shares (including interest at the Nominated Interest Rate from the date of forfeiture on the money for the time being unpaid if the Directors think fit to enforce payment of the interest), but his or her liability ceases if and when the Company receives payment in full of all the money (including interest) so payable in respect of the Shares.

11.5 Statement as to Forfeiture

A statement in writing declaring that the person making the statement is a Director or a Secretary of the Company, and that a Share has been duly forfeited on a date stated in the statement, is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the Share.

11.6 Sale of Forfeited Share

11.6.1 The Company may receive the consideration (if any) given for a forfeited Share on any sale or disposition of the Share and may execute a transfer of the Share in favour of the person to whom the Share is sold or disposed.

11.6.2 Upon the execution of the transfer, the transferee shall be registered as the holder of the Share and shall not be bound to see to the application of any money paid as consideration.

11.6.3 The title of the transferee to the Share shall not be affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the Share.

11.7 Deemed Calls for Forfeiture Purposes

The provisions of the Constitution as to forfeiture shall apply in the case of non-payment of any sum that, by the terms of issue of a Share, becomes payable at a fixed time as if that sum had been payable by virtue of a call duly made and notified.

12. Alteration of capital

12.1 Larger Nominal Value

The Company may by resolution consolidate and divide all or any of its Share capital into Shares of larger nominal value than its existing Shares.

12.2 Smaller Nominal Value

The Company may by resolution subdivide all or any of its Shares into Shares of smaller nominal value (a subdivision must not alter the proportion between the amount paid and the amount (if any) unpaid on the Shares concerned).
13. General meetings

13.1 General

Any Director, whenever he or she thinks fit, may convene a general meeting of Members.

13.2 Decisions of Single Member

13.2.1 If the Company has only one Member and the Member records the Member’s decision to a particular effect, the recording of the decision counts as the passing by the Member of a resolution to that effect.

13.2.2 A record made for the purposes of clause 13.2.1, also has effect as minutes of the passing of the resolution.

13.2.3 A record made for the purposes of clause 13.2.1 must be made in writing.

13.3 Circulating Resolutions

13.3.1 If all the Members have signed a document containing a statement that they are in favour of a resolution of the Members in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a general meeting held on the day, and at the time at which, the document was last signed by a Member.

13.3.2 For the purposes of clause 13.3.1, 2 or more separate documents containing statements in identical terms each of which is signed by one or more Members shall together be deemed to constitute one document containing a statement in those terms signed by those Members on the respective days on which they signed the separate documents.

13.3.3 A reference in clause 13.3.1 to all the Members does not include a reference to a Member who would not be entitled to vote on the resolution.

13.3.4 The resolution pursuant to clause 13.3.1 will not be deemed to be passed unless, where a Share is held jointly, each joint Member has signed the document.

13.4 Notices

13.4.1 Subject to the Act and any requirement of the Act pertaining to the passing of a special resolution, at least 21 days written notice must be given of any general meeting. However, the Company may call a general meeting on shorter notice if Members with at least 95% of the vote that may be cast at the meeting agree beforehand, except at a general meeting at which a resolution will be moved to remove the Company’s auditor (if any) pursuant to Section 329 of the Act.

13.4.2 Subject to the Act, any general meeting or any proceeding at the meeting is not invalid only because of:

(a) the accidental omission to give notice of the meeting;

(b) the non-receipt of such notice by any person entitled to such notice; or

(c) a defect in such a notice given.
13.4.3 Written notice of every general meeting pursuant to clause 13.4.1 must be given individually to:

(a) each Member entitled to attend and vote at the meeting and in the case of joint holders to the joint holder whose name appears first in the register of Members in respect of the registered Share jointly held;

(b) each Director;

(c) the Company’s auditor (if any) for the time being; and

(d) every person known the Company as being entitled to a Share in consequence of the death, bankruptcy or mental incapacity of a Member who would otherwise be entitled to receive notice of the meeting.

13.4.4 No other person shall be entitled to receive notices of general meetings.

13.4.5 Each notice of a general meeting shall:

(a) specify the place, the day, and the hour of the meeting, and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this;

(b) state the general nature of the business to be transacted at the meeting;

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

(d) if a member is entitled to appoint a proxy contain a statement setting out the following information:

(i) that the Member has a right to appoint a proxy;

(ii) whether or not the proxy needs to be a Member of the Company;

(iii) that a Member who is entitled to cast 2 or more votes may appoint 2 proxies and specify the proportion or number of votes each proxy is appointed to exercise; and

(iv) comply with any other disclosure requirements of the Act.

13.5 Cancellation of Meeting

Subject to the Act and this Constitution, the Directors with the prior written approval of the Members, as they see fit, may cancel a general meeting which has been notified to the Members any time before the meeting.

14. Proceedings at General Meetings

14.1 General

14.1.1 A general meeting may be held at 2 or more venues using any electronic means that gives the Members as a whole a reasonable opportunity to participate.
14.1.2 The quorum required for the purposes of a general meeting shall be:
(a) a Member or Members representing not less than one half of the voting rights of all Members having the right to vote at the general meeting; or
(b) a Member or Members holding Shares conferring a right to vote at the general meeting being Shares on which an aggregate sum has been paid equal to not less than one half of the total sum paid up on all the Shares conferring that right.

14.1.3 For the purpose of determining whether a quorum is present, a person attending as a proxy, or as representing a body corporate that is a Member, shall be deemed to be a Member.

14.1.4 No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.

14.1.5 A reference to a Member being personally present at a meeting includes a reference to a Member participating in a meeting by electronic means.

14.1.6 If there is a failure of the electronic means which results in the disconnection of any or all of the Members participating in the meeting, the meeting shall be adjourned until the failure of the electronic means has been rectified. If that is not possible within 60 minutes of the initial failure, the Chairman must adjourn the meeting until such time, date and place that is considered to give the Members as a whole a reasonable opportunity to participate in the meeting.

14.2 Quorum not Present

If a quorum is not present within 30 minutes from the time appointed for the meeting:

14.2.1 where the meeting was convened upon the requisition of Members, the meeting shall be dissolved; and

14.2.2 in any other case:
(a) the meeting stands adjourned to such day, and at such time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week at the same time and place; and
(b) if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting the meeting shall be dissolved.

14.3 Chair

14.3.1 If the Directors have elected one of their number as chair of their meetings, he or she shall preside as chair at every general meeting.

14.3.2 If the Directors have elected one of the number as deputy chair, the deputy chair shall preside as chair at a general meeting if the Director elected as chair is absent or not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act.

14.3.3 Where a general meeting is held and:
(a) a chair has not been elected as provided by clause 14.3.1 and a deputy chair has not been elected as provided by clause 14.3.2; or
(b) both the chair elected as provided by clause 14.3.1 and the deputy chair elected as provided by clause 14.3.2 are absent or not present within 15 minutes after the time appointed for the holding of the meeting or are unwilling to act,

the Members present shall elect another Director of the Company to be chair of the meeting.

14.4 Adjournment of Meeting

14.4.1 The chair may with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

14.4.2 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

14.4.3 Except as provided by clause 14.4.2, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

14.5 Resolutions at Meetings

14.5.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:

(a) by the chair;

(b) by a Member or Members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting; or

(c) by a Member or Members holding Shares in the Company conferring a right to vote at the meeting being Shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the Shares conferring that right.

14.5.2 Unless a poll is so demanded, a declaration by the chair 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 Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

14.5.3 The demand for a poll may be withdrawn.

14.6 Poll at Meetings

14.6.1 If a poll is duly demanded, it shall be taken in such manner and (subject to clause 14.6.2) either at once or after an interval or adjournment or otherwise as the chair directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

14.6.2 A poll demanded on the election of a chair or on a question of adjournment shall be taken immediately.
14.7 Casting Vote of Chair

In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting at which the show of hands takes place or at which the poll is demanded, in addition to his or her deliberative vote (if any), has a casting vote.

14.8 Votes by Members

Subject to any rights or restrictions attached to any class or classes of Shares:

14.8.1 at meetings of Members or classes of Members each Member entitled to vote may vote in person or by proxy or attorney; and

14.8.2 on a show of hands every person present who is a Member or a representative of a Member has one vote, and on a poll, every person present in person or by proxy or attorney shall have one vote for each share he or she holds.

14.9 Votes by Joint Holders

If a share is held jointly and more than one member votes in respect of that share, whether in person or by proxy or by attorney, only the vote of the Member whose name appears first in the register of Members counts.

14.10 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, his or her committee or trustee or such other person as properly has the management of his or her estate may exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.

14.11 Entitlement to Vote

A Member shall not be entitled to vote at a general meeting unless all calls and other sums presently payable by him or her in respect of Shares in the Company shall have been paid.

14.12 Objections to Qualification to Vote

14.12.1 An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.

14.12.2 Any such objection shall be referred to the chair of the meeting, whose decision shall be final.

14.12.3 A vote not disallowed pursuant to such an objection shall be valid for all purposes.

14.13 Proxies

14.13.1 An appointment of a proxy is valid if it is signed by the Member of the Company making the appointment and contains the following information:

(a) the Member's name and address;
(b) the Company's name;
(c) the proxy's name or the name of the office held by the proxy; and
(d) the meetings at which the appointment may be used.
14.13.2 An appointment may specify the way in which the proxy is to vote on a particular resolution and, where an appointment so provides, the proxy shall not be entitled to vote in the resolution except as specified in the appointment.

14.13.3 A proxy appointed to attend and vote for a member has the same rights as a member to speak at the meeting or join in demanding a poll.

14.14 Time Within Which Proxies to be Lodged

14.14.1 For an appointment of a proxy to be effective, the following documents must be received by the Company at least 48 hours before the meeting:

(a) the proxy’s appointment; and

(b) if the appointment is signed by the appointor’s attorney, the authority under which the appointment was signed or a certified copy of the authority.

14.14.2 If a meeting has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

14.14.3 A Company receives an appointment authority when it is received at any of the following:

(a) the Company’s registered office;

(b) a fax number at the Company’s registered office; or

(c) a place, fax number or electronic address specified for the purpose in the notice of meeting.

14.15 Validity of Votes made by Proxy

14.15.1 A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

14.15.2 Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if before the proxy votes:

(a) the appointing Member dies;

(b) the Member is mentally incapacitated;

(c) the Member revokes the proxy’s appointment;

(d) the Member revokes the authority under which the proxy was appointed by a third party; or

(e) the Member transfers the share in respect of which the proxy was given.
15. Appointment, removal and remuneration of Directors

15.1 General

15.1.1 The number of the Directors (not including alternate Directors) shall be not less than three nor more than seven.

15.1.2 The Company, in general meeting, may by resolution:

(a) appoint a person as a Director; and

(b) increase or reduce the maximum number of Directors specified in clause 15.1.1.

15.2 Retirement

15.2.1 Any Director may retire from office on giving written notice to the Company of his or her intention to retire.

15.2.2 Any resignation of a Director will take effect from the date specified in the notice or if the date of resignation is earlier than the date of service of the notice, the resignation will take effect from the date of service.

15.3 Filling of Vacancy

Subject to the Act, the Company in general meeting, may by resolution appoint any person as a Director:

15.3.1 to replace a Director who has ceased to hold office; or

15.3.2 as an additional Director but so that the total number of Directors does not at any time exceed the number determined in accordance with clause 15.1.

15.4 Additional or Casual Directors

15.4.1 The Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors does not at any time exceed the number determined in accordance with clause 15.1.

15.4.2 Any Director so appointed shall hold office only until the next general meeting when the Company at a general meeting must resolve:

(a) to confirm the appointment of that Director;

(b) to appoint another person to replace that Director; or

(c) to leave the position vacated by that Director empty.

15.5 Removal of Directors

15.5.1 The Company in general meeting, may by resolution remove any Director before the expiration of his or her period of office, and may by resolution appoint another person in his or her stead.

15.5.2 The person so appointed shall be subject to retirement at the same time as if he or she had become a Director on the day on which the Director in whose place he or she is appointed was last elected a Director.
15.6 Remuneration of Directors

15.6.1 The Directors shall be paid such remuneration as shall from time to time be determined by the Company in general meeting.

15.6.2 That remuneration shall be deemed to accrue from day to day.

15.6.3 The Directors may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or otherwise in connection with the business of the Company.

15.7 Share Quallification of Directors

The Share qualification for Directors may be fixed by the Company in general meeting and, unless and until so fixed, is nil.

15.8 Additional Circumstances for Vacation of Office

In addition to the circumstances in which the office of a Director shall become vacant by virtue of the Act, the office of a Director shall become vacant if the Director:

15.8.1 becomes of unsound mind or becomes a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

15.8.2 resigns his or her office by notice in writing to the Company;

15.8.3 is absent without the consent of the Directors from meetings of the Directors held during a period of 6 months;

15.8.4 without the consent of the Company in general meeting holds any other office of profit under the Company except that of managing Director or principal executive officer or executive Director, or

15.8.5 has, subject to clause 15.10, a conflict of interest and fails to declare the nature of his or her interest as required by the Act.

15.9 Death, Incapacity or Bankruptcy of Sole Director and Member

15.9.1 If a person who is the only Director and the only Member of the Company dies or cannot manage the Company because of the person's mental incapacity, and a personal representative or trustee is appointed to administer the person's estate or property, the personal representative or trustee may appoint a person (including the personal representative or trustee) as the Director of the Company.

15.9.2 If a person who is the only Director and the only Member of the Company vacates the office:

(a) on becoming an undischarged bankrupt under section 206B (3) of the Act; or

(b) as a result of the application of Section 206B (4) of the Act;

and a trustee in bankruptcy is appointed to the person's property, the trustee may appoint a person (including the trustee) as Director of the Company.

15.9.3 A person appointed as a Director of the Company under clause 15.9 holds that office as if they had been properly appointed in accordance with the Constitution.
15.10 Conflict of Interest

15.10.1 A Director who has a material personal interest in a matter that relates to the affairs of the Company must, unless that Director is the sole Director, give the other Directors notice of the interest held at a meeting of Directors as soon as practicable after the Director becomes aware of their interest in the matter.

15.10.2 The Director shall declare the full details of the nature and extent of the interest and its relation to the affairs of the Company.

15.10.3 The Secretary shall record the declaration of a Director's interest in the minutes of the meeting.

15.10.4 The Director may give the other Directors standing notice of the nature and extent of the interest in the matter either at a Directors' meeting or to the other Directors individually in writing.

15.10.5 If standing notice is given to the other Directors individually in writing, it must be tabled at the next meeting of Directors after it is given.

15.10.6 Notwithstanding any rule of law or equity to the contrary but subject to clause 15.8.5, no Director shall be or become disqualified from his or her office by contracting with the Company either as vendor or purchaser, or promisor or otherwise or from being employed or performing any service for or on behalf of the Company in any capacity, professional or otherwise, nor shall any such contract or arrangement be liable to be impeached, affected or avoided by reason of that Director being a party to or otherwise interested in that contract or arrangement, nor shall that Director be liable to account to the Company for any profit realised by or in respect of such contract or arrangement.

16. Powers and duties of Directors

16.1 General

Subject to the Act and to any other provision of this Constitution, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in promoting and forming the Company, and may exercise all such powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Company in general meeting.

16.2 Attorney for Company

16.2.1 The Directors may, by power of attorney, appoint any corporation, firm, person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.

16.2.2 Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him or her.

16.3 Execution of Cheques and Bills of Exchange

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn,
accepted, endorsed or otherwise executed, as the case may be, by any 2 Directors or if the Company has only one Director, by that Director or in such other manner as the Directors determine.

16.4 Directors of Wholly-Owned Subsidiaries

Where the Company is a wholly-owned subsidiary of a body corporate, a Director may act in the best interests of the Holding Company if:

16.4.1 the Director acts in good faith in the best interests of the Holding Company;

16.4.2 the Company is not insolvent at the time the Director acts; and

16.4.3 the Company does not become insolvent because of the Director's act.

17. Proceedings of Directors

17.1 General

17.1.1 The Directors may meet together by electronic means or otherwise for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

17.1.2 If there is a failure of the electronic means used in conducting a meeting of directors, the meeting shall be adjourned until the failure can be rectified. If that is not possible within one hour of the initial failure, the Directors who are able to communicate with each other must adjourn the meeting to a time, date and place determined by those Directors.

17.2 Decisions of Directors

17.2.1 Subject to this Constitution, except where the provisions of this Constitution require the unanimous approval of the Directors, questions arising at a meeting of Directors shall be decided by a majority of votes of Directors present and voting and any such decision shall for all purposes be deemed a decision of the Directors.

17.2.2 In case of an equality of votes, the chair of the meeting, in addition to his or her deliberative vote (if any), shall have a casting vote.

17.3 Director Interested in Contract with Company

Subject to clause 15.10, a Director may vote in respect of any contract or arrangement in which he or she is interested and may attest the affixing of the Seal to any document relating to any such contract or arrangement.

17.4 Alternate Directors

17.4.1 A Director, with the approval of a majority of the other Directors, (except where the Company only has one Director), may appoint a person (whether a Member or not) to be an alternate Director in his or her place during such period as he or she thinks fit.

17.4.2 An alternate Director is entitled to notice of meetings of the Directors and, if the appointor is not present at such a meeting, is entitled to attend and vote in his or her stead.
17.4.3 An alternate Director may exercise any powers that the appointor may exercise and the exercise of any such power by the alternate Director shall be deemed to be the exercise of the power by the appointor.

17.4.4 An alternate Director shall not be required to have any Share qualifications.

17.4.5 An appointment of an alternate Director shall be effected by a notice in writing signed by the Director who makes the appointment and served on the Company.

17.4.6 The appointment of an alternate Director may be terminated at any time by the appointor or by resolution passed by the Directors notwithstanding that the period of the appointment of the alternate Director has not expired, and shall terminate in any event if the appointor vacates office as a Director.

17.4.7 The termination of an appointment of an alternate Director shall be effected by notice to the Company in writing signed by the Director who made the appointment or signed by the chair of the meeting of Directors or in his or her absence, the deputy chair (if any) or in his or her absence another Director and served on the alternate Director.

17.5 Quorum

At a meeting of Directors, the number of Directors whose presence shall be necessary to constitute a quorum shall be such number as shall be determined by the Directors and, unless so determined, shall be:

17.5.1 one Director, if the Company has only one Director; or

17.5.2 a majority of Directors in the case where the Company has an even number of Directors or 50% of Directors in the case where the Company has an odd number of Directors, if the Company has 2 or more Directors.

17.6 Vacancies

In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum or of convening a general meeting of the Company.

17.7 Chair

17.7.1 The Directors shall elect one of their number as chair of their meetings and may determine the period for which that Director is to hold office.

17.7.2 The Directors may elect one of their number as deputy chair of their meetings and may determine the period of office for which that Director is to hold office.

17.7.3 The deputy chair shall chair the meetings of the Directors where the chair is absent or not present within 10 minutes after the time appointed for the time of the meeting or is unwilling to act.

17.7.4 Where a meeting of Directors is held and:

(a) a chair has not been elected as provided by clause 17.7.1 and a deputy chair has not been elected as provided by clause 17.7.2; or
(b) the chair and the deputy chair are both absent or not present within 10 minutes after the time appointed for the holding of the meeting or are unwilling to act,

the Directors present shall elect one of their number to be the chair of the meeting.

17.8 Delegation by Directors

17.8.1 The Directors may by resolution delegate any of their powers to a committee or committees of directors, a Director, an employee of the Company or any other person, consisting of such of their number as they think fit.

17.8.2 A Delegate must exercise the powers delegated in accordance with any directions of the Directors.

17.8.3 The exercise of the power of the Delegate is as effective as if the Directors had exercised it.

17.8.4 Directors who delegate their powers are responsible for the exercise of the power by the delegate as if the power had been exercised by the Directors themselves.

17.9 Committees of Directors

17.9.1 The Members of any committee appointed pursuant to clause 17.8 may elect one of their number as chair of their meetings.

17.9.2 Where such a meeting is held and:

(a) a chair has not been elected as provided by clause 17.9.1; or

(b) the chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the Members present may elect one of their number to be chair of the meeting.

17.9.3 A committee may meet and adjourn as it thinks proper.

17.9.4 Questions arising at a meeting of a committee shall be determined by a majority of votes of the Members present and voting.

17.9.5 In the case of an equality of votes, the chair, in addition to his or her deliberative vote (if any), shall have a casting vote.

17.10 Resolutions of Directors

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

17.10.2 For the purposes of clause 17.10.1, 2 or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.
17.10.3 A reference in clause 17.10.1 to all the Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.

17.11 Decisions and Declarations of Single Director

17.11.1 If the Company has only one Director and the Director records the Director's decision to a particular effect, the recording of the decision counts as the passing by the Director of a resolution to that effect.

17.11.2 A record made for the purposes of clause 17.11.1 also has effect as minutes of the passing of the resolution.

17.11.3 If the Company has only one Director and the Director records the Director's declaration to a particular effect, the recording of the declaration and signing of the record counts as the making of a declaration to that effect made at a meeting of the Directors.

17.11.4 A record made for the purposes of clause 17.11 must be made in writing.

17.12 Validity of Acts of Directors

All acts done by any meeting of the Directors or of a Delegate or by any person acting as a Director are effective even if the appointment or the continuance of the appointment of the Director is invalid because the Company or Director did not comply with the Constitution or any provision of the Act.

18. Managing Director

18.1 General

18.1.1 The Directors may from time to time appoint one or more of their number to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in a particular case, may revoke or vary any such appointment.

18.1.2 A Director so appointed shall not, while holding that office, be subject to retirement, but his or her appointment shall automatically terminate if he or she ceases for any cause to be a Director.

18.2 Remuneration of Managing Director

A managing director shall, subject to the terms of any agreement entered into in a particular case, receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Directors determine.

18.3 Powers of Managing Director

18.3.1 The Directors may, upon such terms and conditions and with such restrictions as they think fit, confer upon a managing director any of the powers exercisable by them.

18.3.2 Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Directors.

18.3.3 The Directors may at any time revoke or vary any of the powers so conferred on a managing director.
18.3.4 The Directors may delegate the responsibility for the day to day management of
the operations of the Company to the managing director.

18.3.5 The managing director will carry out the directions of the Directors and report to the
Directors.

19. Associate Directors

19.1 Appointment

19.1.1 The Directors may from time to time appoint any person to be an associate Director
and may from time to time terminate any such appointment.

19.1.2 The Directors may not appoint any more than 5 associate Directors at any time.

19.1.3 The Directors may from time to time determine the powers, duties and
remuneration of any person appointed as an associate Director.

19.2 Qualification

A person appointed as an associate Director shall not be required to hold any Shares to
qualify him or her for appointment but, except by the invitation and with the consent of the
Directors, shall not have any right to attend or vote at any meeting of Directors.

20. Secretary

Subject to the Act, the Company is not required to appoint a Secretary. However, any
Secretary appointed shall hold office on such terms and conditions, as to remuneration and
otherwise, as the Directors determine.

21. Seal

21.1 Custody of Seal

If the Directors resolve to have a Seal, the Directors shall provide for the safe custody of the
Seal.

21.2 Use of Seal

The Seal shall be used only by the authority of the Directors, or of a committee of the
Directors authorised by the Directors to authorise the use of the Seal, and every document to
which the Seal is affixed shall be:

21.2.1 signed by a Director and be countersigned by another Director, a Secretary or
another person appointed by the Directors to countersign that document or a class
of documents in which that document is included; or

21.2.2 if there is only one Director, who is also the only Secretary of the Company, signed
by that person and it is stated next to the signature that the person witnesses the
sealing in the capacity of sole Director and sole Secretary of the Company.
22. Accounts and inspection of records

22.1 Accounts

22.1.1 The Directors shall cause proper accounting and other records to be kept and also distribute copies of balance sheets as required by the Act.

22.1.2 The Directors shall, unless the Shareholders resolve to the contrary in writing, cause to be prepared a financial report and Directors’ report for a financial year.

22.2 Inspection of Records

The Shareholders or a nominee may inspect the accounting records and other documents of the Company at any reasonable time.

23. Dividends and Reserves

23.1 Declaration of Dividends

Subject to the provisions of the Act and any special rights and restrictions attached to any Shares, the Directors may declare and pay a dividend at any time as appears to the Directors to be justified by the profits of the Company.

23.2 Interim Dividends

The Directors may declare and pay at any time such interim dividends as appear to the Directors to be justified by the profits of the Company.

23.3 Interest on Dividends

Interest shall not be payable by the Company in respect of any dividend.

23.4 Reserves

23.4.1 The Directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think proper as reserves, to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied.

23.4.2 Pending any such application, the reserves may, at the discretion of the Directors, be used in the business of the Company or be invested in such investments as the Directors think fit.

23.4.3 The Directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

23.5 Entitlement to Dividends

23.5.1 Subject to clause 23.5.4 and the rights of persons (if any) entitled to Shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the Shares in respect of which the dividend is paid.

23.5.2 All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the Shares during any portion or portions of the period in
respect of which the dividend is paid, but, if any Share is issued on terms providing that it will rank for dividend as from a particular date, that Share ranks for dividend accordingly.

23.5.3 An amount paid or credited as paid on a Share in advance of a call shall not be taken for the purposes of this clause 23.5 to be paid or credited as paid on the Share.

23.5.4 Where more than one class of Shares has been issued, the Directors may declare and pay a dividend or make a distribution of capitalised profits:

(a) on the Shares of any one or more classes to the exclusion of any other class; or

(b) on the Shares of any one class at the same rate, or a higher or lower rate than the dividend declared and paid or distribution made on the Shares of other classes.

23.6 Deductions from Dividends

The Directors may deduct from any dividend payable to a Member all sums of money (if any) presently payable by him or her to the Company on account of calls or otherwise in relation to Shares in the Company.

23.7 Dividends Paid from Specific Assets

23.7.1 The Directors when declaring a dividend may, by resolution, direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up Shares in, or debentures of, any other corporation.

23.7.2 Where a difficulty arises in regard to such a distribution, the Directors may settle the matter as they consider expedient and fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any Members on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the Directors consider expedient.

23.8 Payment of Dividends

23.8.1 Any dividend, interest or other money payable in cash in respect of Shares may be paid by cheque sent through the post directed to:

(a) the address of the holder as shown in the register of Members, or in the case of joint holders, to the address shown in the register of Members as the address of the joint holder just first named in that register; or

(b) to such other address as the holder or joint holders in writing directs or direct.

23.8.2 Any one of 2 or more joint holders may give effective receipts for any dividends, interest or other money payable in respect of the Shares held by them as joint holders.
24. Capitalisation of Profits

24.1 General

The Company may capitalise profits to:

24.1.1 pay up any amount unpaid on issued Shares; or
24.1.2 pay up Shares to be issued to Members as fully-paid bonus Shares.

24.2 Application of Capitalised Profits

The amount capitalised must be applied for the benefit of Members in the proportions in which the Members would have been entitled to dividends if the amount capitalised had been distributed as a dividend.

25. Notices

25.1 General

A notice may be given by the Company to any Member either by serving it on him or her personally or by sending it by post, facsimile transmission or electronic mail to him or her at his or her address as shown in the register of Members or the address, facsimile number or electronic mail address supplied by him or her to the Company for the giving of notices to him or her.

25.2 Deemed Notice

Any such notice shall be deemed to have been given:

25.2.1 if by post on the day it would have been received in the normal course of post; and
25.2.2 if by facsimile transmission or electronic mail when the transmitting machine confirms successful completion of transmission during the recipient's normal business hours or, if transmission occurs after that time, during the normal business hours of the recipient on the next Business Day.

25.3 Joint Holders

A notice may be given by the Company to the joint holders of a Share by giving the notice to the joint holder first named in the register of Members in respect of the Share.

25.4 Death or Bankruptcy

A notice may be given by the Company to a person entitled to a Share in consequence of the death or bankruptcy of a Member by serving it on him or her personally or by sending it to him or her by post addressed to him or her by name, or by the title of the representative of the deceased or assignee of the bankrupt, or by any like description, at the address (if any) within the territory supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred.

25.5 Service on Company

A document may be served on the Company by leaving it at, or by sending it by post to, the registered office of the Company.
26. Winding up

26.1 Division of Property

If the Company is wound up, the liquidator may, with the sanction of a special resolution, divide among the Members in kind the whole or any part of the property of the Company and may for that purpose set such value as he or she considers fair upon any property to be so divided and may determine how the division is to be carried out as between the Members or different classes of Members.

26.2 Vesting of Property

The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such property in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member shall be compelled to accept any Shares or other securities in respect of which there is any liability.

27. Indemnity

27.1 Definition of Liability and Officer

In this clause 27:

27.1.1 Liability means costs, losses, liabilities and expenses.

27.1.2 Officer means a Director, secretary or other officer of the Company.

27.1.3 References to Officers include references to former Officers.

27.2 Indemnity of Officers

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

27.3 Indemnity for proceedings

Without limiting clause 27.2, every Officer of the Company must be indemnified out of the assets of the Company against any Liability incurred by that person in defending proceedings, whether civil or criminal, in respect of any act or thing done by the Officer in that person's capacity as such Officer but excluding any Liability from or against which the Company is not permitted by the Act to exempt or indemnify the Officer.

28. Interpretation

28.1 Persons

In this Constitution, a reference to a person includes a firm, partnership, joint venture, association, corporation or other corporate body.
28.2 **Legislation**

In this Constitution, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

28.3 **This Document, Clauses and Headings**

In this Constitution:

28.3.1 a reference to this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;

28.3.2 a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Constitution;

28.3.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form; and

28.3.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Constitution.

28.4 **Business Day**

If a payment or other act is required by this Constitution to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

28.5 **Number and Gender**

In this Constitution, a reference to:

28.5.1 the singular includes the plural and vice versa; and

28.5.2 a gender includes the other genders.
**Schedule**

**SHARE CLASSES**

1. **Classes of Shares**

   Subject to the provisions of clauses 6.1 and 6.2, the Directors may elect to issue shares of the following classes:

1.1 Ordinary Shares;

1.2 'A' class Shares;

1.3 'B' class Shares;

1.4 'C' class Shares;

1.5 'D' class Shares;

1.6 'E' class Shares;

1.7 'F' class Shares;

1.8 'G' class Shares;

1.9 'H' class Shares; and

1.10 Redeemable Preference Shares.

2. **Rights and restrictions applicable to Shares of different classes**

2.1 **Ordinary Shares**

   Holders of Ordinary Shares will possess the following rights and be subject to the following restrictions:

   2.1.1 a right to receive notice of any general meeting of the Company under clause 13.4;

   2.1.2 voting rights as specified in clause 14.8;

   2.1.3 dividends as determined from time to time in accordance with this Constitution; and

   2.1.4 the right to participate in the distribution of surplus assets on winding up.

2.2 **'A', 'B' and 'C' Class Shares**

   Holders of 'A', 'B' and 'C' class Shares will possess the following rights and be subject to the following restrictions:

   2.2.1 a right to receive notice of any general meeting of the Company under clause 13.4;

   2.2.2 voting rights as specified in clause 14.8;
2.2.3 dividends as determined from time to time in accordance with this Constitution; and
2.2.4 the right to participate in the distribution of surplus assets on winding up.

2.3 'D', 'E' and 'F' Class Shares

Holders of 'D', 'E' and 'F' class Shares will possess the following rights and be subject to the following restrictions:

2.3.1 no right to receive notice of any general meeting;
2.3.2 no voting rights at any general meeting of the Company;
2.3.3 dividends as determined from time to time in accordance with this Constitution; and
2.3.4 no right to participate in the distribution of surplus assets on a winding up.

2.4 'G' Class Shares

Holders of 'G' class Shares will possess the following rights and be subject to the following restrictions:

2.4.1 a right to receive notice of any general meeting of the Company under clause 13.4;
2.4.2 voting rights as specified in clause 14.8;
2.4.3 no right to specific dividends;
2.4.4 no right to participate in the distribution of surplus assets on winding up.

2.5 'H' Class Shares

Holders of 'H' class Shares will possess the following rights and be subject to the following restrictions:

2.5.1 no right to receive notice of any general meeting of the Company;
2.5.2 no voting rights;
2.5.3 dividends as determined from time to time in accordance with this Constitution;
2.5.4 the right to participate in the distribution of surplus assets on winding up.

3. Special provisions applicable to redeemable preference Shares

3.1 Redeemable Preference Shares

Holders of Redeemable Preference Shares (RP Shares) will possess the following rights and be subject to the following restrictions:

3.1.1 The right to receive notice of any general meeting of the Company under clause 13.4;
3.1.2 The same voting rights as the holders of Ordinary Shares, but only where the following special circumstances occur:

(a) a dividend or part of a dividend is in arrears with respect to the RP Shares;
(b) a reduction of capital is proposed;
(c) a resolution to ratify the terms of a buy-back agreement is proposed;
(d) any other proposal is put forward that affects rights which flow from ownership of the RP Shares;
(e) it is proposed that the Company be wound up;
(f) it is proposed that the whole of the Company’s property, business and undertakings be disposed of.

3.1.3 As determined by the Directors at the date of issue:

(a) the right to a fixed cumulative dividend at a yearly rate fixed by the Directors at the date of issue;
(b) the right to a fixed non-cumulative dividend at a yearly rate fixed by the Directors at the date of issue;
(c) the right to a cumulative dividend at a rate or rates determined by the Directors at any time; or
(d) the right to a non-cumulative dividend at a rate or rates determined by the Directors at any time.

3.1.4 The right to be paid their dividends before any dividends are paid on the other classes of Shares.

3.1.5 The right, on a winding up or capital reduction, to a return of capital at the issue price of the RP Shares (together with any unpaid dividends on RP Shares) in priority to any other Shares which have been issued.

3.1.6 RP shareholders will not otherwise possess the right to participate in any surplus assets or profits.

3.2 Redemption of RP Shares

Subject to sections 254J and 254K of the Act, the RP Shares will be redeemable at the option of the Company, upon payment to the RP Shareholders of the aggregate issue price of the RP Shares, together with any accumulated dividends.

3.3 Notice

The option to redeem will be exercised by providing notice in writing to the RP Shareholders at their respective registered addresses. A bank cheque to each of the RP Shareholders for the amount payable on redemption will accompany each notice.
STATEMENT BY PERSONS WHO HAVE CONSENTED TO BE MEMBERS

We, the persons whose full names and addresses are set out below and who consent to becoming a member of the Company agree to the form of the constitution of the Company set out above.

Wangaratta Rural City Council
ABN 67 784 981 354
###

Witness to above signature
Wangaratta Saleyards
Management Services Agreement

Wangaratta Rural City Council
ABN 67 784 981 354

and

Wangaratta Livestock Exchange Pty Ltd
ACN #

AGENDA – Special Council Meeting
29 January 2018

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Wangaratta Saleyards
Management Services Agreement

Dated / / 

Parties

<table>
<thead>
<tr>
<th>Name</th>
<th>Wangaratta Rural City Council ABN 67 784 981 354</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>Wangaratta Government Centre 62-68 Ovens Street PO Box 238 Wangaratta VIC 3677</td>
</tr>
<tr>
<td>Facsimile</td>
<td>03 6721 9526</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:council@wangeratta.vic.gov.au">council@wangeratta.vic.gov.au</a></td>
</tr>
<tr>
<td>Contact</td>
<td>##</td>
</tr>
<tr>
<td>Short name</td>
<td>Council</td>
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<table>
<thead>
<tr>
<th>Name</th>
<th>Wangaratta Livestock Exchange Pty Ltd ACN ##</th>
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<td>Address</td>
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<td>Contact</td>
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<tr>
<td>Short name</td>
<td>WLE</td>
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</table>

Background

A. Council is the owner of the Saleyards.

B. WLE is a company registered under the Corporations Act 2001 (Cth) and is wholly owned by Council.

C. Council has resolved to implement a commercial management framework for the Saleyards under which Council appoints WLE to provide agreed Management Services to Council in respect of the Saleyards, including:

C.1 oversee the operations of the Saleyards to the benefit of Council;

C.2 develop a five year Strategic Plan for the future development and direction of the Saleyards for consideration by and approval of Council;
C.3 develop an Annual Plan & Budget in respect of each financial year consistent with the Strategic Plan for consideration by and approval of Council;

C.4 provide regular reports to Council in relation to the operations of the Saleyards, including progress on the development and execution of the Strategic Plan and Annual Plan & Budget;

C.5 perform agreed items of routine operational maintenance, minor capital maintenance and management, but not items of major capital maintenance or improvements which will be undertaken by Council; and

C.6 develop recommendations for major capital maintenance or improvements to be carried out by Council for consideration and approval of Council.

D. In order to ensure the continued efficient operation of the Saleyards, Council grants to WLE for the Term the right to receive income in respect of the Saleyards during the Term.

E. In consideration for Council’s appointment of it under this Agreement and the benefits referred to in Recital D, WLE undertakes to Council:

E.1 to perform all of its roles, functions and duties with due care and skill;

E.2 to ensure that it does not contravene (or cause Council to contravene) any obligations in relation to the Saleyards;

E.3 to indemnify Council in respect of any claims arising out of a breach of its obligations referred to in Recital E.2; and

E.4 to pay to Council all income received in respect of the Saleyards, less WLE’s agreed Management Services Fee, determined in accordance with the Annual Plan & Budget.

The Parties Agree

1. Definitions

In this Agreement unless expressed or implied to the contrary:

Agreement means this Wangaratta Saleyards Management Services Agreement, together with any of its schedules, annexures, attachments or similar.

Annual Plan & Budget means the annual plan and budget for the operation of the Saleyards which is consistent with the Strategic Plan to be prepared by WLE for consideration and approval by Council.

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

Claims includes actions, proceedings, suits, causes of action, arbitrations, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

Financial Year means each period commencing on 1 July and concluding on the subsequent 30 June.

Insolvency Event means any of the following events:
(a) WLE becomes insolvent;

(b) a receiver, receiver and manager, administrator, controller, provisional liquidator or
liquidator is appointed to WLE or WLE enters into a scheme of arrangement with its
creditors or is wound up;

(c) WLE has a judgment or order given against it in an amount exceeding $10,000.00
(or the equivalent in another currency) and that judgment or order is not satisfied or
quashed or stayed within 20 Business Days after being given.

Management Services means the management services to be provided by WLE to Council
in respect of the Saleyards, including:

(a) to develop a long-term Strategic Plan for the future development and direction of
the Saleyards for the consideration and approval of Council;

(b) to develop an Annual Plan & Budget in respect of each financial year consistent
with the Strategic Plan for the consideration and approval of Council;

(c) to provide regular reports to Council in relation to the operations of the Saleyards,
including progress in the development and execution of the Strategic Plan and
Annual Plan & Budget; and

(d) to provide the Services specified in the Annual Plan and Budget; and

(e) such other services as are described in this Agreement or as may be agreed
between Council and WLE from time to time.

Management Services Fee means the amount agreed by Council and WLE specified in the
relevant Annual Plan & Budget and calculated by reference to WLE's costs of providing the
Management Services to Council.

Quarter means a 3 month period commencing on 1 January, 1 April, 1 July or 1 October.

Saleyards means the Wangaratta Saleyards, a Council owned and operated business,
operated from the property situated at 99 Shanley Street, Wangaratta South.

Strategic Plan means the long-term strategic plan for the future development and direction
of the Saleyards to be prepared by WLE for the consideration and approval of Council.

Term means the term of this Agreement determined in accordance with clause 3.

2. Appointment

2.1 Council appoints WLE to provide the Management Services to Council for the Term subject
to and in accordance with the terms and conditions of this Agreement.

2.2 WLE accepts its appointment by Council.
3. Term

3.1 Initial Term

This Agreement and the appointment of WLE commences with effect from 1 July 2018 and continues until 30 June 2020 unless extended pursuant to clause 3.2 or terminated sooner under clause 6.

3.2 Renewal of Term

3.2.1 Not more than 12 months and not less than 6 months prior to the expiry of the Term, Council may give WLE written notice that it does not wish this Agreement to renew.

3.2.2 Unless Council gives WLE a notice under clause 3.2.1, this Agreement will be taken to have been renewed for a further term of 5 years commencing upon the date it would otherwise have expired.

3.2.3 This Agreement may only be renewed under this clause 3.2 so that the total term of the Agreement does not exceed 50 years from its commencement.

4. Management Services

4.1 Provision of Management Services to Council

4.1.1 WLE must provide the Management Services to Council:

(a) in accordance with all laws and any requirements of any authority;

(b) with reasonable care and skill;

(c) in accordance with the Strategic Plan approved by Council; and

(d) in accordance with any relevant Annual Plan & Budget approved by Council.

4.1.2 WLE must not incur or make Council liable to the expenditure of any monies unless the expenditure has been provided for in the relevant Annual Plan & Budget or approved in writing by Council.

4.2 Strategic Plan

4.2.1 The interim Strategic Plan for the Saleyards is set out in Schedule 1.

4.2.2 WLE must prepare and provide to Council within 6 months of the date of this Agreement a draft Strategic Plan for the future development and direction of the Saleyards in consultation with Council, and any other relevant stakeholders.

4.2.3 The draft Strategic Plan must:

(a) be prepared in consultation with Council;

(b) contain a dispute resolution mechanism to address and resolve disputes with and issues raised by members of the public in relation to the Saleyards; and

(c) address any matters requested by Council to be addressed in relation to future development and direction of the Saleyards.
4.2.4 Council must review and approve or decline to approve the draft Strategic Plan by notice in writing to WLE.

4.2.5 If Council declines to approve the draft Strategic Plan:

(a) Council must provide WLE with written reasons for declining to approve the draft Strategic Plan;

(b) WLE must reconsider the draft Strategic Plan and Council’s reasons for declining to approve it; and

(c) WLE must resubmit a further draft Strategic plan to Council for Council’s review and approval within four weeks of WLE’s receipt of Council’s advice in writing in accordance with clause 4.2.5(a).

4.2.6 Once Council approves the draft Strategic Plan, it is the Strategic Plan for the purposes of this Agreement.

4.2.7 WLE must review and update the Strategic Plan at least every 3 years after it is adopted. Council may request WLE to review and update the Strategic Plan at any time and WLE must comply with any such request.

4.3 Annual Plan & Budget

4.3.1 Until the first Annual Plan & Budget is approved by Council under this clause 4.3, WLE must conduct its affairs in accordance with the Interim Annual Plan & Budget set out in Schedule 2.

4.3.2 WLE must prepare and provide to Council a draft Annual Plan & Budget for the operation of the Saleyards and the provision of the Management Services in respect of each Financial Year, not less than 6 months prior to the Commencement of the Financial Year to which it relates.

4.3.3 The draft Annual Plan & Budget must:

(a) be prepared in consultation with Council;

(b) be consistent with the current Strategic Plan;

(c) include an amount payable by WLE to Council approximately equivalent to the payroll tax that would be payable by WLE if WLE was not exempt from payroll tax under section 59 of the Payroll Tax Act 2007 (Vic);

(d) address any matters requested by Council to be addressed in relation to the operation of the Saleyards;

(e) contain a detailed budget for the operation of the Saleyards during the relevant financial year specifying expected income, WLE’s costs of providing its services and Management Fee and payments to be made to Council; and

(f) contain detailed key performance indicators for the performance of the Saleyards.

4.3.4 Council must review and approve or decline to approve the draft Annual Plan & Budget by notice in writing to WLE.
4.3.5 If Council declines to approve the draft Annual Plan & Budget:
   (a) Council must provide WLE with written reasons for declining to approve the draft Annual Plan & Budget;
   (b) WLE must reconsider the draft Annual Plan & Budget and Council's reasons for declining to approve it; and
   (c) WLE must resubmit a further draft Annual Plan & Budget to Council for its review and approval within 4 weeks.

4.3.6 Once Council approves the draft Annual Plan & Budget, it is the Annual Plan & Budget for the relevant financial year for the purposes of this Agreement.

4.4 Reports by WLE to Council

4.4.1 WLE must provide Council with Quarterly written reports on the performance of the Saleyards within 10 Business Days of the end of each Quarter, including:
   (a) a summary financial performance of the Saleyards in the preceding Quarter
   (b) the status of the key performance indicators in the current Annual Plan & Budget;
   (c) details of any significant departures from the current Annual Plan & Budget or Strategic Plan (including any departures from relevant materiality thresholds adopted by Council in its management reporting framework);
   (d) any other potential issues in relation to the Saleyards which may have a significant positive or negative effect on the Saleyards or its performance in the future; and
   (e) other matters requested by Council from time to time.

4.4.2 Unless requested by Council in writing to the contrary, WLE must prepare and provide Council with an audited financial report and directors' report for each financial year. This clause has effect as a notice to WLE from its sole shareholder under section 219 of the Corporations Act 2001 (Cth).

4.5 Meetings between Council and WLE

4.5.1 Representatives of Council and WLE must meet regularly in accordance with an agreed meeting schedule (not less than monthly) and as requested by Council from time to time to discuss:
   (a) the status of current and draft Strategic Plans and Annual Plan & Budgets;
   (b) the performance of the Saleyards and issues affecting its performance or opportunities for improvement; and
   (c) other matters relevant to the Saleyards as agreed or requested by Council from time to time.

4.5.2 WLE must provide Council with a copy of each notice of meeting and agenda for each meeting of WLE's board and invite Council's Mayor and Director Corporate Services (or their delegates) to attend all meetings of its Board in an ex-officio non-voting capacity.
5. Financial matters

5.1 Right to Receive Rent and Income

5.1.1 Council assigns to WLE the right to receive all rent and income derived in respect of the Saleyards during the Term.

5.1.2 Council must provide all reasonable assistance to WLE including providing such payment directions as are necessary to enable WLE to receive all rent and income derived in respect of the Saleyards during the Term.

5.2 Payment to Council

5.2.1 WLE must pay to Council monthly in arrears (or on such other basis as may be agreed in writing between Council and WLE) all monies received by WLE less the Management Services Fee and any other deductions agreed in writing by Council.

5.2.2 WLE must provide to Council a proper tax invoice in respect of the Management Services Fee deducted from any payment to Council under clause 5.2.1.

6. Occupancy

6.1 Non-Exclusive Licence

6.1.1 Council grants WLE a non-exclusive licence to occupy all parts of the Saleyards for the Term.

6.1.2 WLE may grant users of the Saleyards a non-exclusive sub-licence to enter and use the Saleyards in accordance with terms and conditions determined by WLE and Council will not grant such licenses itself.

6.1.3 Any terms and conditions of use determined by WLE must be consistent with the terms of this Agreement.

7. Indemnity

7.1.1 WLE must ensure that it complies with the terms of this Agreement and does not do any act or make any omission that would cause Council to be in contravention or breach of any obligation of Council in relation to the Saleyards, including as owner of the Saleyards.

7.1.2 WLE must indemnify Council against the full cost to Council of any Claim arising out of any breach of clause 7.1.1, except to the extent that the Claim arises out of an act or omission by Council which was negligent, in breach of this Agreement or law.
8.  Dispute avoidance and resolution

8.1  Dispute avoidance

8.1.1 Each of WLE and Council acknowledge a desire to avoid the cost, lost time and expenditure or diversion of resources likely to arise from any prolonged dispute between them arising out of or in connection with this Agreement or the management of the Saleyards by WLE.

8.1.2 Accordingly, each party agrees that, so far as practicable, it will conduct its dealings with the other in such a way as to minimise disputation with the other. Without limitation to that general principle, each party will:

(a) promptly notify the other of any facts, matters, circumstances or issues which have arisen or of which it becomes aware which may become the source of a dispute;

(b) discuss the subject matter of any such notice in good faith with the other party to attempt to prevent the facts, matters, circumstances or issues from becoming a dispute; and

(c) act in accordance with any agreed outcomes reached under clause 8.1.2(b) to the extent that the agreed outcome is consistent with this Agreement and the law.

8.2  Dispute resolution

8.2.1 If a dispute arises concerning this Agreement or any aspect of the management of the Saleyards, either of the parties may serve a dispute notice on the other. The dispute notice must state that a dispute has arisen and briefly identify the matter in dispute.

8.2.2 WLE’s manager and Council’s Director of Corporate Services (or their delegates) must meet to attempt to resolve the dispute as expeditiously as possible.

8.2.3 If the dispute is not able to be resolved within a reasonable period of time under clauses 8.2.1 - 8.2.2, Council’s CEO may make a determination to resolve the dispute, which shall be binding upon both parties.

9.  Termination

9.1  Termination by agreement

Council and WLE may terminate this Agreement at any time by written agreement.

9.2  Termination by Council

Council may terminate this Agreement at any time by written notice:

9.2.1 for convenience, by providing WLE with not less than 6 months prior written notice; or

9.2.2 if WLE has breached this Agreement in a way that is not capable of remedy; or

9.2.3 if WLE has breached this Agreement and has not rectified the breach within 21 days of Council providing it with written notice requiring it to do so; or
9.2.4 If WLE suffers an Insolvency Event.

10. GST

10.1 GST Act

In this clause words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as their definition in that Act.

10.2 Exclusive of GST

Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

10.3 Recipient must pay

If GST is payable in respect of any supply made by a supplier under this Agreement, subject to clause 10.4, the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

10.4 Tax invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 10.3.

11. Security interests

11.1 WLE must not encumber or otherwise grant a security interest in respect of any personal property in which WLE has rights, other than a Permitted Security Interest.

11.2 For the purposes of this clause 11:

- *personal property* has the meaning given in the PPSA;
- *Permitted Security Interest* means:
  - (a) a purchase money security interest given in the ordinary course of WLE’s business;
  - (b) a security interest in favour of Council; or
  - (c) a security interest given with Council’s prior written consent, subject to satisfaction of any conditions that Council may impose (in its absolute discretion);

- *PPSA* means the *Personal Property Securities Act 2009* (Cth);
- *purchase money security interest* has the meaning given in the PPSA;
- *rights* has the same meaning as under the PPSA; and
- *security interest* has the meaning given in the PPSA.
12. Notices

12.1 Delivery of notice

12.1.1 A notice or other communication required or permitted to be given to a party under this Agreement must be in writing and may be delivered:

(a) personally to the party;
(b) by leaving it at the party's address;
(c) by posting it by prepaid post addressed to the party at the party's address;
(d) by facsimile to the party's facsimile number; or
(e) by electronic mail to the party's email address.

12.1.2 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

12.2 Particulars for delivery

12.2.1 The address, facsimile number and email address of each party are set out on page 1 of this Agreement under the heading 'Parties' (or as notified by a party to the other parties in accordance with this clause).

12.2.2 Any party may change its address, facsimile number or email address by giving notice to the other parties.

12.3 Time of service

A notice or other communication is deemed delivered:

12.3.1 If delivered personally or left at the person's address, upon delivery;
12.3.2 If posted within Australia to an Australian address, 5 Business Days after posting and in any other case, 10 Business Days after posting;
12.3.3 If delivered by facsimile, subject to clauses 12.3.5 and 12.3.6, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the recipient's facsimile;
12.3.4 If delivered by electronic mail, subject to clauses 12.3.5 and 12.3.6, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient;
12.3.5 If received after 5.00pm in the place it is received, at 9.00am on the next business day; and
12.3.6 If received on a day which is not a business day in the place it is received, at 9.00am on the next business day.
13. General

13.1 Variation

This Agreement may only be varied or replaced by a document duly executed by the parties.

13.2 Counterparts

This Agreement may be executed in counterparts, all of which taken together constitute one document.

13.3 Entire agreement and no reliance

13.3.1 This Agreement:

(a) constitutes the entire agreement between the parties; and

(b) supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation imposed, given or made by a party (or an agent of a party) prior to entering into this Agreement.

13.3.2 The parties acknowledge that in entering into this Agreement each party has not relied on any representations made by the other party (or its agents or employees) other than matters expressly set out in this Agreement.

13.4 Liability

If a party consists of 2 or more people or entities, an obligation of that party binds each of them jointly and severally.

13.5 Severability

13.5.1 Any provision of this Agreement that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

13.5.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Agreement that is unlawful or unenforceable will be severed from this Agreement and the remaining provisions continue in force.

13.6 Further assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

13.7 Legal costs and expenses

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.

13.8 Waiver and exercise of rights

13.8.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
13.8.2 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

13.8.3 The failure of a party at any time to insist on performance of any provision of this Agreement is not a waiver of the party's right at any later time to insist on performance of that or any other provision of this Agreement.

13.9 No assignment without consent

WLE must not:

13.9.1 sell, transfer, novate, delegate, assign, licence; or

13.9.2 mortgage, charge or otherwise encumber

any right or obligation under this Agreement to any person without the prior written consent of Council.

13.10 No relationship

Other than expressed to the contrary:

13.10.1 no party to this Agreement has the power to obligate or bind any other party;

13.10.2 nothing in this Agreement will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties; and

13.10.3 nothing in this Agreement will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

13.11 Survival of indemnities

Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement.

13.12 Enforcement of indemnities

It is not necessary for a party to incur any expense or make any payment before enforcing a right of indemnity conferred by this Agreement.

13.13 No merger

The warranties, undertakings, agreements and continuing obligations in this Agreement do not merge on completion.

13.14 Business Day

If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.
14. Interpretation

14.1 Governing law and jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

14.2 Words and headings

In this Agreement, unless expressed to the contrary:

14.2.1 words denoting the singular include the plural and vice versa;
14.2.2 the word ‘includes’ in any form is not a word of limitation;
14.2.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
14.2.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Agreement; and
14.2.5 no rule of construction applies to the disadvantage of the party preparing this Agreement on the basis that it prepared or put forward this Agreement or any part of it.

14.3 Specific references

In this Agreement, unless expressed to the contrary, a reference to:

14.3.1 a gender includes all other genders;
14.3.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
14.3.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
14.3.4 writing includes writing in digital form;
14.3.5 ‘this Agreement’ is to this Agreement as amended from time to time;
14.3.6 ‘A$’, ‘$’, ‘AUD’ or ‘dollars’ is a reference to Australian dollars;
14.3.7 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Agreement;
14.3.8 any property or assets of a person includes the legal and beneficial interest of that person in those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
14.3.9 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
14.3.10 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and

14.3.11 any body (Original Body) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

14.4 Personal knowledge

A reference to a matter being to the knowledge of a person means the matter is to the best of the knowledge and belief of the person after making proper enquiry including enquiry which a reasonable person would be prompted to make by reason of knowledge of a fact.
Signing Page

Executed by the parties

The Common Seal of the Wangaratta Rural City Council was affixed in the presence of:

Councillor

Chief Executive Officer

Executed by Wangaratta Livestock Exchange Pty Ltd ###
ACN ### in accordance with section 127(1) of the Corporations Act 2001 (Cth) ### by being signed by authorised persons for the company:

Director

Director (or Company Secretary)

Full name

Full name

Usual address

Usual address
Schedule 1  Interim Strategic Plan

[To be agreed by the parties and inserted]
Schedule 2  Initial Annual Plan & Budget

[To be agreed by the parties and inserted] ##
The Rural City of Wangaratta is a leading regional city council, providing a broad range of services and activities to its growing population of 28,000. Situated in north east Victoria, the region provides outstanding lifestyle, recreational, educational and health facilities and is recognised for its tourism, gourmet foods and fine wines.

A number of opportunities exist for suitably qualified people to nominate for positions as directors of a new, wholly Council-owned entity that is being established to manage Council’s Saleyards business.

Wangaratta Livestock Exchange Pty Ltd

The Wangaratta Saleyards (the Saleyards) is owned and operated by the Wangaratta Rural City Council (the Council). The recent upgrade of the facility has delivered a state of the art facility that is one of the premier cattle auction centres in Victoria.

The Saleyards has National Saleyards Quality Accreditation boasting high quality, roofed and soft-floor stock handling and selling pens with access to water for cattle in all receiving, holding and delivery pens. It features a high quality, EPA approved, waste treatment facility and state of the art weighing facilities including a modern link to Australian Quarantine and Inspection Service (AQIS). Other features include truck washing facilities, pregnancy testing of cattle, availability of cattle weigh-ins for private sales seven days a week, and an excellent canteen.

An economic impact assessment of the Saleyards conducted in 2012 confirmed that the facility makes a significant economic and employment contribution to the local Wangaratta regional economy. Council’s objectives for the business reflect the importance of the operation to Wangaratta and district. Council requires the Saleyards to have an appropriate business, governance and management structure that gives assurance that it is managed effectively, efficiently and sustainably in accordance with industry standards and best practice guidelines and one that also optimises use and user satisfaction.

In order to achieve its objectives for the Saleyards, Council is establishing an arm’s length entity to manage the Saleyards. The company structure to be incorporated will be a proprietary company limited by shares, and wholly owned by Council. The entity will be registered under the Corporations Act 2001 (Cth) (the Act) as the Wangaratta Livestock Exchange Pty Ltd (WLE).

Functions and responsibilities of WLE

Council is implementing a commercial management framework for the Saleyards where Council appoints WLE to provide agreed management services to Council in respect of the Saleyards under a Management Services Agreement (the Agreement), including to:

1. develop a 5 year Strategic Plan for the future development and direction of the Saleyards for consideration by and approval of Council;
2. develop an Annual Plan & Budget in respect of each financial year consistent with the Strategic Plan for consideration by and approval of Council;
3. operate the Saleyards with the objective of achieving the Annual Plan and Budget and the long-term Strategic Plan;
4. provide regular reports to Council in relation to the operations of the Saleyards, including progress on the development and execution of the Strategic Plan and Annual Plan & Budget;
5. perform agreed items of routine operational maintenance, minor capital maintenance and management, but not items of major capital maintenance or improvements which will be undertaken by Council; and

6. develop recommendations for major capital maintenance or improvements to be carried out by Council for consideration and approval of Council.

In order to ensure the continued efficient operation of the Saleyards, Council will grant to WLE the right to receive income in respect of the Saleyards.

In consideration for Council’s appointment of it under the Agreement, WLE undertakes to Council:

1. to perform all of its roles, functions and duties with due care and skill
2. to ensure that it does not contravene (or cause Council to contravene) any obligations in relation to the Saleyards
3. to indemnify Council in respect of any claims arising out of a breach of its obligations referred to in item 2 above
4. to pay to Council all income received in respect of the Saleyards, less WLE’s agreed Management Services Fee, determined in accordance with the Annual Plan & Budget.

Council support during establishment

Council will offer support during the establishment stages of the WLE. Council will work with the appointed Directors to establish the business and also provide initial working capital. Council will also provide agreed services at cost to the business.

An agreed transitional management plan will be provided to clarify the responsibilities of both the council and the Directors during this stage.

Time commitment required of a WLE Director

Director appointments will be made on a part-time sessional basis.

An indicative annual time commitment would be approximately 20 days per annum, usually comprising of 12 board/strategy meetings.

Term of appointment

Directors will be appointed by Council for a term of up to three years. Council may appoint Directors for one, two or three years.

Mandatory requirements for appointment as a Director to WLE

To be eligible for appointment, applicants must:

- be an individual, not a body corporate
- be a resident of Australia
- be at least 18 years of age

A person will be ineligible for appointment if they:
• are disqualified from managing corporations under the Act
• have any convictions on indictment of offences that concerned the making, or participation in making, of decisions that affected the whole or a substantial part of the business of a corporation
• have any convictions on indictment of offences that concerned acts that had the capacity to affect significantly a corporation’s financial standing
• have any convictions on indictment of offences that were a contravention of the Act and were punishable by imprisonment for a period greater than 12 months
• have any convictions for offences that involved dishonesty and were punishable by imprisonment for at least 3 months
• have any convictions for offences against the law of a foreign country that were punishable by imprisonment for a period greater than 12 months
• are an undischarged bankrupt under the law of Australia, its external territories or another country; and
• have failed to comply with any prescribed insolvency procedures;

Relevant skills and experience

Skills and experience that will be considered in relation to applicants are but not limited to:
• executive and non-executive experience
• livestock saleyards industry and sector experience or knowledge
• strategic thinking
• board of directors governance knowledge and understanding
• leadership, relationship management and achieving change including experience as either a CEO or senior member of a management team in a similar or larger sized organisation
• attributes and competencies enabling individual board members to use their knowledge and skills to function well as team members and to interact with key stakeholders
• subject matter expertise, such as:
  o accounting
  o capital management
  o legal services
  o risk management
  o IT expertise
  o public policy or government relations.

Remuneration

Directors will be eligible to receive an appropriate level of remuneration for an appointment.

Director’s fees will be recommended by the board and subject to approval by the Council.

A person undertaking the role of Chair may be remunerated at a higher rate than other members in recognition of their additional leadership and relationship management responsibilities. The inaugural Chair will be appointed by Council based on these competencies.
Fees will be set and reviewed by Council in line with the Victorian State Government publication ‘Department of Premier and Cabinet Appointment and Remuneration Guidelines’ (the Guidelines) as it exists from time to time.

Members will be eligible for reimbursement for reasonable out of pocket expenses, such as travelling, accommodation, meals and other incidental expenses associated with the business of the entity.

Relevant approvals

The Guidelines outline the processes and principles that will be applied in appointing WLE directors.

Applicants selected for shortlisting will be required to consent to background and probity checks in accordance with these guidelines.

How to apply

All applications must include biographical details, including relevant qualifications and experience and the skills they bring to the board. Applications must include a document addressing the criteria listed in the section headed ‘Relevant skills and experience’ above.

Further enquiries about this position should be directed to Ruth Kneebone Director of Corporate Services on 03 57271814

Applications can be emailed to careers@wangaratta.vic.gov.au or posted to:

Manager – People & Culture
Rural City of Wangaratta
PO Box 238
WANGARATTA 3676

Applications close at 4pm on 21 February 2018
22 December 2017

Mr Robert Gregory
Partner
Maddocks
25/727 Collins Street
MELBOURNE VIC 3000

By Email: Robert.Gregory@maddocks.com.au

Dear Robert

Rural City of Wangaratta (RCW) Saleyards-- S193 Risk Assessment

We have undertaken the work agreed to in our engagement letter dated 30 October 2017 and I have pleasure in presenting our report in this regard.

Background

The Saleyards is a Council owned and operated business (Business). The Business has undergone major, multi-million dollar capital upgrades, due to its importance to the Wangaratta community, the regional economy and social contribution.

Council determined that a thorough review and determination of the Business' model was required to deliver improved governance standards, levels of accountability, decision making and performance for this community asset.

In February 2017, RCW’s Saleyards Business Structure: Options for the Future: Discussion Paper (Discussion Paper) recommended that Council consider the net advantages of transferring the Business to an arm’s length entity. The Discussion Paper also recommended a proprietary company limited by shares entity as being the most viable option.

At a meeting on 28 March 2017, council passed a resolution agreeing in principle to develop a management structure with respect to the Saleyards Business.

On 22 August 2017, council moved a motion that RCW (in brief) to progress with the establishment of a new company limited by shares and authorised the CEO to effect this transition.

Under the circumstance, council are required to arrange for the preparation of a S193 Risk assessment, which is contained in this report.

My professional Curriculum Vitae setting out my qualifications to prepare this report are set out in Attachment 1.
Scope of Work
The scope of work was to undertake a S193 risk assessment which addresses the relevant aspects of the proposed arrangement.

Our work involved the consideration of relevant documentation, interviews with relevant personnel and group discussions.

Limitations
Our work did not extend to any aspects of the migration beyond the development of the risk assessment report, thus we did not for example, evaluate risks in relation to any specific board nominees.

Our risk assessment has relied on the input and communication of relevant factors and information from the management team, without which there may possibly be risks which we are unaware of and thus may not have addressed in this report.

Executive Summary
The migration of the saleyard from one owned and operated by council, to that of an independent company, in itself appears to be reasonably straightforward and in many respects considered a reasonable and straightforward undertaking.

From a risk perspective, while there are a number of potential benefits in gaining a truly commercial perspective on running the business and its operations there are also a number of potential risks notable the impact on potential viability as well as community reaction to possible changes in pricing and operating manner.

The manner in which the new company transitions from a council operated entity to an independent operating company will considerably influence its ability to function in a sustainable manner in the future.

From our risk analysis presented below, we have estimated a potential annual risk exposure of $87,000.

Risk Methodology
In considering the risks associated with this proposal, we have considered these from an incremental perspective. This means that where RCW already has an exposure and such an exposure remains, this would result in a nil incremental risk.

Thus only risks and opportunities that are additional results of the change are considered to be incremental.
Risk Analysis

The following is a summary of the risk value we have attached to each of the risks identified below.

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<th>Risk</th>
<th>Risk Commentary</th>
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<tr>
<td>1</td>
<td>Going Concern due to ongoing deficits or insufficient cash flow to enable the yard to continue operating. As an independent trading entity the new company is exposed to the same rules as any other company, this implies that should trading deficits occur on an ongoing basis, there will be a time when the entity is no longer viable, without the financial support of Council.</td>
<td>Annual budgets will be prepared and presented. Provision of up front budget allocation – seed funding. RCW is ultimately the only shareholder and will maintain an oversight over the financial affairs of the entity and be in a position to address any looming issues in this regard. The projected deficit is no more than is being experienced by RCW at present and thus presents no incremental risk. The separation of management of the saleyard is an attempt by RCW to address this situation.</td>
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<td>2</td>
<td>Increase in cost base or not all costs taken into account There are potentially hidden costs that are currently absorbed by Council that are not taken into account which will further impact on the current deficits. In addition, in its own right the company will incur various expenses which it or council does not currently incur, such as directors fees, directors insurance, loss of leveraging off exiting Council contracts, (waste collection, software licences, public liability insurance for example) purchasing power.</td>
<td>Financial modelling has taken into account all current costs as well as new anticipated associated with running the operation that has not previously been allocated to the enterprise. RCW have indicated that they will offer a transition plan to assist the new board. This will entail an offer the current services at actual costs to minimise expensive start-up costs until the board settles in. In addition RCW will offer support to establish the new enterprise. For this purpose we have assumed there are additional costs that have not been identified or contemplated and thus provided for $5k per month.</td>
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<td>3</td>
<td>Additional resources required resulting in increased costs. Currently the saleyard utilises council staff to fulfil many diverse functions. On separation, Council may be unwilling or unable to provide such support, resulting in the need to employ more staff. In addition, the new company may choose to employ its own staff in order to avoid the ongoing scrutiny of council.</td>
<td>A transition management plan will be established between council and the saleyard. While it is possible that additional resources will be required, it is also possible that a more commercial board will be in a position to maximise the output form their expenditure on people thus reducing this exposure, possibly even requiring fewer resources. The projected budget already takes into account staffing costs, which are commensurate with those that are currently being incurred. There is no reason to expect that additional resources will be required. Nil</td>
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<td>4</td>
<td>Loss of community support due to perception of commercialisation. Manager alienating the stakeholders (Customer and Agents) through a more commercial approach. A focus of the new company on improving financial performance may result in certain operational changes which the community has become accustomed to. This may result in a migration to other surrounding saleyards. Saleyard fees and rates increase resulting in a reduction in volume and reduced revenue. A commercial perspective by the new company could very well result in a change in the fees and charges levied and while these may still be competitive, this may in itself result in a loss of business where people from surrounding areas will travel for the currently lower fees. Without such incentive, these people will potential go to their closer saleyards. In addition, higher fees are unlikely to attract other customers, unless accompanied by improved facilities and services.</td>
<td>RCW has consulted widely and have indicated that it will depend on the buyers attending and the agents supporting the new model. RCW have indicated that there is not many alternative venues within the area, and the closest is a commercial operation. Attendance of buyers will be critical to the success, agents will follow buyer behaviour. From a logistical perspective it will increase difficulty for customers to have to travel further to other venues and as such there is potentially an inherent protection for the saleyard, provided their offering remains reasonable and relevant. For the purpose of this analysis, we have assumed a 10% impact on annual revenue due to unexpected reduction in attendance. A Strategic plan and annual budget has to be approved by council. Analysis by RCW of the competing saleyard in the area indicates that there is room for some movement in the saleyard fees. In addition financial projections based on historical volumes at comparable rates has been undertaken. This is an existing current risk which RCW is attempting to mitigate with the appointment of a new board. 54</td>
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<td>Item</td>
<td>Description</td>
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<td>5</td>
<td>Change in rates, service offerings and facilities as well as a commercial approach may attract new customers from the surrounding areas. Ability to operate the company to some extent free of the constraints of local government requirements would potentially provide opportunities, however this would depend on the extent to which the company is dependent on council for financial support.</td>
<td>There is potential positive benefit from an entity that is run by a commercial board. This may result in increased revenue and profit. This represents a offsetting risk. Assumed for the purpose of this analysis to be an uplift of 5% of revenue.</td>
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<td>6</td>
<td>Reputational impact on Council due to the operating style of the new company. The company operates in a manner which is contrary to community expectations and guidelines of council.</td>
<td>RCW will have a management services agreement in place and has an annual budget and strategic planning requirement within this. If the reputation is being damaged in the view of the council, council can reflect these concerns in the required strategic direction of the WLE</td>
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<td>7</td>
<td>Increased investment requirement by Council. Commensurate with a change in a fee structure, may come the need to balance this with improved facilities and services. It is possible that the new company may look to Council to undertake improvements to support such fee changes.</td>
<td>The Management Services Agreement, will indicate the responsibility for maintenance, minor capital and major capital. The annual budget process will dovetail into council budgets and council will be able to budget for major capex in its forward budgets.</td>
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<td>8</td>
<td>Inappropriate board decisions due to insufficient or relevant board skills and experience. The new company will be critically dependent on the skills and experience of the board to ensure that it is able to improve performance. Without adequate selection and monitoring mechanisms, the board may not have the requisite experience and skills.</td>
<td>Considerable effort will be made in order to appoint and oversee a commercially minded and appropriately skilled board. Oversight exercised by RCW should ideally identify non-performing or under skilled board members.</td>
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<th>Item</th>
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<td>9</td>
<td>Poorest financial management of the company results in council having to make up the shortfall. The company will have the right to receive all revenue and make all payments and thus without proper financial management, these aspects can be neglected.</td>
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<td>10</td>
<td>Loss of operating infrastructure. Currently the sleyard relies on all the operating infrastructure of council, such as computers, people, processes reporting etc. As an independent company, it will either have to provide these facilities itself or rely on council to continue providing these. Council may or may not be prepared to do so.</td>
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<td>11</td>
<td>Loss of income tax exempt status. This scenario arises where the new company seeks other ventures in order to make its own operations viable. The manner in which these other operations are structured and undertaken could very well impact on the status of the whole company.</td>
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<td>12</td>
<td>Govt changes the tax act to remove income tax exempt status of the STB.</td>
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<td>13</td>
<td>Facilities become degraded due to a lack of ongoing maintenance. While it remains council assets, this scenario results from Council taking a hands off approach and thus no longer seeing the direct link to the operations, and thus seeing the requirement for capital upkeep and development.</td>
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14. New company takes on Debt that is cannot afford, ultimately resulting in Council having to make up any shortfall. The risk scenario is that an independent board may very well take it upon themselves to incur debt on behalf of the company, without Council approval or involvement. The constitution doesn’t allow this, Management Services agreement, annual budget and strategic plan will assist in minimising this risk. Nil.

15. Increased risk of fraud conducted by the directors or management team which results in negative publicity for Council and the possibility that Council will have to make good on the shortfall. While this is an existing risk, the separation of the entities does increase the exposure of director level fraud. Assuming that as part of RCW oversight, there is procedures to validate financial figures and operational controls within the company, then this risk will be minimised. In addition the amounts involved are relatively small and thus any material level of fraud will be reasonably identifiable. Nil.

Total potential estimated risk exposure per annum that can be quantified

87

We would like to thank both the staff of Wangaratta for their support in undertaking this assessment and I trust that this report adequately captures all relevant aspects in relation to the proposed transfer of ownership to an independent company.

If you have any further questions with regards to the content of this report, please feel free to call me on (03) 8610 5620.

Yours sincerely

PITCHER PARTNERS CONSULTING PTY LTD

GRAHAM NORISKIN
Executive Director
Appendix 1 - Professional Curriculum Vitae of Graham Noriskin

**GRAHAM NORISKIN (EXECUTIVE DIRECTOR)**

Graham has over 30 years of experience in the delivery of Risk & Internal Audit services and has lead Pitcher Partners Risk Services division for the past 12 years. Prior to joining Pitcher Partners, Graham was a Partner in the Risk division of a Big 4 firm for 3 years.

Graham is a Chartered accountant and also a member of the Institute of Internal Auditors. Graham has experience in servicing many Local councils and currently provide outsourced Internal Audit and Risk management services to a number of large local councils.

Graham has numerous skills and expertise which includes:

- Internal Audit
- Risk Management
- Commercial / Business Skills
- Business process analysis
- Environmental Risk
- Over 30 years In-depth Information technology experience
- BCP and DRP
- Advanced data analysis and business and operational/financial modelling

**Professional qualifications and memberships:**

- Member of the Institute of Internal Auditors
- Member of the Institute of Chartered Accountants in Australia
- Bachelor of Commerce
- Bachelor of Accounting Science (Hons)