

Local Government Act 2008

CONSTITUTION OF A

Local Government Subsidiary

“CouncilBIZ”

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Constitution of Local Government Subsidiary (CouncilBIZ)

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Constitution:

“**Act**” means the *Local Government Act (NT)*;

“**Agency**” means the department or departmental unit to which responsibility for administering the *Local Government Act* of the Northern Territory is allocated by an Administrative Arrangements Order.

“**Approval**” means the written approval of the Minister;

“**Auditor**” means the auditor appointed by the Local Government Subsidiary in accordance with rule 17;

“**Business Day**” means a day that is not a Saturday, Sunday, public holiday or bank holiday in Darwin, Northern Territory;

“**Business Hours**” means 8:30am to 5pm Central Standard Time;

“**Chief Executive Officer**” means the Chief Executive Officer, or equivalent senior officer, of the Agency;

“**Local Government Subsidiary**” means CouncilBIZ as constituted by the Membership pursuant to section 27 of the Act;

“**Constitution**” means this constitution and any supplementary substituted or amending constitution for the time being in force;

“**Executive Officer**” means the person employed pursuant to Rule 14;

“**Member**” means the members, from time to time, the first members names and details appear at Rule 9 hereof, and “**Members**” and “**Membership**” have corresponding meanings;

“**Minister**” means the Northern Territory Minister responsible from time to time for the portfolio of Local Government;

“**Nominated Representatives**” means a senior officer employed by the Member and nominated in writing by the Member;

“**Territory**” means the Northern Territory of Australia represented by the Minister;

“**Registered Address**” means the addresses of the Members as notified from time to time to the Local Government Subsidiary.

1.2 Interpretation

In this Constitution unless the context requires otherwise:

- (a) references to notices include formal notices of meeting and all documents and other communications from the Local Government Subsidiary to its Members;
- (b) words importing any gender include all other genders;
- (c) the word "person" includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (d) a reference to any legislation or a provision of any legislation includes any amendment to that legislation or provision, any consolidation or replacement of that legislation or provision and any subordinate legislation made under that legislation;
- (e) where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Executive Officers;
- (f) a reference to **writing** and **written** includes printing, lithography and other ways of representing or reproducing words in a visible form; and
- (g) the singular (including defined terms) includes the plural and the plural includes the singular.

1.3 Headings

Headings are used for convenience only and do not affect the interpretation of this Constitution.

1.4 Local Government Act

In this Constitution unless the contrary intention appears:

- (a) 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; and
- (b) "section" means a section of the Act.

2. LOCAL GOVERNMENT SUBSIDIARY'S NAME AND ADDRESS

The name of the Local Government Subsidiary is **CouncilBIZ**.

The physical address of the Local Government Subsidiary is:

21 Parap Road
PARAP NT 0820

3. LOCAL GOVERNMENT SUBSIDIARY'S OBJECT

The Object for which the Local Government Subsidiary is established is to facilitate the efficient provision of administration, information technology and financial services to the Members, including, but not limited to, by providing infrastructure, goods and services

and by procuring goods and services for the Members as may be required from time to time.

4. OPERATING COSTS AND POWERS OF LOCAL GOVERNMENT SUBSIDIARY

- a) All costs expenses and outlays of any kind whatsoever required to be made by the Local Government Subsidiary, shall be calculated and shared by the Members either equally or on the basis of a formula agreed by resolution of the Members.

Local Government Subsidiary's powers

- b) Solely for the purpose of carrying out the Local Government Subsidiary's Object, and for no other purpose, the Local Government Subsidiary may, subject to the rules that apply to shire councils under the Act:
- (i) raise funds and invite and receive contributions, grants, distributions of income or capital, gifts, loans and deposits from any person;
 - (ii) accept and hold funds or property of any kind;
 - (iii) undertake full administration and management of the Local Government Subsidiary and charge and accept fees, commission or other remuneration in respect of such administration and management with the written agreement of the Members;
 - (iv) purchase, take on lease or in exchange, hire, accept gifts or otherwise acquire real or personal property;
 - (v) control, manage, lease, exchange, mortgage, charge, sell, transfer, surrender, dispose of, develop, carry on business or otherwise deal with any real or personal property of any kind;
 - (vi) invest, deal with and lend money and otherwise provide financial accommodation to, and guarantee or otherwise secure loans to, the Local Government Subsidiary ;
 - (vii) construct, improve, maintain, develop, work, manage and control real or personal property and enter into contracts and agreements;
 - (viii) appoint a person as the Local Government Subsidiary's attorney or agent with the powers on the terms the Local Government Subsidiary thinks fit;
 - (ix) enter into any arrangement or obtain from any government or authority any right, privilege or concession that the Local Government Subsidiary thinks it desirable to obtain, and carry out, exercise and comply with any of those arrangements, rights, privileges and concessions;
 - (x) in accordance with all laws in force in the Territory from time to time, and in accordance with the responsibilities of the Executive Officer as set out in this Constitution, engage, dismiss or suspend any employee, agent, contractor or professional person;
 - (xi) make, draw, accept, endorse, discount, execute and issue negotiable or transferable instruments; and

- (xii) do all other things that are incidental or conducive to furthering the Local Government Subsidiary's Object.

5. GUARANTEE BY MEMBERS

The debts and liabilities of the Local Government Subsidiary are guaranteed by the Members in equal shares or on the basis of a formula agreed by the Members.

6. INCOME AND PROPERTY

- (a) The Local Government Subsidiary's income and property, however derived, must be applied solely towards promoting the Local Government Subsidiary's Object. No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise, to any of the Members. However, this rule does not prohibit payment:

- (i) in good faith to any Member for goods or services supplied in the ordinary and usual course of business at usual or reasonable commercial rates;
- (ii) of reasonable and commercial interest on money borrowed from a Member; or
- (iii) of reasonable and commercial rent for premises let by any Member to the Local Government Subsidiary ; or
- (iv) out-of-pocket expenses incurred by a Member or a Nominated Representative in performing a duty of the Local Government Subsidiary ; or
- (v) of premiums on contracts of insurance for, any Member to the extent permitted by law and this Constitution

7. ABOLITION OF LOCAL GOVERNMENT SUBSIDIARY

In the event of the organisation being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation as agreed to by the Members, with similar purposes and which has rules prohibiting the distribution of its assets and income to its members.

8. ALTERING THIS CONSTITUTION

This Constitution may only be altered by unanimous resolution of the Members and with the Approval of the Minister, unless an amendment to the Act results in an inconsistency between this Constitution and the Act, in which case this Constitution will be deemed to be amended in line with the amendment to the Act.

9. MEMBERSHIP

- (a) There shall be one class of Membership with members having the rights set out in this Constitution. The Local Government Subsidiary is constituted by the Members whose names and addresses appear at Schedule 1 and they shall be deemed to constitute the Membership of the Local Government Subsidiary on the day that this Constitution is gazetted by the Minister in accordance with section 29 (1) of the Act.
- (b) The Local Government Subsidiary (by unanimous resolution of the Members) may invite any other local government body having the same or similar interests, to become a Member.
- (c) If invited to do so an applicant may make an application to the Local Government Subsidiary (in writing and signed by the applicant) in the form (if any) prescribed by the Members.
- (d) After the receipt of an application for Membership, the Local Government Subsidiary in meeting must consider the application and decide whether it wishes to admit or reject the admission of the applicant. The Local Government Subsidiary in meeting need not give any reason for rejecting an application. No new Members may be admitted to the Local Government Subsidiary without the Approval of the Minister, but the Minister may, in his discretion, direct the Local Government Subsidiary to accept an application.
- (e) The Agency is entitled to be notified of and attend meetings of the Local Government Subsidiary as an observer without voting rights.

10. RIGHTS AND DUTIES OF MEMBERS

10.1 Rights of Members

Without limiting the rights otherwise conferred on Members in this Constitution or under the Act, each Member has the following rights:

- (a) through their Nominated Representative, be given notice of, attend and vote at any meeting of the Local Government Subsidiary in accordance with Part 12 of this constitution; and
- (b) to nominate in writing one person, being the Chief Executive Officer or other senior officer employed by the Member, to be their Nominated Representative from time to time

10.2 Duties of Members

The Members of the Local Government Subsidiary and their Nominated Representatives must:

- (a) act honestly, diligently with the reasonable care of a member of a local government Council, and without bias;
- (b) act respectfully towards other Members and employees and not engage in personal attacks;

- (c) not make improper use of information or opportunities received through their positions;
- (d) manage and control the affairs of the Local Government Subsidiary in the interests of all the Members and in accordance with this Constitution, the Act and the Local Government Subsidiary's Object; and
- (e) not make any public statement on behalf of or concerning the Local Government Subsidiary unless authorised by the Members unanimously.

11. RESIGNATION OF A MEMBER

11.1 Resignation

A Member may not resign from the Local Government Subsidiary without the Approval of the Minister.

12. MEETINGS OF THE LOCAL GOVERNMENT SUBSIDIARY

12.1 Calling meetings

- (a) A meeting may be called:
 - (i) by the chairperson;
 - (ii) by not less than one-third of Nominated Representatives requesting a meeting in writing to the chairperson, or if there is no chairperson at that time, the subsidiary's executive officer, or if there is no executive officer at that time, to the Agency's chief executive officer; and
 - (iii) the subsidiary must hold at least one meeting every year for the purpose of tabling the Local Government Subsidiary's annual report and financial statements and appointing an auditor.

12.2 Notice of meetings

- (a) Notice of every meeting must be given in any manner authorised by Part 18 of this constitution to:
 - (i) every Member;
 - (ii) the Agency;and
 - (iii) the Auditor (if the meeting will involve tabling the Local Government Subsidiary's annual report and financial statements and appointing an auditor.

No other person is entitled to receive notice of meetings.

- (b) A notice of a meeting must:
 - (i) specify the date, time and place of the meeting;
 - (ii) state the general nature of the business to be transacted at the meeting;

- (iii) be given at least seven days before the meeting is held;
- (iv) may be given in person or by post, telephone, fax or other electronic means; and
- (v) is taken to be given to a Nominated Representative if it is given to the Delegate of the Nominated Representative; and
- (vi) a Nominated Representative may waive notice of a meeting by notifying the Local Government Subsidiary to that effect in person or by post, telephone, fax or other electronic means.

12.3 Quorum

- (a) Subject to the balance of this Rule, a quorum at a meeting consists of not less than 75 per cent of the total Members, as represented by their validly appointed Nominated Representative.
- (b) If a quorum is not achieved, then the Members must reconvene the meeting to another date, not being less than seven days from the date that this clause comes into effect, but if at that reconvened meeting a quorum is still not reached, and the Members reasonably believe that a decision or decisions must be made in the best interests of the Subsidiary, then those decisions may be made by the Members present and entitled to vote and no Member not present at the meeting may challenge the validity of the decision or decisions on the basis that no quorum was present.

12.4 Voting rights

- (a) At a meeting every Nominated Representative of a Member has one vote.
- (b) An objection to the qualification of a person to vote at a meeting must be:
 - (i) raised before or at the meeting at which the vote objected to is given or tendered; and
 - (ii) referred to the chairperson of the meeting, whose decision is final.
- (c) All resolutions of the Local Government Subsidiary that relate to a formula referred to in Clause 4, 5 or 7; a proposed alteration of the Constitution under Clause 8; or an application for membership under Clause 9 must be carried unanimously by all members.
- (d) Other decisions of the subsidiary may be carried by a majority of members present at a meeting by a show of hands.

12.5 Meeting other than in person

- (a) The contemporaneous linking together by telephone or other electronic means of a sufficient number of the Nominated Representatives to constitute a quorum constitutes a meeting of the Nominated Representatives. All the provisions in this Constitution relating to meetings of the Nominated Representatives apply, so far as they can and with any necessary changes, to meetings of the Nominated Representatives by telephone or other electronic means.
- (b) A person who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.

- (c) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the Nominated Representatives involved was at that place for the duration of the meeting.

12.6 Circular resolutions

- (a) If:
 - (i) the Members all consent to a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed; and
 - (ii) the Members who consent to the document would have constituted a quorum at a meeting held to consider that act, matter, thing or resolution,
 then that act, matter, thing or resolution is deemed to be done at or passed by a meeting.

12.7 Procedures at Meetings

Subject to the rules set out in this constitution and the laws of the Territory, the members may adopt procedures for meetings of the Local Government Subsidiary from time to time.

12.8 Chairperson of Nominated Representatives

- (a) The Nominated Representatives must elect one of their number as chairperson and may decide the period for which that Nominated Representative is to be the chairperson.
- (b) If at a meeting of Nominated Representatives there is no elected chair or the elected chair is unwilling or unable to act, then the Nominated Representatives present must elect one of their number as chairperson of the meeting.

13. DISPUTE RESOLUTION PROCEDURES

- 13.1** If the Members are unable to agree unanimously in respect of any decision required to be made by them unanimously by this Constitution, or the parties are in dispute over any other matter or thing concerning the Local Government Subsidiary, after having made bona fide efforts to reach a unanimous decision or compromise the dispute, then they must refer the dispute to a mediator to be agreed between them, or if they are unable to agree within five (5) business days of the meeting at which the matter in dispute was first considered, then to the President for the time being of the Law Society of the Northern Territory, who will appoint a suitably qualified and experienced mediator to assist the parties to resolve the matter.
- 13.2.** The parties must use reasonable endeavours to have the mediation conducted as quickly as reasonably practicable, and must co-operate fully with the mediator, including but not limited to making available to the mediator all materials or information requested by him and furnishing the same together with all other materials which are relevant to the determination promptly.
- 13.3** If the matter is unresolved at mediation, then the matter in dispute shall be referred to the Agency's chief executive officer, and the decision of the chief executive officer shall be absolute and final and shall bind the parties accordingly.

14. EXECUTIVE OFFICER

14.1 Appointing and removing an Executive Officer

- (a) The Local Government Subsidiary shall employ one Executive Officer to conduct the day to day business of the Local Government Subsidiary.
- (b) The Members may fill any casual vacancy pending the appointment of a new Executive Officer.

14.2 When office of Executive Officer becomes vacant

In addition to the circumstances outlined in Rule 14.1 above and any terms and conditions of the employment contract of the Executive Officer, the office of an Executive Officer becomes vacant if the Executive Officer:

- (a) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (b) becomes bankrupt or insolvent or makes an arrangement or composition with his or her creditors generally;
- (c) is convicted on indictment of an offence and the Executive Officers do not within one month after that conviction resolve to confirm the Executive Officer's appointment or election (as applicable) to the office of Executive Officer;
- (d) dies;
- (e) fails to make him or herself available for a meeting after it has been re-convened once; or
- (f) is charged with an offence which carries a term of imprisonment of more than two (2) years;
- (g) engages in conduct or does an act that is likely, in the reasonable opinion of the Members, to bring the Local Government Subsidiary into disrepute.

14.3 Powers and duties of Executive Officer

- (a) The Executive Officer is responsible for managing the Local Government Subsidiary's day to day business and affairs under the supervision and direction of the Members and must comply with the terms of any employment contract entered into with the Local Government Subsidiary.
- (b) The Executive Officer has the power (among other things) to hire other employees of the Local Government Subsidiary.
- (c) In exercising their powers and discharging their duties, the Executive Officer must comply with all laws in force from time to time in the Northern Territory of Australia.

14.4 Executive Officers may hold other positions

- (a) An Executive Officer may hold another position (except as Auditor) in the Local Government Subsidiary and may be appointed to that position on terms as to remuneration, tenure and otherwise that the Members think fit.
- (b) An Executive Officer may be or become an Executive Officer or other officer of, or otherwise interested in, any related body corporate, trust or other entity promoted by the Local Government Subsidiary in which the Local Government Subsidiary is interested as a shareholder or otherwise

15. INTERESTS OF A MEMBER & NOMINATED REPRESENTATIVES

15.1 Interests of Members

- (a) A Member is not disqualified merely for being a Member from contracting with the Local Government Subsidiary in any respect including, but not limited to:
 - (i) selling property to, or purchasing property from, the Local Government Subsidiary;
 - (ii) lending money to the Local Government Subsidiary with or without interest or security;
 - (iii) guaranteeing the repayment of money borrowed by the Local Government Subsidiary for a commission or profit;
 - (iv) underwriting or guaranteeing the subscription for securities in any related body corporate or other body corporate promoted by the Local Government Subsidiary or in which the Local Government Subsidiary is interested as a shareholder or otherwise, for a commission or profit; or
 - (v) being contracted by the Local Government Subsidiary or acting in any professional capacity (except as Auditor) on behalf of the Local Government Subsidiary.
- (b) A contract made by a Member with the Local Government Subsidiary and a contract or arrangement entered into by or on behalf of the Local Government Subsidiary in which any Member may be in any way interested is not avoided or rendered voidable merely because the Member holds membership or because of the fiduciary obligations arising from that membership.
- (c) Notwithstanding anything contained in this rule, a Local Government Subsidiary must comply in all respects with the *Local Government Act* of the Northern Territory and all subordinate legislation thereunder, when procuring goods and/or services for the Local Government Subsidiary and/or the Members.

15.2 Interests of Nominated Representatives

- (a) A Nominated Representative being interested in any arrangement involving the Local Government Subsidiary must declare any actual or potential personal conflict of interest, and, if the Local Government Subsidiary does not permit the interest being pursued, is liable to account to the Local Government Subsidiary for any profit realised by or under that contract or arrangement.
- (b) A Nominated Representative who has a material personal interest in a matter that is being considered at meeting of the Local Government Subsidiary must not:
 - (i) be present while the matter is being considered at the meeting; or
 - (ii) vote on the matter.
- (c) The Members may make rules requiring the disclosure of interests that a Nominated Representative, and any person considered as related to or associated with a Nominated Representative, may have in any matter concerning the Local Government Subsidiary or a related body corporate.

15.3 Delegation to Executive Officer

- (a) The Members may by unanimous vote, and with the consent of the delegate, delegate powers to the Executive Officer.
- (b) An Executive Officer to whom any powers have been delegated must exercise the powers delegated in accordance with any directions given by the Members.

16. INDEMNITY

16.1 Indemnity

To the maximum extent permitted by law, the Local Government Subsidiary must indemnify any current or former Executive Officer out of the property of the Local Government Subsidiary against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs that are not in the nature of legal costs dealt with in this rule);
- (c) legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity; and
- (d) legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Local Government Subsidiary, if that expenditure has been approved by all the Members,

except to the extent that:

- (e) the Local Government Subsidiary is forbidden by law to indemnify the person against the liability or legal costs; or

- (f) an indemnity by the Local Government Subsidiary of the person against the liability or legal costs, if given, would be made void by law.

17. BOOKS, ACCOUNTS AND AUDIT REQUIREMENTS

The Local Government Subsidiary must ensure that proper books and records of its financial affairs are kept at all times and that the requirements of the Act are complied with in all respects.

The accounting records and other documents of the Local Government Subsidiary are to be kept open to the inspection of the Members during Business Hours and on Business Days.

The Local Government Subsidiary must appoint a properly qualified Auditor who must audit the books and records of the Local Government Subsidiary annually and provide an audit report to the Local Government Subsidiary for the purposes of enabling it to comply with its statutory obligations.

18. NOTICES

18.1 How notices may be given

A notice may be given by the Local Government Subsidiary to a Member by:

- (a) delivering it to the Member personally;
- (b) sending it to the Member's fax number or electronic address, if the Member has nominated one to the Local Government Subsidiary for receipt of notices; or
- (c) posting it by prepaid post to the Member's registered address.

18.2 When taken as given

A notice is taken as given by the Local Government Subsidiary and received by the Member:

- (a) if delivered, at the time of delivery;
- (b) if faxed, when the Local Government Subsidiary receives a confirmation report that all pages of the fax have been transmitted to the Member's fax number, but if transmission or receipt is after 5.00 pm, it is taken as received on the next Business Day;
- (c) if sent electronically, on the next Business Day; and
- (d) if posted, on the third Business Day after it was posted.

The initial Members of the Local Government Subsidiary are the Constituent Councils listed below, who adopt the above Constitution as the Local Government Subsidiary's Constitution in accordance with section 29 of the Act and will constitute the Local Government Subsidiary as and from the date on which the Constitution is gazetted in accordance with section 29(1) of the Act.

19. LOCAL GOVERNMENT SUBSIDIARY MEMBER COMMITTEES

19.1 Establishment of Member Committees

Member Committees may be established by the Subsidiary or by including the name of the Committee and its constituent members in Schedule 2 of this Constitution.

19.2 Roles, functions and procedures of Member Committees

The roles, functions and procedures of a Member Committee may be established by the Subsidiary or by setting out the roles, functions and procedures of the Committee in Schedule 2 of this constitution.

19.3 Apportionment of costs by Member Committees

Without limiting the application of clause 19.2, a Member Committee may have the role of deciding the apportionment of costs for services provided specifically for constituent members of the Committee by the Subsidiary. Where a Member Committee is empowered to make decisions about apportionment of costs, the other members of the Subsidiary shall not unreasonably refuse to give effect to any such decision.

SCHEDULE 1: MEMBERS

Name of Members	Address of Member
Barkly Shire Council	
Central Desert Shire Council	
East Arnhem Shire Council	
MacDonnell Shire Council	
Roper Gulf Shire Council	
Tiwi Islands Shire Council	
Victoria Daly Shire Council	
West Arnhem Shire Council	
Local Government Association of the Northern Territory	

SCHEDULE 2: LOCAL GOVERNMENT SUBSIDIARY MEMBER COMMITTEES

Schedule 2A: The Northern Finance and Administration Committee

- i)** The Subsidiary will establish a Member Committee called the 'Northern Finance and Administration Committee', whose constituent members shall be the Tiwi Islands Shire Council, the West Arnhem Shire Council and the East Arnhem Shire Council.
- ii)** Subject to sub-clause (iii) below, the roles, functions and procedures of the Northern Finance and Administration Committee shall be determined from time to time by unanimous resolution of the constituent members of the Committee.
- iii)** The roles and functions of the Northern Finance and Administration Committee shall be limited in their application to services of the Subsidiary that are provided specifically and exclusively to the constituent members of the Committee and shall have no application to services provided generally to the members of the Subsidiary.

MINISTERIAL APPROVAL – section 29 (1)

I, Daniel Robert Knight, Minister for Local Government, hereby approve the formation of the Local Government Subsidiary (CouncilBIZ) in accordance with section 29(1) of the Act.



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Date:

10 JUN 2008