

***Local Government Act***

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 21;

**"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;

**"General Manager"** means the person employed pursuant to rule 15;

**"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, elected member of the member local government council or Chief Executive Officer of the member local government council and nominated as its Nominated Representative in writing by the Member;

**"Object"** means the object of the Local Government Subsidiary in clause 4 of this Constitution;

**"Present"** means present in person, video-link or telephone in respect of a meeting;

**"Quorum"** means the quorum in Rule 13.4;

**"Relevant Legislation"** means regulations made under the Act, guidelines made by the Minister under the Act and general instructions issued by the Agency under the Local Government (Accounting) Regulations;

**"Special Resolution"** means at least 80% of the votes of Members Present at a meeting where a Quorum is achieved;

**"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 the following rules of interpretation apply unless the context requires otherwise:

- a) the interpretation of this Constitution is in accordance with the Interpretation Act;
- b) headings are for convenience only and do not affect the interpretation of this Constitution;
- c) references to notices include formal notices of meeting and all documents and other communications from the Local Government Subsidiary to its Members;
- d) words importing any gender include all other genders;
- e) the word "person" includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- f) 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;
- g) 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;
- h) a reference to writing and written includes printing and other ways of representing or reproducing words in a visible form;
- i) the singular (including defined terms) includes the plural and the plural includes the singular; and
- j) where the Act or amendment to the Act results in an inconsistency between this Constitution and the Act, the provision must be read down and failing that, severed from the Constitution where the remainder of the Constitution remains operative

## **1.3 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.

## **2 COMMENCEMENT**

This Constitution shall come into effect on the date it is approved by the Minister, superseding the previous constitution.

## **3 LOCAL GOVERNMENT SUBSIDIARY'S NAME AND ADDRESS**

The name of the Local Government Subsidiary is CouncilBIZ.

The address of the Local Government Subsidiary is:

21 Parap Road

PARAP NT 0820

## **4 LOCAL GOVERNMENT SUBSIDIARY'S OBJECT**

The Object for which the Local Government Subsidiary is established is to carry out functions related to local government on behalf of the Members and facilitate the efficient provision of services to the Members, including, but not limited to administration, information technology and financial services as may be required from time to time.

## **5 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 but excluding the Local Government Association of the Northern Territory either equally or on the basis of a formula agreed by Special Resolution.
- b) Following the end of the financial year, any payment of dividend of the Local Government Subsidiary must be shared equally among all Members but excluding the Local Government Association of the Northern Territory, or on the basis of a formula agreed by Special Resolution.

### **Local Government Subsidiary's powers**

- c) Solely for the purpose of carrying out the Object, and for no other purpose, the Local Government Subsidiary may, subject to the rules that apply to regional 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 General Manager as set out in this Constitution, engage, dismiss or suspend any employee, agent, contractor or professional person;
  - xi. enter into contracts and agreements that are at arm's length in nature for the acquisition or provision of services, works or goods which shall include with any Member/s or third party;

- xii. make, draw, accept, endorse, discount, execute and issue negotiable or transferable instruments; and
- xiii. do all other things that are incidental or conducive to carrying out the Object.

## **6 GUARANTEE BY MEMBERS**

The debts and liabilities of the Local Government Subsidiary are guaranteed by all of the Members other than the Local Government Association of the Northern Territory, in equal shares or on the basis of a formula agreed by Special Resolution.

## **7 INCOME AND PROPERTY**

The Local Government Subsidiary's income and property, however derived, must be applied solely towards promoting the Local Government Subsidiary's Object. The Local Government Subsidiary is prohibited from distributing any income or property, or providing any 'in kind' support in any form to a third party.

- a) However, this rule does not prohibit:
  - i. payment 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. payment of reasonable and commercial interest on money borrowed from a Member;
  - iii. payment of reasonable and commercial rent for premises let by any Member to the Local Government Subsidiary;
  - iv. payment of out-of-pocket expenses incurred by a Member or a Nominated Representative in performing a duty of the Local Government Subsidiary;
  - v. payment of premiums on contracts of insurance for, any Member to the extent permitted by law and this Constitution; or
  - vi. accumulation of surplus income for reserves or investments, provided such investments comply with section 121 of the Act.

## **8 ABOLITION OF LOCAL GOVERNMENT SUBSIDIARY**

In the event the Minister abolishes the Local Government Subsidiary or the Local Government Subsidiary otherwise being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred in equal shares to all Members excluding the Local Government Association of the Northern Territory, or otherwise on the basis of a formula agreed by Special Resolution.

## **9 ALTERING THIS CONSTITUTION**

### **9.1 Minister's Approval Required to Vary Constitution**

- a) This Constitution may only be varied with the written approval of the Minister.
- b) The Minister may vary the Constitution unilaterally.

### **9.2 Members Request to Vary Constitution**

- a) The Members may by Special Resolution request the Minister to approve a variation to the Constitution, which for avoidance of doubt, rule 9.1 shall apply at all times.

## **10 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 Special Resolution) 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.

## **11 RIGHTS AND DUTIES OF MEMBERS**

### **11.1 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 rule 13 of this constitution; and
- b) to nominate in writing one person, being the Chief Executive Officer of the member local government council, elected member of the member local government council or other senior officer employed by the Member, to be their Nominated Representative from time to time.
- c) where the Nominated Representative is unavailable, the Member is entitled to nominate an alternate Nominated Representative pursuant to rule 11.1(b)

### **11.2 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; and
- 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.



## **12 RESIGNATION OF A MEMBER**

### **12.1 Resignation**

A Member's resignation from the Local Government Subsidiary shall not take effect unless all of the following occur:

- a) written notice must be provided to all of the Members stating the member's intention to resign as a member of the Local Government Subsidiary "Resignation Notice";
- b) within 60 days from the date that Members receive the Resignation Notice, the Members may respond in writing to the Member;
- c) following expiry of the period of 60 days in rule 12.1(b) should the Member wish to proceed with its resignation, the Member must provide within the next 60 days the Minister with the Resignation Notice together with any Member responses received under rule 12.1(b); and
- d) the Member receives written approval from the Minister permitting the Member's resignation, which unless otherwise approved by the Minister, shall take effect at the end of the financial year.

## **13 MEETINGS OF THE LOCAL GOVERNMENT SUBSIDIARY**

### **13.1 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 General Manager, or if there is no General Manager at that time, to the Agency's chief executive officer; and

### **13.2 Required Meetings**

- a) The Local Government Subsidiary must hold at least:
  - i. one meeting before 30 June for the purpose of adopting the Local Government Subsidiary's annual plan (which includes the annual budget); and
  - ii. one meeting before 31 October every year for the purpose of tabling the Local Government Subsidiary's annual report, financial statements and appointment of auditor.

### **13.3 Notice of meetings**

- a) Notice of every meeting must be given in any manner authorised by rule 25 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. be in writing and given either in person, by post or e-mail;
- 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.

#### **13.4 Quorum**

- a) Subject to the balance of this Rule, a quorum at a meeting consists of a majority of the total Members, as represented by their validly appointed Nominated Representative.
- b) If a quorum is not achieved within 30 minutes of the appointed starting time for the meeting, 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.

#### **13.5 Voting rights and Required Resolutions**

- 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 rule 5 or 8 of this Constitution or to a proposed alteration of the Constitution under rule 9 must be passed by Special Resolution.
- d) An application for membership under rule 10 and the formula referred to under rule 6 must be carried by Special Resolution.
- e) Other decisions of the Local Government Subsidiary may be carried by a majority of Members present at a meeting by a show of hands.

#### **13.6 Meeting other than in person**

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

- c) A meeting by telephone or video-link 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.

### **13.7 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.

### **13.8 Procedures at Meetings**

- a) 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.
- b) Minutes of meetings must be recorded for all meetings for tabling and confirmation by Members at the following the meeting.

### **13.9 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.

## **14 DISPUTE RESOLUTION PROCEDURES**

- a) If the Members are unable to pass a Special Resolution 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 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.
- b) 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.
- c) If the matter is unresolved at mediation, then the Members must refer the dispute to an independent expert to be agreed between them, or if they are unable to agree within five (5) business days of the mediation, then to the President for the time being of the Law Society of the Northern Territory, who will appoint a suitably experienced independent expert whose decision shall be absolute and final and shall bind the parties accordingly.

## **15 GENERAL MANAGER**

### **15.1 Appointing a General Manager**

- a) The Local Government Subsidiary shall employ one General Manager 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 General Manager.

### **15.2 When office of General Manager becomes vacant**

In addition to the circumstances outlined in rule 15.1 above and any terms and conditions of the employment contract of the General Manager, the office of a General Manager becomes vacant if the General Manager:

- a) dies;
- b) completes a term of the employment contract as General Manager and is not reappointed;
- c) resigns by written notice served upon the Members and the Local Government Subsidiary;
- d) would be disqualified under the Act from being a local government council Chief Executive Officer; or
- e) has his or her employment contract as General Manager terminated.

### **15.3 Powers and duties of General Manager**

Without being an exhaustive list, in fulfilling his/her role as the General Manager, he/she must:

- a) be 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) have the power to hire and terminate employees of the Local Government Subsidiary;
- c) ensure that the Members are advised as soon as practicable of any material development that affects the financial or operating capacity of the Local Government Subsidiary;
- d) establish and maintain internal controls to safeguard the assets of the Local Government Subsidiary and ensure the accuracy, completeness and reliability of the Local Government Subsidiary's accounting records;
- e) establish and maintain a written fraud protection plan to detect and prevent fraud from within and outside the Local Government Subsidiary;
- f) ensure the proper custody of the Local Government Subsidiary's records, including the maintenance of a register of all correspondence addressed to, or sent by, the Local Government Subsidiary;
- g) promote the operational efficiency of the Local Government Subsidiary;
- h) maintain up to date written employment policies for the Local Government Subsidiary that cover (but are not limited to):
  - i) recruitment;
  - ii) probation and performance assessment;
  - iii) equal opportunities for advancement and access to training and development;
  - iv) access to employment-related benefits; and
  - v) resolution of employment-related grievances.

- i) ensure compliance with the Act, Relevant Legislation and all relevant laws in force in the Northern Territory of Australia.

## **16 INTERESTS OF A MEMBER & NOMINATED REPRESENTATIVES**

### **16.1 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.

### **16.2 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.

### **16.3 Delegation to General Manager**

- a) The Members may by passing a majority resolution, and with the consent of the General Manager, delegate powers to the General Manager.
- b) A General Manager to whom any powers have been delegated must exercise the powers delegated in accordance with any directions given by the Members.

## **17 INDEMNITY**

## **17.1 Indemnity**

To the maximum extent permitted by law, the Local Government Subsidiary must indemnify any current or former Executive Officer/General Manager 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);
- b) 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
- c) 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:

- d) the Local Government Subsidiary is forbidden by law to indemnify the person against the liability or legal costs; or
- e) an indemnity by the Local Government Subsidiary of the person against the liability or legal costs, if given, would be made void by law.

## **18 BOOKS, ACCOUNTS AND AUDIT REQUIREMENTS**

### **18.1 Maintenance of Books and Records**

The Local Government Subsidiary, through its General Manager, must ensure that proper books and records of its financial affairs are kept at all times in accordance with the Australian Accounting Standards and that the requirements of the Act and Relevant Legislation are complied with in all respects.

### **18.2 Inspection of Books and Records**

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

### **18.3 Audit Committee**

- a) The Local Government Subsidiary must, through its General Manager, establish and maintain an audit committee for the purposes of independently reviewing the internal control processes of the Local Government Subsidiary to monitor:
  - i) compliance by the Local Government Subsidiary with proper standards of financial management and the Australian Accounting Standards; and
  - ii) compliance by the Local Government Subsidiary with the Local Government (Accounting) Regulations.
- b) The audit committee will be subject to the same rules that apply to an audit committee for a local government council under regulation 10(3) of the Local Government (Accounting) Regulations except that the Chief Executive Officer is the General Manager in this case.

## **19 ANNUAL PLAN**

### **19.1 Adoption of Annual Plan**

The Local Government Subsidiary shall adopt an annual plan in accordance with the following process:

- a) The General Manager must present by no later than 1 March each year to the Members a draft annual plan relating to the following financial year that includes all aspects detailed in rule 19.2 for the Member's comments;
- b) By no later than 30 April each year, Members may provide written comments on the draft annual plan to the General Manager;
- c) After taking into consideration the Members' comments provided pursuant to rule 19.1(b), the General Manager must provide a further draft annual plan for consideration by the Members by no later than 31 May of that year;
- d) The Members will consider the further draft annual plan provided pursuant to rule 19.1(c) and will adopt or adopt with any modifications the Members require by passing a majority resolution before 30 June of that year;
- e) The annual plan approved by the Members pursuant to rule 19.1 shall be the adopted annual plan for the relevant financial year.
- f) In this rule 19.1, where Members may provide comments or otherwise directions to the General Manager in respect of the annual plan, the Executive Committee shall also be permitted.

## **19.2 Annual Plan Content**

The annual plan must contain the following detail with respect to the financial year which it is prepared, and with respect to at least three immediately subsequent financial years:

- a) the nature and scope of the activities to be undertaken by the Local Government Subsidiary;
- b) the ratio of consolidated Member's funds to total assets (and the definition of those terms);
- c) the performance targets and other measures by which the performance of the Local Government Subsidiary may be judged;
- d) the annual budget and long-term budget for at least three outer years; and
- e) any other matters that are agreed by the Members.

## **20 ANNUAL BUDGET**

The Local Government Subsidiary cannot budget for a deficit, which occurs if overall expenditure (other than non-cash expenditure) exceeds revenue for a financial year.

## **21 AUDIT**

### **21.1 Auditor**

The Members must appoint an auditor that is properly qualified by resolution of the Members to audit the Local Government Subsidiary's annual financial statement.

### **21.2 Audit Requirements**

- a) The annual financial statement of the Local Government Subsidiary must be audited annually by an auditor appointed pursuant to rule 21.1;
- b) The auditor must report each year to the Members in respect of the financial affairs of the Local Government Subsidiary.

## **22 ANNUAL REPORT AND ANNUAL FINANCIAL STATEMENT**

### **22.1 Annual Financial Statement**

The annual financial statement must be prepared in accordance with the following documents published by the Australian Accounting Standards Board as established under the Australian Securities and Investments Commission Act 2001:

- a) Australian Accounting Standards;
- b) Statements of Accounting Concepts;
- c) Interpretations; and
- d) Framework for the Preparation and Presentation of Financial Statements.

## **22.2 Annual Report**

The annual report must be tabled at the Member's meeting as required by rule 13.2(a)(ii) and be provided to the Minister, in both cases by no later than 31 October following the financial year to which the report relates, and must contain:

- a) the audited annual financial statement; and
- b) an assessment of the Local Government Subsidiary's performance against the performance targets and other measures stated in the annual plan.

## **23 COMMON SEAL**

### **23.1 Affixing Common Seal**

- a) Subject to rule 23.1(b), the Local Government Subsidiary shall have a common seal, which may be affixed to documents requiring execution under seal, where each affixing of seal must be witnessed by either:
  - i) Two (2) Nominated Representatives on behalf of Members; or
  - ii) One (1) Nominated Representatives and the General Manager.
- b) The common seal must only be affixed to documents where a majority of Members resolve to authorise its use on the document.

### **23.2 Custody of Common Seal and Register**

- a) The common seal of the Local Government Subsidiary must be kept in the custody of the General Manager.
- b) The General Manager must maintain a register that records details of the documents to which the common seal was affixed, resolution of Members authorising its use, names of persons who witnessed the affixing of the common seal and the date of affixing of seal.

## **24 WRITE OFFS**

### **24.1 Assets**

- a) Money or property may only be written off where a majority of Members resolve to authorise the writing off of the relevant amount or item in the accounts of the Local Government Subsidiary, after compliance with rule 24.1(b).
- b) Before providing the resolution in rule 24.1(a), the Members must be satisfied with the following written declaration of the General Manager that:
  - i) money has been misappropriated or cannot be found; or
  - ii) an item of property has been misappropriated, destroyed, damaged beyond economical repair or cannot be found.



## **24.2 Debts**

- a) A debt may only be written off where a majority of Members resolve to authorise the writing off of the debt in the accounts of the Local Government Subsidiary, after compliance with rule 24.2(b).
- b) Before providing the resolution in rule 24.2(a), the Members must be satisfied with the following written declaration of the General Manager that:
  - i) all reasonable efforts have been made to recover the debt; and
  - ii) it is not reasonably possible to recover it.

## **25 NOTICES**

Documents shall be served in accordance with section 25 of the Interpretation Act and as further stipulated below.

### **25.1 How notices may be given**

A person may serve a document on an individual or body:

- a) by giving it to:
  - i) if the recipient is an individual – the recipient; or
  - ii) if the recipient is a body – an executive officer of the body; or
  - iii) in any case – a person authorised by the recipient to receive the document;
- b) by send it by prepaid post addressed to the recipient at the recipient's address; or
- c) by sending it to the recipient by fax, provided the recipient consents to the document being served by means of fax; or
- d) by leaving it, addressed to the recipient, at the recipient's address with someone who appears to be at least 16 years old and appears to live or be employed there.

### **25.2 When taken as given**

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

- a) if personally delivered pursuant to rule 25.1(a), at the time of delivery;
- b) if faxed delivered pursuant to rule 25.1(c), when the Local Government Subsidiary receives a confirmation report that all pages of the fax have been transmitted to the recipient'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, subject to evidence to the contrary, when the notice was sent; and
- d) if posted pursuant to rule 25.1(a), notice is taken to be served when it would have been delivered in the ordinary course of post.

## **26 LOCAL GOVERNMENT SUBSIDIARY EXECUTIVE COMMITTEES**

### **26.1 Establishment of Executive Committees**

- a) An Executive Committee may be established by the Local Government Subsidiary where the Members resolve by majority resolution for its establishment.

- b) The Executive Committee must consist of at least four (4) Nominated Representatives that the Members resolve by majority resolution as to the appointments of those Nominated Representatives on the Executive Committee.
- c) Any vacancies on the Executive Committee resulting in less than four (4) Executive Committee members must be filled as soon as possible.

## **26.2 Roles, functions and procedures of Executive Committees**

- a) The roles, functions and procedures of the Executive Committee (including the procedure for filling vacant positions in the Executive Committee) must be contained in a policy as resolved by majority resolution of the Members.
- b) The General Manager must keep and maintain an up to date record of the members of the Executive Committee.
- c) The General Manager must keep minutes of all meetings of the Executive Committee and all matters directed by the Executive Committee.
- d) To avoid doubt, the Executive Committee does not have the power to direct the General Manager on the following matters:
  - i) operating costs formula referred to in rule 5(a);
  - ii) dividend distribution formula referred to in rule 5(b);
  - iii) distribution of surplus formula referred to in rule 8;
  - iv) alterations of the constitution referred to in rule 9;
  - v) invitation for membership referred to in rule 10;
  - vi) adoption of a budget referred to in rule 13.2;
  - vii) appointment of an auditor referred to in rule 21.1;
  - viii) adoption of, or direction to modify, the annual plan referred to in rule 19;
  - ix) authorisation or ratification of the use of the common seal referred to in rule 23;
  - x) authorisation to write off money or property referred to in rule 24.1; and
  - xi) authorisation to write off debts referred to rule 24.2.

## SCHEDULE 1: MEMBERS

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<b>Name of Members</b>	<b>Address of Member</b>
Barkly Regional Council	PO Box 821 Tenant Creek NT 0861
Central Desert Regional Council	PO Box 2257 Alice Springs NT 0871
East Arnhem Regional Council	PO Box 1060 Nhulunbuy NT 0881
MacDonnell Regional Council	PO Box 5267 Alice Springs NT 0871
Roper Gulf Regional Council	PO Box 1321 Katherine NT 0851
Tiwi Islands Regional Council	PMB 267 Winnellie NT 0822
Victoria Daly Regional Council	PO Box 19 Katherine NT 0851
West Arnhem Regional Council	PO Box 721 Jabiru NT 0886
West Daly Regional Council	GPO Box 3775 Darwin NT 0801
Local Government Association of the Northern Territory	PO Box 2017 Parap NT 0804

**MINISTERIAL APPROVAL – section 29 (1)**

I, Gerald Francis McCarthy, Minister for Housing and Community Development, hereby approve this constitution for the Local Government Subsidiary (CouncilBIZ) in accordance with section 29(1) of the Act.

A handwritten signature in black ink, appearing to read 'G. McCarthy', is written above a horizontal dotted line.

Date: 19/7/2018