



**ATTACHMENTS TO REPORTS OF THE BLAYNEY SHIRE COUNCIL MEETING
HELD ON MONDAY 18 FEBRUARY 2019**

06 Orange 360

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TDO Ltd

Annual General Meeting Minutes

Tuesday 27th December, 2018 at 8:30am | GATE, 1447 Forest Road, Orange

In attendance:

David Hoskins, Peter Robson (Chair), Tony Cheney, Reg Kidd, Scott Ferguson, Ian Davison, Caddie Marshall (General Manager), Justin Byrne (Consultant – Agritourism – Orange Flying High project)

1. Apologies:

Jeff Whitton, Jason Hamling, Phillip Tudor, Philip Shaw, Garry Styles

2. Chairman's Annual Report:

The Chairman, Peter Robson, **thanked** the Board's commitment for their support in developing TDO Ltd and congratulated the Board on the appointment of the GM who had continued to forge stronger Council and stakeholder engagement in 2018.

He congratulated and encouraged the Board to continue to have rigorous debate which is fundamental to achieve the best outcomes for the organisation.

3. Financial Report:

David Hoskins **tabled** the annual report ending 30 June, 2018 and **reported** that TDO Ltd recorded a net surplus of \$7,689 (2017: \$3,953) and Net Assets of \$80,642. The Full Report was included in email and distributed to all Directors prior to the AGM.

3. Appointment and election of Directors

It was **noted** that Orange City Council has resolved to appoint their new TDO Ltd Directors, that being Mr Garry Styles, Cr Reg Kidd and Cr Joanne McRae.

It was further **noted** that Cabonne Council were meeting later that day to appoint their new TDO Ltd Director, that being Cr Kevin Beatty with the alternate to be Cr Ian Davison.

MOTION: To accept and welcome the new Orange City Council Directors.

Moved: T. Cheney

Seconded: I. Davison

CARRIED

4. Transition plan to new entity:

It was **noted** that PWM are the appointed as the TDO Ltd Auditors for 2018 and ongoing.

5. General Business:

Nil to report.

Meeting closed 8:43am.

TDO LIMITED
A.B.N. 30 616 158 822

FINANCIAL REPORT
FOR THE YEAR ENDED
30 JUNE 2018

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TDO LIMITED
ABN: 30 616 158 822

DIRECTORS' REPORT

Your directors present their report on the company for the financial year ended 30 June 2018.

Directors

The names of directors in office at any time during or since the end of the year are:

Directors have been in office since the start of the financial year to the date of this report unless otherwise stated.

President:	Peter Robson	
Treasurer:	David Hoskins	
Committee:	Phillip Shaw	
	Garry Styles	
	Ian Davison	
	Reg Kidd	(Appointed September 2017)
	Scott Ferguson	
	Tony Cheney	
	Phillip Tudor	
	Jason Hamling	
	Jeff Whitton	
	John Davis	(Resigned August 2017)

Principal Activities

TDO Ltd trading as Orange360 is a not for profit organisation. We are a dynamic regional tourism entity very much focused on driving increased visitation and economic benefit across the entire region. Our purpose is to encourage over 1 million visitors to our region to further discover all of the wonders and gems that are unique to us - our people, our places and our produce. Orange360 encompasses everything that colours our region, all year round.

TDO Ltd represents numerous members across the Orange region, encompassing the local government areas of Orange City Council, Cabonne Council and Blayney Shire Council. Our membership base is made up of Wineries, Restaurants/Cafes, Pubs/Clubs, Accommodation, Retail, Producers, Education, Art and History, Health and general business members.

The company's short-term objectives are to:

- Build a strong structure to support the members and grow the membership base.
- Develop a Regional Destination Brand and Communications Strategy that integrates across all digital platforms including an online booking website.
- Collaboration with all business and community groups for the benefit tourism.
- Promote and represent the region at Regional, State, National and International meetings and events
- Work closely with all Council stakeholders to achieve common tourism.

The company's long-term objectives are to:

- Grow visitation to the region.
- Increase the average value per visitor stay.
- Encourage investment in the region in both tourism and general business.

TDO LIMITED
ABN: 30 616 158 822

DIRECTORS' REPORT

To achieve these objectives, the company has adopted the following strategies:

- Marketing and Communication Strategy.
- Development of new Membership Structure.
- Development of a training and familiarisation program to the local tourism industry.
- Secure government funding at both State and Federal levels.
- Work in synergy with Orange City, Cabonne and Blayney Councils, and Destination NSW.

Significant Changes

No significant changes in the nature of the company's activities occurred during the year.

Operating Result

The net operating surplus for the year amounted to \$76,689 (2017: surplus of \$3,953).

Information on Directors (holding office at the date of this report)

Name: Peter Robson
Occupation: Vigneron
Experience: Director since 2017
Meetings Attended: 12 of 12

Name: David Hoskins
Occupation: Vigneron
Experience: Director since 2017
Meetings Attended: 10 of 12

Name: Philip Shaw
Occupation: Vigneron
Experience: Director since 2017
Meetings Attended: 8 of 12

Name: Garry Styles
Occupation: General Manager
Experience: Director since 2017
Meetings Attended: 9 of 12

Name: Ian Davison
Occupation: Councillor
Experience: Director since 2017
Meetings Attended: 11 of 12

Name: Reg Kidd
Occupation: Mayor
Experience: Director since September 2017
Meetings Attended: 8 of 10

TDO LIMITED
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DIRECTORS' REPORT

Information on Directors (holding office at the date of this report) cont.

Name: Scott Ferguson
Occupation: Mayor
Experience: Director since 2017
Meetings Attended: 9 of 12

Name: Phillip Tudor
Occupation: Publican
Experience: Director since 2017
Meetings Attended: 2 of 12

Name: Jason Hamling
Occupation: Councillor
Experience: Director since 2017
Meetings Attended: 2 of 12

Name: Tony Cheney
Occupation: Solicitor
Experience: Director since 2017
Meetings Attended: 11 of 12

Name: Jeff Whitton
Occupation: Councillor
Experience: Director since 2017
Meetings Attended: 2 of 12

Name: John Davis
Occupation: Councillor
Experience: Director since 2017
Meetings Attended: 1 of 2
Resigned: August 2017

Meetings of the Board

During the year ended 30 June 2018 there were 12 meetings of the board and/or members held including the annual general meeting. The number of meetings attended by each board member during the period is stated in this report.

The company is incorporated under the *Corporations Act 2001* and is a company limited by guarantee.

TDO LIMITED
ABN: 30 616 158 822

DIRECTORS' REPORT

Auditor's Independence Declaration

A copy of the auditor's independence declaration as required under section 307C of the *Corporations Act 2001* is set out on page 5.

Signed in accordance with a resolution of the Board of Directors:

Director:



Director:



Dated this

1st day of November 2018

TDO LIMITED
ABN: 30 616 158 822

**AUDITOR'S INDEPENDENCE DECLARATION
UNDER SECTION 307C OF THE CORPORATIONS ACT 2001
TO THE DIRECTORS OF TDO LIMITED**

We hereby declare that to the best of our knowledge and belief, during the financial year ended 30 June 2018 there have been no:

- (i) No contraventions of the auditor independence requirements as set out in the *Corporations Act 2001* in relation to the audit; and
- (ii) No contraventions of any applicable code of professional conduct in relation to the audit.

Name of Firm: PMW Audit
Chartered Accountants

Audit Partner:


Graham Spalding

Address: 65 Hill Street, Orange NSW 2800

Dated this 1st **day of** November **2018**

TDO LIMITED
A.B.N. 30 616 158 822

STATEMENT OF COMPREHENSIVE INCOME
FOR THE YEAR ENDED 30 JUNE 2018

	2018	2017
INCOME		
Grant Income	538,108	50,000
Other Funding	-	8,000
Membership Income	43,034	-
<i>Events Income</i>		
- Apple Ramble	5,631	-
- Banjo Paterson	30,997	-
- F.O.O.D Week	11,635	-
- Sydney Wine Events	5,000	-
<i>Other Income</i>		
- Donations Received	13,160	-
- Glasses	3,232	-
- Marketing Services	2,000	-
- Miscellaneous	27	-
TOTAL INCOME	652,824	58,000
COST OF SALES		
<i>Events</i>		
- Apple Ramble	5,221	-
- Barangaroo	749	-
- F.O.O.D Week	1,666	-
- Banjo Paterson	30,772	-
- Sydney Wine Events	10,000	-
- Taste Orange at Watson's Bay	5,751	-
- Winter Fire Festival	11,935	-
<i>Other</i>		
- Glasses	409	-
- Orange Flying High	4,690	-
- Tourism Packages	65	-
TOTAL COST OF SALES	71,258	-

The accompanying notes form part of these financial statements.

TDO LIMITED
A.B.N. 30 616 158 822

STATEMENT OF COMPREHENSIVE INCOME
FOR THE YEAR ENDED 30 JUNE 2018

	2018	2017
EXPENSES		
Accountancy and Consulting Fees	13,561	15,897
Annual Leave Provision	4,848	-
Audit Fees	4,700	825
Bank Charges	410	-
Branding Expenses	40,553	-
Cleaning/Waste Disposal	1,532	-
Computer Expenses	6,186	-
Contractors	49,212	21,503
Depreciation and amortisation	568	-
Electricity, Gas & Water	2,000	-
Employee Recruitment Costs	19,177	-
General Marketing	20,449	-
Insurance	3,518	-
Legal Fees	2,244	781
Loss on Disposal of Asset	2,867	-
Membership Development	11,458	15,000
Memberships and Subscriptions	3,665	-
Office Repairs & Maintenance	11,176	-
Office Rent & Expenses	10,410	-
Other Expense	1,255	-
Postage, Printing and Stationery	4,731	41
Phone, Fax and Internet	3,941	-
Salaries and Wages	139,414	-
Sub-contracting	125,975	-
Superannuation	12,875	-
Staff Amenities and Training	4,128	-
Travel and Accommodation	920	-
Website	3,104	-
TOTAL EXPENSES	<u>504,877</u>	<u>54,047</u>
OPERATING (DEFICIT)/ SURPLUS FOR YEAR	<u>76,689</u>	<u>3,953</u>

The accompanying notes form part of these financial statements.

TDO LIMITED
A.B.N. 30 616 158 822

STATEMENT OF FINANCIAL POSITION
FOR THE YEAR ENDED 30 JUNE 2018

		2018	2017
CURRENT ASSETS			
Cash and cash equivalents	2	208,698	11,114
Trade and other receivables	3	27,475	-
Inventory	4	5,685	-
Other assets	5	1,163	-
TOTAL CURRENT ASSETS		<u>243,021</u>	<u>11,114</u>
NON-CURRENT ASSETS			
Plant and equipment	6	4,489	-
Intangible assets	7	16,167	-
TOTAL NON-CURRENT ASSETS		<u>20,656</u>	<u>-</u>
TOTAL ASSETS		<u>263,677</u>	<u>11,114</u>
CURRENT LIABILITIES			
Trade and other payables	8	178,187	7,161
Employee leave entitlements	9	4,848	-
TOTAL CURRENT LIABILITIES		<u>183,035</u>	<u>7,161</u>
NON-CURRENT LIABILITIES			
TOTAL NON-CURRENT LIABILITIES		<u>-</u>	<u>-</u>
TOTAL LIABILITIES		<u>183,035</u>	<u>7,161</u>
NET ASSETS		<u>80,642</u>	<u>3,953</u>
EQUITY			
Retained earnings		<u>80,642</u>	<u>3,953</u>
TOTAL EQUITY		<u>80,642</u>	<u>3,953</u>

The accompanying notes form part of these financial statements.

TDO LIMITED
A.B.N. 30 616 158 822

STATEMENT OF CHANGES IN EQUITY
FOR THE YEAR ENDED 30 JUNE 2018

	Retained Earnings
Balance at 1 July 2016	-
Net surplus/(deficit)	3,953
Balance as at 30 June 2017	<u>3,953</u>
Net surplus/(deficit)	76,689
Balance as at 30 June 2018	<u>80,642</u>

The accompanying notes form part of these financial statements.

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TDO LIMITED
A.B.N. 30 616 158 822

STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED 30 JUNE 2018

	2018	2017
CASH FLOW FROM OPERATING ACTIVITIES		
Receipts from customers and members	116,178	-
Grants & sponsorships received	636,142	58,000
Payments to suppliers and employees	(530,645)	(46,886)
Net cash provided by operating activities	10 221,675	11,114
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchase of property, plant and equipment	(4,784)	-
Purchase of intangible assets	(19,307)	-
Net cash provided by investing activities	(24,091)	-
Net increase (decrease) in cash held	197,584	11,114
Cash at beginning of year	11,114	-
Cash at end of year	2 208,698	11,114

The accompanying notes form part of these financial statements.

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TDO LIMITED
A.B.N. 30 616 158 822

NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2018

1. Statement of Significant Accounting Policies

The directors have prepared the financial statements on the basis that the company is a non-reporting entity because there are no users who are dependent on its general purpose financial reports. These financial statements are therefore special purpose financial statements that have been prepared in order to meet the requirements of the *Corporations Act 2001*. The company is a not-for-profit entity for financial reporting purposes under Australian Accounting Standards.

The financial statements have been prepared in accordance with the mandatory Australian Accounting Standards applicable to entities reporting under the *Corporations Act 2001* and the significant accounting policies disclosed below, which the directors have determined are appropriate to meet the needs of members. Such accounting policies are consistent with the previous period unless stated otherwise.

The financial statements have been prepared on an accruals basis and are based on historical costs unless otherwise stated in the notes. The accounting policies that have been adopted in the preparation of this report are as follows.

a) Income Tax

No provision for income tax has been raised as the company is exempt from Income Tax under Div 50 of the Income Tax Assessment Act 1997.

b) Plant & Equipment

Each class of plant and equipment is carried at cost or fair value, less, where applicable, accumulated depreciation and impairment losses.

Plant & Equipment

Plant and equipment are measured on the cost basis less depreciation and impairment losses.

The carrying amount of plant and equipment is reviewed annually by the board to ensure it is not in excess of the recoverable amount from these assets. The recoverable amount is assessed on the basis of the expected net cash flows that will be received from the asset's employment and subsequent disposal. The expected net cash flows have been discounted to their present values in determining recoverable amounts.

In the event the carrying amount of plant and equipment is greater than the recoverable amount, the carrying amount is written down immediately to the estimated recoverable amount. A formal assessment of recoverable amount is made when impairment indicators are present (refer to Note 1(d) for details of impairment).

This should be read in conjunction with the attached audit report

TDO LIMITED
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NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2018

Plant & Equipment (Cont.)

Plant and equipment that have been contributed at no cost, or for nominal cost, are valued and recognised at fair value of the asset at the date it is acquired.

Depreciation

The depreciable amount of all fixed assets, is depreciated on a straight-line or diminishing value basis over their useful lives to the economic entity commencing from the time the asset is held ready for use.

The depreciable amount of all fixed assets, is depreciated on a straight-line or diminishing value basis over their useful lives to the economic entity commencing from the time the asset is held ready for use.

The depreciation rates used for each class of depreciable assets are:

Class of Fixed Asset	Depreciation
Office Equipment	10 – 50%
Furniture and Equipment	10%

The assets' residual lives and useful lives are reviewed, and adjusted if appropriate, at each balance sheet date.

An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount.

Gains and losses on disposals are determined by comparing proceeds with the carrying amount. These gains or losses are included in the profit or loss statement. When revalued assets are sold, amounts included in the revaluation reserve relating to that asset are transferred to retained earnings.

c) Financial Instruments

Initial recognition and measurement

Financial assets and financial liabilities are recognised when the company becomes a party to the contractual provisions to the instrument. For financial assets, this is equivalent to the date that the company commits itself to either purchase or sell the asset (i.e. trade date accounting is adopted).

Financial instruments are initially measured at fair value plus transaction costs, except where the instrument is classified "at fair value through profit or loss", in which case transaction costs are recognised as expenses in profit or loss immediately.

Classification and subsequent measurement

Financial instruments are subsequently measured at fair value, amortised cost using the effective interest method, or cost. Where available, quoted prices in an active market are used to determine fair value. In other circumstances, valuation techniques are adopted.

TDO LIMITED
A.B.N. 30 616 158 822

NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2018

d) Financial Instruments (Cont.)

Loans and receivables

Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market and are subsequently measured at amortised cost. Gains or losses are recognised in profit or loss through the amortisation process and when the financial asset derecognised.

Impairment

At the end of each reporting period, the company assesses whether there is objective evidence that a financial asset has been impaired. A financial asset (or a group of financial assets) is deemed to be impaired if, and only if, there is objective evidence of impairment as a result of one or more events (a "loss event") having occurred, which has an impact on the estimated future cash flows of the financial asset(s).

In the case of financial assets carried at amortised cost, loss events may include: indications that the debtors or a group of debtors are experiencing significant financial difficulty, default or delinquency in interest or principal payments; indications that they will enter bankruptcy or other financial reorganisation; and changes in arrears or economic conditions that correlate with defaults.

Derecognition

Financial assets are derecognised when the contractual rights to receipt of cash flows expire or the asset is transferred to another party whereby the entity no longer has any significant continuing involvement in the risks and benefits associated with the asset. Financial liabilities are derecognised when the related obligations are discharged, cancelled or have expired. The difference between the carrying amount of the financial liability extinguished or transferred to another party and the fair value of consideration paid, including the transfer of non-cash assets or liabilities assumed, is recognised in profit or loss.

d) Impairment of Assets

At the end of each reporting period, the company assesses whether there is any indication that an asset may be impaired. The assessment will include considering external and internal sources of information. If such an indication exists, an impairment test is carried out on the asset by comparing the recoverable amount of the asset, being the higher of the asset's fair value less costs to sell and value in use to the asset's carrying value. Any excess of the asset's carrying value over its recoverable amount is recognised immediately in profit or loss, unless the asset is carried at a revalued amount in accordance with another Standard. Any impairment loss of a revalued asset is treated as a revaluation decrease in accordance with that other Standard.

Where it is not possible to estimate the recoverable amount of an individual asset, the company estimates the recoverable amount of the cash generating unit to which the asset belongs.

TDO LIMITED
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NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2018

e) Employee Benefits

Provision is made for the company's liability for employee benefits arising from services rendered by employees to balance date. Employee benefits that are expected to be settled within one year have been measured at the amounts expected to be paid when the liability is settled, plus related on-costs. Employee benefits payable later than one year have been measured at the present value of the estimated future cash outflows to be made for those benefits. In determining the liability, consideration is given to employee wage increases and the probability that the employee may not satisfy vesting requirements.

Those cash outflows are discounted using market yields on national government bonds with terms to maturity that match the expected timing of cash flows attributable to employee provisions

f) Provisions

Provisions are recognised when the entity has a legal or constructive obligation, as a result of past events, for which it is probable that an outflow of economic benefits will result and that outflow can be reliably measured.

g) Cash and Cash Equivalents

Cash and cash equivalents includes cash on hand, deposits held at call with banks, other short-term highly liquid investments with original maturities of three months or less, and bank overdrafts. Bank overdrafts are shown within short-term borrowings in current liabilities on the balance sheet.

h) Revenue

Interest revenue is recognised on a proportional basis taking into account the interest rates applicable to the financial assets.

Revenue from the rendering of a service is recognised upon the delivery of the service to the customers.

Grant revenue is recognised in the income statement when the entity obtains control of the grant and it is probable that the economic benefits gained from the grant will flow to the entity and the amount of the grant can be measured reliably.

If conditions are attached to the grant which must be satisfied before the entity is eligible to receive the contribution, the recognition of the grant will be deferred until those conditions are satisfied.

When grant revenue is received whereby the entity incurs an obligation to deliver economic value directly back to the contributor, this is considered a reciprocal transaction and the grant revenue is recognised in the balance sheet as a liability until the service has been delivered to the contributor, otherwise the grant is recognised as income on receipt.

All revenue is stated net of the amount of goods and services tax (GST).

TDO LIMITED
A.B.N. 30 616 158 822

NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2018

i) Goods and Service Tax (GST)

Revenue, expenses and assets are recognised net of the amount of GST, except where the amount of GST incurred is not recoverable from the Australian Tax Office. In these circumstances the GST is recognised as part of the cost of acquisition of the asset or as part of an item of the expense. Receivables and payables in the balance sheet are shown inclusive of GST.

Cash flows are presented in the cash flow statement on a net basis, except for the GST component of investing and financing activities, which are disclosed as operating cash flows.

j) Comparative Figures

Where required by Accounting Standards, comparative figures have been adjusted to conform to changes in presentation for the current financial year. When the company applies an accounting policy retrospectively, makes a retrospective restatement or reclassifies items in its financial statements, a statement of financial position as at the beginning of the earliest comparative period must be disclosed.

k) Trade and Other Payables

Trade and other payables represent the liability outstanding at the end of the reporting period for goods and services received by the company during the reporting period which remain unpaid. The balance is recognised as a current liability with the amount normally being paid within 30 days of the recognition of the liability.

l) Critical Accounting Estimates and Judgements

The directors evaluate estimates and judgements incorporated into the financial report based on historical knowledge and best available current information. Estimates assume a reasonable expectation of future events and are based on current trends and economic data, obtained both externally and within the company.

TDO LIMITED
A.B.N. 30 616 158 822

NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2018

	2018	2017
2 Cash and Cash Equivalents		
Cash at bank	208,698	11,114
Reconciliation of cash	<u>208,698</u>	<u>11,114</u>
Cash at the end of the financial year as shown in the cash flow statement is reconciled to items in the balance sheet as above.		
3 Receivables		
Current		
Debtors	27,475	-
Provision for doubtful debts	<u>-</u>	<u>-</u>
	<u>27,475</u>	<u>-</u>
4 Inventory		
Current		
Glasses on Hand	5,685	-
	<u>5,685</u>	<u>-</u>
5 Other Assets		
Current		
Prepayments	1,163	-
	<u>1,163</u>	<u>-</u>
6 Property, Plant and Equipment		
Furniture and fittings - at cost	1,515	-
Less accumulated depreciation	<u>(35)</u>	<u>-</u>
	<u>1,480</u>	<u>-</u>
Office equipment - at cost	2,361	-
Less accumulated depreciation	<u>(84)</u>	<u>-</u>
	<u>2,277</u>	<u>-</u>
Computer equipment - at cost	908	-
Less accumulated depreciation	<u>(176)</u>	<u>-</u>
	<u>732</u>	<u>-</u>
Total property, plant and equipment	<u>4,489</u>	<u>-</u>

This should be read in conjunction with the attached audit report

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TDO LIMITED
A.B.N. 30 616 158 822

NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2018

	2018	2017
7 Intangible Assets		
Websites	19,307	-
Disposals	(2,867)	-
Less accumulated amortisation	(273)	-
	<u>16,167</u>	<u>-</u>
8 Trade and Other Payables		
Current		
Trade and other creditors	45,354	6,336
ATO Creditor	23,860	-
Accrued expenses	9,477	825
Funding Received in Advance	48,034	-
Funds Held in Trust	50,000	-
Membership Fees Received in Advance	1,462	-
	<u>178,187</u>	<u>7,161</u>
9 Employee Leave Entitlements		
Current		
Annual leave	4,848	-
Total employee leave entitlements	<u>4,848</u>	<u>-</u>
10 Cash Flow Information		
Reconciliation of Cash Flow from		
Surplus/(Deficit)	76,689	3,953
Non-cash flows in Surplus/(Deficit)		
Depreciation and Amortisation	568	-
Loss on Disposal of Asset	2,867	-
Changes in assets and liabilities, net of		
(Increase) Decrease in receivables	(27,475)	-
(Increase) Decrease in inventory	(5,685)	-
(Increase) Decrease in other assets	(1,163)	-
Increase (Decrease) in trade and other creditors	171,026	7,161
Increase (Decrease) in employee leave entitlements	4,848	-
	<u>141,551</u>	<u>7,161</u>
Cash flows from operations	<u>221,675</u>	<u>11,114</u>

This should be read in conjunction with the attached audit report

TDO LIMITED
A.B.N. 30 616 158 822

NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2018

11 Remuneration of Directors

The directors of the company perform their duties on an honorary basis and do not receive a remuneration for services rendered to the company in their capacity as directors.

12 Events After Balance Date

There were no subsequent events identified that required adjustment to or disclosure in these financial statements.

13 Company Details

The registered office of the company is:
Orange Railway Station, 150 Peisley Street
ORANGE NSW 2800

The principal place of business of the company is:
Orange Railway Station, 150 Peisley Street
ORANGE NSW 2800

This should be read in conjunction with the attached audit report

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TDO LIMITED
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DIRECTORS' DECLARATION

The directors have determined that the company is not a reporting entity and that this general purpose financial report has been prepared in accordance with the accounting policies described in Note 1 to the financial statements.

The directors of the company declare that:

1. The financial statements and notes, as set out on pages 5 to 19 are in accordance with the *Corporations Act 2001*:
 - a) comply with Australian Accounting Standards applicable to the company; and
 - b) give a true and fair view of the financial position as at 30 June 2018 and of the performance for the year ended on that date in accordance with the accounting policy described in Note 1 of the financial statements of the company.
2. In the directors' opinion there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

This declaration is made in accordance with a resolution of the Board of Directors.

Director: _____

Director: _____

Dated this 1st day of November 2018

**INDEPENDENT AUDIT REPORT
TO THE MEMBERS OF TDO LIMITED
A.B.N. 30 616 158 822**

Opinion

We have audited the financial report of TDO Limited (the Company), which comprises the statement of financial position as at 30 June 2018, the statement of comprehensive income, statement of changes in equity and statement of cash flows for the year then ended, and notes to the financial report, including a summary of significant accounting policies, and the directors' declaration.

In our opinion:

the accompanying financial report of TDO Limited, is in accordance with the Corporations Act 2001, including:

- a. giving a true and fair view of the company's financial position as at 30 June 2018 and of its performance for the year ended on that date; and
- b. complying with Australian Accounting Standards and the Corporations Regulations 2001.

Basis for Opinion

We conducted our audit in accordance with Australian Auditing Standards. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Report section of our report. We are independent of the Company in accordance with the Corporations Act 2001 and the ethical requirements of the Accounting Professional and Ethical Standards Board's APES 110 Code of Ethics for Professional Accountants (the Code) that are relevant to our audit of the financial report in Australia. We have also fulfilled our other ethical responsibilities in accordance with the Code.

We confirm that the independence declaration required by the Corporations Act 2001, which has been given to the directors of TDO Limited, would be in the same terms if given to the directors as at the time of this auditor's report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Basis of Accounting and Restriction on Distribution

Without modifying our opinion, we draw attention to Note 1 of the financial report, which describes the basis of accounting. The financial report has been prepared to assist TDO Limited to meet the requirements of the *Corporations Act 2001*. As a result, the financial report may not be suitable for another purpose.

Other information

The directors are responsible for the other information. The other information comprises the information in the Company's annual report for the year ended 30 June 2018, but does not include the financial report and the auditor's report thereon.

Our opinion on the financial report does not cover the other information and we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial report, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial report or our knowledge obtained in the audit or otherwise appears to be materially misstated. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

Directors' Responsibilities for the Financial Report

The directors of the company are responsible for the preparation of the financial report and have determined that the accounting policies described in Note 1 to the financial report, are appropriate to meet the requirements of the *Corporations Act 2001* and are appropriate to meet the needs of the members. The directors' responsibility also includes such internal controls as the directors determine necessary to enable the preparation of a financial report that is free from material misstatement, whether due to fraud or error.

In preparing the financial report, the directors are responsible for assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the Company or to cease operations, or have no realistic alternative but to do so.

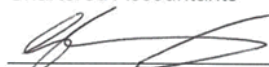
Auditor's responsibility

Our objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of this financial report.

A further description of our responsibilities for the audit of the Financial Report is located at the Auditing and Assurance Standards Board website at:
http://www.auasb.gov.au/auditors_responsibilities/ar4.pdf. This description forms part of our Auditor's Report.

Name of Firm: PMW Audit
Chartered Accountants

Audit Partner:


Graham Spalding CA

Address: 65 Hill Street
Orange NSW 2800

Dated this 1st **day of** November **2018**

Constitution

of

TDO Limited

A Company Limited by Guarantee not having Share Capital

Care of Cheney Suthers Lawyers

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Overview

This is the Constitution of TDO Limited.

The Company is a company limited by guarantee. The liability of its Members is limited to the amount they have agreed to pay in the guarantee. The Company must always have at least one Member and three directors.

The Constitution sets out the basis on which the Company is to be managed. Nothing in the Constitution is intended to derogate from the *Corporations Act*. That Act:

- imposes many obligations on the Company which are not reproduced in this Constitution; and
- overrules anything in this Constitution to the extent that they are inconsistent.

This Constitution replaces the replaceable rules in the *Corporations Act*. Words used in the Constitution which have a meaning in the *Corporations Act* have the same meaning in this Constitution (unless expressly stated otherwise).

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Constitution of TDO Limited

A Company's name, Objects and powers

Name of the Company

- 1 The name of the Company is TDO Limited.

Objects

- 2 The Company's objects are all or any of the following:
- 2.1 promoting tourism in the local government areas of Orange, Cabonne and Blayney.

Powers

- 3 The Company has:
- 3.1 the legal capacity and powers of an individual; and
- 3.2 all the powers of a body corporate (other than the power to issue shares).
- 4 However, the Company has those capacities and powers only to the extent:
- 4.1 necessary, or convenient, to carry out the Company's objects; or
- 4.2 incidental to carrying out those objects.

B Members' liability and guarantee

Liability of Members

- 5 The liability of each Member is limited to the amount of the guarantee set in clause 6.

Guarantee by Members

- 6 If the Company is wound up while a person is a Member (or within one year after they stop being a Member) then that person must contribute up to \$1.00 to the Company for:
- 6.1 payment of the Company's debts and liabilities incurred before that person ceased to be a Member;
- 6.2 payment of the costs, charges and expenses of winding-up the Company; and
- 6.3 adjustment of the rights of the contributories among themselves.

C How the Company's income and property are to be applied

For the Company's objects

- 7 All of the Company's income and property must be applied solely towards the promotion of the Company's objects as set out in clause 2.

No dividends etc. to Members

- 8 The Company may not pay, or transfer, any of its income or property — directly or indirectly — by way of dividend, bonus or otherwise to any person who is or has been a Member.

Remuneration and expenses for Members allowed

- 9 Regardless of clause 8, the Company may pay remuneration in good faith to any Member, officer or employee of the Company in return for any goods or services they provide to the Company in the ordinary and usual course of business.
- 10 The Board may authorise the repayment of any expenses a Member incurs for the Company, or in connection with performing their duties for the Company.

Payments to directors: restrictions, remuneration, expenses

- 11 The Company may not pay any remuneration to an Appointed Director for services rendered in the capacity as a Director.
- 12 If the Company is to pay any remuneration to an Elected Director for services rendered in the capacity as a Director, then the remuneration must be on reasonable commercial terms and the Board must first have:
- 12.1 consented to the Director providing those services; and
- 12.2 resolved to approve the amount of the payment.
- 13 If the Company is to pay any remuneration to a Director for services rendered in the capacity as an employee of the Company, then the Board must first have resolved to approve the terms of that employment.
- 14 The Board may authorise the repayment of any expenses a Director incurs for the Company, or in connection with performing their duties for the Company.

Loans and leases from Members

- 15 The Company may pay:
- 15.1 interest on money borrowed from any Member; and
- 15.2 reasonable and proper rent for premises a Member leases to the Company.
- 16 For the purposes of clause 15, if a Member pays the Company a deposit, bond or other security for the payment of fees and charges levied under the Constitution, then that payment is not a loan from the Member.

D Membership and Membership Fees

Members

- 17 The Company's Members are as follows (unless the Member has resigned under clause 35 or clause 37, or been expelled under clause 38):

- 17.1 the persons who are specified in the application to register the Company lodged under section 117 of the Act and who have consented to be Members;
- 17.2 Orange City Council, Cabonne Council and Blayney Shire Council for so long as they respectively continue to provide funding to the Company (**Council Members**);
- 17.3 any person who becomes a Standard, Premium or Corporate Partner of Orange 360 by whatever name called from time to time or any other category of Member determined by the Board (**Ordinary Members**); and
- 17.4 any other person the Board admits to Membership in accordance with this Constitution.

Membership fees

- 18 The following amounts are payable by Members:
 - 18.1 Each Council Member must pay to the Company by way of annual grant funding such amount as is agreed between the Company and the Council;
 - 18.2 Each Ordinary Member must pay an annual Membership fee in an amount determined by the Board. The amount of the fee may vary between different categories of Ordinary Membership.

Register of Members

- 19 The Company must keep and maintain the Register in accordance with the Act and otherwise as the Board determines.
- 20 Any dispute that arises in relation to the Register must be referred to the Board. The Board's decision is final and binding on all Members (in the absence of manifest error).

Eligibility for Membership

- 21 The following persons are eligible to be Ordinary Members
 - 21.1 any person who has a demonstrated interest in the Company;
 - 21.2 any person that the Board considers would benefit the Company by becoming a member; and
 - 21.3 any person in a category of persons that the Company has determined to be eligible to be Members.

Categories of Membership

- 22 At any time, the Board may (subject to the Act) create different types of Membership with different rights, obligations and restrictions.

Membership is not transferable

- 23 A Member may not transfer their Membership to another person.

Voting rights

- 24 A Member is entitled to one vote at a General Meeting of the Company:
- 24.1 Council Members and Ordinary Members are entitled to one vote. ;
 - 24.2 Non-Financial Members or non-fee paying Members are not entitled to vote.
- 25 However, the Board may suspend an Ordinary Member's entitlement to vote if the Member owes the Company any amount that is more than 3 months overdue (or such other period as the Board determines).

A Member's representative

- 26 If a Member or an Applicant is not a natural person, then it must appoint (in writing) a natural person as its Representative. The Member may remove and replace its Representative by giving written notice to the Board in a form the Board approves.
- 27 The Representative may, on the Member's behalf, exercise all the powers that the Member could exercise at a meeting or in voting on a resolution — unless those powers are restricted in a way set out in clause 28.
- 28 The document appointing the Representative may set out either or both of:
- 28.1 what the Representative is appointed to do; and
 - 28.2 any restrictions on what the Representative may do.
- 29 If the appointment is made by reference to a position held, then the appointment must identify the position.
- 30 The Company must arrange for:
- 30.1 the name and address of the Representative to be entered in the Register; and
 - 30.2 all correspondence and notices from the Company to the Member to be served on that Representative.

Applying and being admitted to Membership

- 31 A person's Application to be a Member must be made in the form, and accompanied by any fee, the Board has set.
- 32 The Board will consider and, in its absolute discretion, accept or reject an Application. If the Board rejects an Application, then:
- 32.1 it must arrange for any money the Applicant tendered with the Application to be repaid to the Applicant, without interest; and
 - 32.2 the Board does not have to give any reasons for the rejection.
- 33 An Applicant does not become a Member until the Company has:
- 33.1 received any fee that applies; and
 - 33.2 the name and address of the Applicant (and its Representative if relevant) are entered in the Register.

- 34 Each Member is liable for all taxes, duty and charges payable in respect of their Application, their Membership and any related transaction or document. Each Member indemnifies the Company and will keep it indemnified in respect of any liability for all those amounts.

Resigning from Membership: and ongoing liability

- 35 A Member may resign from Membership by giving written notice to the Company. When the notice period expires, the Member stops being a Member but:
- 35.1 they remain liable for any money they owe the Company; and
- 35.2 under clause 6, they remain liable for another 12 months.
- 36 A Member also resigns if they owe the Company any amount that is more than 6 months overdue (the Board may change the length of that period). If a Member resigns under this clause, then the Board may reinstate their Membership if they pay the outstanding amount.

Expelling and disciplining a Member

- 37 The Board may — in the way described in clause 38 — expel a Member or implement appropriate disciplinary action if the Member:
- 37.1 has committed a breach of any obligation or duty under this Constitution; or
- 37.2 has engaged in conduct detrimental to the interests of the Company.
- 38 For any expulsion or discipline to be valid:
- 38.1 at least 21 days before the Board meeting at which the resolution is considered, the Member must be given written notice of:
- the meeting;
 - the intended resolution; and
 - the particulars of the alleged act, omission or conduct complained of;
- 38.2 at the meeting (and before the resolution is passed), the Member must be given the opportunity to explain themselves in writing or orally (or both if they request it);,
- 38.3 if the Member does give an explanation, then the Board must take it into account;
- 38.4 the relevant resolution must be passed by 75% of the Directors present and voting;
- 38.5 the Board must arrange for the Member to be given written notice of any Board resolution on the matter; and
- 38.6 if the Board resolves to expel the Member, then the Member ceases to be a Member when the Board serves them with the notice. Also the Member's name will be removed from the Register as set out in clause 39.

Removing an expelled Member's name from the Register

- 39 If a Member is expelled from the Company, then their name (and that of any Representative they have appointed) must be removed from the Register. The Company has no liability to the Member in respect of their removal from the Register.

- 40 When a Member's name is removed from the Register, the Member no longer has:
 - 40.1 any rights or privileges attaching to Membership; or
 - 40.2 any rights which they had against the Company that arose out of their Membership.

E General Meetings: frequency and notice

Annual General Meeting required

- 41 The Company must hold an Annual General Meeting:
 - 41.1 in every calendar year;
 - 41.2 within five months after the end of its financial year; and
 - 41.3 at the time and place the Board determines.

Convening Extraordinary Meetings

- 42 An Extraordinary Meeting may be convened:
 - 42.1 by the Board at such time and place as the Board thinks fit, (as long as it complies with the Act); and
 - 42.2 by Members as allowed under the Act.

Notice of General Meetings

- 43 The Board must give at least 21 days' written notice of a General Meeting to the Members, the Directors and the Auditor (unless a change to that arrangement is made under clause 45). The notice must specify:
 - 43.1 the place, the day and the hour of meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - 43.2 the general nature of the meeting's business;
 - 43.3 the details of any special resolutions to be proposed at the meeting; and
 - 43.4 that Members are entitled to appoint a proxy who must be a Member.
- 44 A Member that is a company is responsible for notifying its Representative of any General Meeting.

Changing the notice procedure for General Meetings

- 45 A meeting may be convened in a way other than, and on shorter notice than, clause 43 requires as long as:
 - 45.1 all the Members entitled to vote at the meeting consent to the change beforehand; and
 - 45.2 the notice and the shorter notice period comply with the Act.

Failure to receive Notice

- 46 A meeting and its proceedings and resolutions are valid even if any one or more of the following is the case:
- 46.1 the Company accidentally omitted to give notice of a meeting to any Member; or
- 46.2 any Member did not receive notice of the meeting.

F General Meetings: proceedings

Use of technology in conferencing

- 47 The Chair may (with the approval of the meeting) confer with Members and others by radio, telephone, facsimile, computer, Internet, closed circuit television or other electronic means of audio or audio-visual communication. Any resolution passed using such a system is to be treated as having been passed at a meeting of the Members held on the day and at the time the conference was held — even if the Members were not present together in one place at the time. This clause does not limit the discretion of the Members to regulate their meetings.
- 48 The provisions of this Constitution regulating the proceedings of the Members apply so far as they are capable to such conferences.

Business at the meeting

- 49 The ordinary business of an Annual General Meeting must include:
- 49.1 considering any annual financial report, directors' report and Auditor's report;
- 49.2 electing and appointing Directors; and
- 49.3 appointing the Auditors and fixing the Auditor's remuneration (if the Company is required to have an auditor).
- 50 All other business at an Annual General Meeting, and all business at an Extraordinary Meeting, is regarded as special business.

Quorum required

- 51 For any business to be transacted at any General Meeting — except the adjournment of the meeting — a quorum must be present. The quorum for a General Meeting is 20% of the Membership, present in person or by Representative, proxy or attorney.

If no Quorum present

- 52 If a quorum is not present within half an hour after the time appointed for a General Meeting then:
- 52.1 if the meeting was convened on the requisition of Members, then it will be dissolved; or
- 52.2 in any other case, the meeting will be adjourned to the same day in the next week at the same time and place (or at such other place as the Chair decides). If at that

adjourned meeting a quorum is not present within fifteen minutes after the time appointed for holding the meeting, then the Members present are a valid quorum.

Chair of the meeting

- 53 The Chair or in the Chair's absence, the Deputy Chair is to preside as chair at every General Meeting.
- 54 If at any General Meeting neither the Chair nor the Deputy Chair is present within fifteen minutes after the time appointed for holding the meeting (or if neither is willing to preside), then the Members present are to choose a Director to preside. If no Director is present (or if all Directors present decline to preside), then those persons present will choose a Member who is present to preside as Chair.

Adjourning (and resuming) a meeting

- 55 The Chair of a General Meeting:
- 55.1 may, with the consent of the Members present and entitled to vote at any meeting, and at which a quorum is present, adjourn a meeting; and
- 55.2 must adjourn a meeting if the meeting directs them to do so.
- 56 If the Chair adjourns a General Meeting, then they may do so to another time or place (or both).
- 57 If a General Meeting is adjourned for one month or more, then the Company must arrange for a new notice of the adjourned meeting to be given.
- 58 After an adjourned meeting is resumed, the only business that may be transacted at the meeting is business that was unfinished before the adjournment.

Auditor attending etc. meeting

- 59 The Auditor is entitled:
- 59.1 to attend any General Meeting of the Company;
- 59.2 to receive the same notices of, and other communications relating to, any General Meeting that a Member is entitled to receive; and
- 59.3 to be heard at any General Meeting which the Auditor attends on any part of the business of the meeting which concerns the Auditor in that capacity. The Auditor's right to be heard exists even if the Auditor retires at that meeting or if a resolution to remove the Auditor from office is passed at that meeting.

G General Meetings: voting

Show of hands vote

- 60 Every item of business submitted to a General Meeting is to be decided in the first instance by a show of hands of the Members, or their Representatives, who are personally present and entitled to vote. The Chair will not have a casting vote.

Evidence of resolution

- 61 It is conclusive evidence that a resolution has been passed (regardless of whether there is any proof of the number or proportion of the votes recorded in favour of or against the resolution) if:
- 61.1 the Chair declares that a resolution has been passed or lost (having regard to the majority required); and
 - 61.2 an entry to that effect has been made in the Company's books and signed by the Chair of that, or the next meeting.

Poll vote

- 62 The Chair or any Member present (personally or by Representative, proxy or attorney) may demand a poll before, or on the declaration of the result of, a show of hands. Any person who has demanded a poll may withdraw their demand.
- 63 A poll demanded on any question of adjournment must be taken before any adjournment.
- 64 The poll is to be taken:
- 64.1 in the manner and at the time and place as the Chair of the meeting directs; and
 - 64.2 either at once or after an interval or adjournment or otherwise.
- 65 The result of the poll is to be the resolution of the meeting at which the poll was demanded.
- 66 If there is a dispute as to the admission or rejection of a vote, then the Chair will finally determine that dispute.
- 67 At a poll, the Chair will not have a casting vote.

Continuing with other business before a Poll

- 68 After a poll has been demanded, the meeting may continue with any business other than the issue on which poll has been demanded.

H General Meetings: appointing a proxy

Eligibility to be proxy

- 69 Any Member may:
- 69.1 appoint a natural person who is a Member, or a Representative, as a proxy to vote on the Member's behalf; and
 - 69.2 may direct the proxy to vote either for or against each or any resolution.

Company receiving notice of proxy

- 70 For an appointment of a proxy to be valid, the Company must receive the document appointing the proxy (and an original, or certified copy, of the power of attorney, if any, under which it is signed):

- 70.1 at least 48 hours before the time for holding the relevant meeting or adjourned meeting or poll; and
- 70.2 at one of:
- the Registered Office;
 - a fax number at the Registered Office; or
 - a place, fax number or electronic address specified for such purpose in the notice of meeting.
- 71 An instrument appointing a proxy is valid for any adjournment of the meeting to which it relates — unless it states something to the contrary.

Form of proxy

- 72 An instrument appointing a proxy must be signed by the appointor, or his or her attorney, and must contain the following information:
- 72.1 the Company name;
- 72.2 the Member's name and address;
- 72.3 the Member's type of Membership;
- 72.4 the proxy's name or the name of the office held by the proxy; and
- 72.5 the meetings at which the appointment may be used.

Proxy's voting instructions

- 73 A document appointing a proxy may specify the way in which the proxy is to vote for a particular resolution. If it does so, then the proxy must vote on the resolution as specified.

Proxy's authority

- 74 A document appointing a proxy will be treated as giving the proxy:
- 74.1 authority to demand, or join in demanding, a poll; and
- 74.2 the power to act generally at the meeting for the person giving the proxy (except to the extent to which the proxy is specifically directed to vote for or against any proposal).

I General Meeting: appointing an attorney

Member appointing an attorney

- 75 Any Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all, or certain specified, meetings of the Company. If the attorney wishes to appoint a proxy for the Member granting the power of attorney, then the attorney must at the Registered Office (or any other place the Board determines) produce:
- 75.1 the power of attorney for inspection; and

75.2 any evidence the Board requires that it has been properly executed.

Directors appointing an attorney of the Company

- 76 The Directors may, by power of attorney, appoint any person whether nominated directly or indirectly by the Directors to be an attorney or attorneys of the Company. The appointment:
- 76.1 may be for any purposes and with powers, authorities and discretions (not exceeding those vested in, or exercisable by, the Directors under this Constitution);
 - 76.2 may authorise any attorney to sub-delegate all or any of the powers, authorities and discretions vested in them;
 - 76.3 may be for periods and on conditions as the Directors think fit; and
 - 76.4 may contain provisions for the protection and convenience of persons dealing with any attorney as the Directors think fit.

J General Meeting: voting by attorney or proxy

Validity of vote after death or revocation

- 77 If a person who has appointed a proxy or attorney has either died or revoked the appointment but any notice in writing of the death or revocation has not been received at the Registered Office before the meeting, then a vote given in accordance within the terms of appointment will be valid.

Person who has appointed proxy or attorney may attend meetings

- 78 A person who has appointed a proxy or attorney may attend and take part in a meeting. Doing so does not revoke the appointment — unless the person votes on the resolution to which the appointment applies.

K Directors

Number and qualifications of Directors

- 79 The number of Directors comprising the Board will be at least 3 and, unless otherwise determined by ordinary resolution, no more than 11. Of those Directors:
- 79.1 3 shall be appointed by Orange City Council for so long as it continues to provide funding to the Company;
 - 79.2 1 shall be appointed by Cabonne Council for so long as it continues to provide funding to the Company;
 - 79.3 1 shall be appointed by Blayney Shire Council for so long as it continues to provide funding to the Company; and
 - 79.4 The balance shall be elected by the Members in accordance with this Constitution — except as provided in clauses 82.3 and 85.

80 Each Director must be a financial Member or a Representative of a financial Member.

Length of appointment

81 Each Elected Director will hold office:

- 81.1 from the end of the Annual General Meeting at which they were elected;
- 81.2 until the end of the following Annual General Meeting — at that time, they must retire (but they are eligible for re-election).

Election of Directors

82 For the purposes of clause 79.4, Directors will be elected in the following way:

- 82.1 Any two Members may nominate any Member or Representative or any other person deemed appropriate to serve as a Director.
- 82.2 The nomination of any Member or Representative as a candidate for election as a Director must be:
 - in writing and signed by the nominated person and their proposer and seconder; and
 - lodged with the Secretary at least 30 days before the Annual General Meeting at which the election is to take place (or any other scheduled General Meeting).
 - be approved by the Board.
- 82.3 If the number of nominated and approved candidates:
 - *is no more than the number of vacancies*, then the Chair of the Annual General Meeting will declare those candidates elected as Directors.
 - *is more than the number of vacancies*, then the Company Secretary will arrange for balloting lists to be prepared containing the names of the candidates in an order determined by lot. The Board may determine the method of the ballot. Each Member is entitled to vote for any number of candidates not exceeding the number of vacancies.
 - *is not enough to meet the required minimum number of Directors*, then the Board must appoint a Member or Representative as Director (as long as they consent) until there is at least the minimum number of Directors.

Alternate Directors

83 Each Appointed Director may by notice in writing to the Company appoint (and may remove) an Alternate Director to attend, be counted in a quorum and to vote at all meetings of the Board at which the Director is not personally present.

Officers on the Board

- 84 At the first meeting of the Board after the Annual General Meeting, the Directors will elect from among their number a Chair, a Deputy Chair, a Secretary and a Treasurer (one Director may fill more than one position). Each of them will hold office until the end of the next Annual General Meeting.

Casual vacancies

- 85 If there is a casual vacancy in the office of Elected Director, then the Board may appoint a replacement Director. That replacement Director holds office until the end of the next Annual General Meeting.

Disqualification of Directors

- 86 The office of a Director will be vacated if the Director:
- 86.1 is a Member, or a Representative of a Member, and they become bankrupt or make any arrangement or composition with their creditors;
 - 86.2 is a Representative of a Member and that Member resigns or is expelled as a Member;
 - 86.3 is a Representative of a Member which is not a natural person, and a winding up order is made in respect of that Member;
 - 86.4 becomes of unsound mind;
 - 86.5 is absent for three consecutive Board Meetings without leave of the Board (unless the Board resolves to the contrary);
 - 86.6 resigns from their Directorship by giving written notice to the Company; or
 - 86.7 ceases to hold office by reason of any order made under the Act.

First directors

- 87 The first Directors are the persons set out as Directors in the application to register the Company lodged under section 117 of the Act. The first Directors will hold office until the end of the first Annual General Meeting, at which point they will cease being directors but will be eligible for re-election.

L Powers of the Board

The board controls and directs the company

- 88 The control and direction of the Company and the management of its property and affairs are vested in the Board.
- 89 The Board may exercise all powers of the Company that are not required to be exercised or done by the Company in General Meeting.

Borrowing

- 90 The Board may raise money in any manner it thinks fit including by borrowing money (whether on the security of the Company's assets or not) and the issuing of a security for any other purpose — so long as this is done to further the Company's objects set out in clause 2.

Investment

- 91 The Board may invest the Company's money in any manner, and for any period, it thinks fit.

Negotiable instruments

- 92 Two Directors, or one Director and some other officer authorised by the Board for the purpose, may sign, draw, accept, endorse or otherwise execute (as the case may be) the following documents for and on behalf of the Company: all cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company.

M Proceedings of the Board

General

- 93 The Board may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- 94 The Board must meet at least 1 times a year.

Use of technology in Board conferencing

- 95 The Board may, if it thinks fit, confer by radio, telephone, facsimile, computer, Internet, closed circuit television or other electronic means of audio or audio-visual communication. Any resolution passed using such a system is to be treated as having been passed at a meeting of the Board held on the day and at the time the conference was held — even if the Directors were not present together in one place at the time. This clause does not limit the discretion of the Board to regulate its meetings.
- 96 The provisions of this Constitution regulating the proceedings of the Board apply so far as they are capable to such conferences.

Notice of meeting

- 97 At any time, the Board may convene a Board meeting by notice served on each Director. The Secretary is to arrange that notice at the request of the Chair or Deputy Chair.
- 98 The proceedings of a Board meeting are valid even if:
- 98.1 the Company accidentally omitted to give notice of a meeting to any Director; or
 - 98.2 any Director did not receive notice of the meeting.

Quorum

- 99 A quorum for Board meetings is (unless the Board determines otherwise) if the number of Directors:
- 99.1 is an even number, half of the Board plus one other director; or
- 99.2 is an odd number, the odd number nearest to, and greater than, half of the number of Directors.

Chair

- 100 The Chair, or in the Chair's absence the Deputy Chair, is to chair every Board meeting.
- 101 If at a Board meeting neither the Chair nor the Deputy Chair is present within fifteen minutes after the time appointed for holding that meeting (or if neither is willing to chair), then the Directors present will choose one of their number to chair the meeting.

Voting

- 102 Questions arising at any meeting will be decided by a majority of votes. Each Director present is entitled to one vote. The Chair does not have a casting vote.
- 103 However, the Board may suspend a Director's entitlement to vote if the Director (or the Member for whom the Director is a Representative) owes the Company any amount that is more than 3 months overdue (or such other period as the Board determines).

Delegation by the Board

- 104 Subject to clause 105, the Board may, as it thinks fit, delegate any of its powers to individual Directors or Members or to committees. A committee may consist of the Directors or Members (or both) that the Board thinks fit. Any individual or committee must comply with any Board direction about how to execute the delegated powers.
- 105 The Board may not delegate its power to delegate.
- 106 The meetings and proceedings of any committee will be governed by the provisions of this Constitution that regulate the meetings and proceedings of the Board so far as they apply and so far as the Board has not replaced them.

Defects in appointment

- 107 An act done in good faith by any meeting of the Board, any meeting of any committee formed by the Board or by any person acting as a Director will not be invalidated merely because of:
- 107.1 any defect in the election, appointment or tenure of a Director or person acting on any such committee; or
- 107.2 the disqualification of any of them.

N Board minutes and circulated resolutions

Making Board resolutions

- 108 The Board may make resolutions either:
- 108.1 in a meeting, of which minutes must be kept as set out in clause 109; or
 - 108.2 by circulated resolution which must be made and kept as set out in clause 110.

Minutes to be kept

- 109 The Board must arrange for:
- 109.1 proper minutes to be made of the proceedings and resolutions of all meetings of the Company, the Board and committees formed by the Board;
 - 109.2 the minutes to be entered in books kept for that purpose; and
 - 109.3 the minutes to be signed by the Chair of the meeting or by the Chair of the next meeting.

Circulated Resolution General

- 110 If all the Directors have signed a document containing a statement that they are in favour of a resolution set out in the document, then that resolution is to be treated as having been passed as a Circulated Resolution at a meeting of the Board held at the time and date on which the resolution was last signed by a Director. (However, the reference to "all the Directors" in this clause does not include any Director who is not entitled to vote on the Resolution.)
- 111 Any Circulated Resolution may consist of several documents in identical terms, each signed by one or more Directors and must be entered in the relevant book of minutes of the Company.

Evidence of proceedings and resolutions

- 112 A minute or Circulated Resolution that is recorded and signed in accordance with clause 109 or 110 to 111 (as the case may be) is evidence of the proceeding or resolution to which it relates (unless the contrary is proved).

O Accounts

Accounts to be kept

- 113 The Board must arrange for the Company to keep proper books of account that:
- 113.1 record true and complete accounts of the affairs and transactions of the Company; and
 - 113.2 give a true and fair view of the state of the Company's affairs and explain its transactions.

Location and inspection of accounts

- 114 The Board must arrange for the books of account:
- 114.1 to be kept at the Registered Office, or in a place or places it thinks fit; and
- 114.2 to be open to the inspection of the Directors during usual business hours.

Auditor

- 115 The Company will comply with the Act in relation to the appointment, removal and resignation of an Auditor.

P Indemnity

Definition of Liability and Officer

- 116 In clauses 117 to 119:
- 116.1 **Liability** means costs, losses, liabilities and expenses.
- 116.2 **Officer** means a Director, secretary or other officer of the Company and includes a former Officer, but does not include an auditor or agent of the Company.

Indemnity of Officers

- 117 The Company must indemnify every Officer out of the assets of the Company against any Liability incurred by that Officer in their capacity as an Officer by reason of any act or thing done or omitted to be done by that person:
- 117.1 in that capacity; or
- 117.2 in any way in the discharge of that person's duties; or
- 117.3 by reason of or relating to the person's status as an Officer.
- 118 However, the indemnity in clause 117 does not extend to any Liability from, or against, which the Company is not permitted by the Corporations Act to exempt or indemnify the Officer.

Indemnity for Proceedings

- 119 Without limiting clause 117, the Company must indemnify every Officer 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.
- 120 However, the indemnity in clause 119 does not extend to any Liability from, or against, which the Company is not permitted by the Corporations Act to exempt or indemnify the Officer.

Q Notices

- 121 The Company may serve notice on any Member in the ways shown in the left hand column of the table below. A notice will be taken to be served at the time shown in the right-hand

column of that table on the relevant row. Any notice to be served on a Representative is served by serving it on the relevant Member.

Way of serving notice	Timing of notice taken to be
Personally	When served
By sending it through the ordinary post to the Member's Registered Address	3 days after the day it is posted. In proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and deposited as a prepaid letter at the post office or in some postal receptacle.
By leaving it at their Registered Address in an envelope addressed to the Member.	Business Day: The same day it is left at the Registered Address. Non-Business Day: the Business Day after it is left at the Registered Address.
By sending it to the fax number or electronic address (if any) nominated by the Member.	On the Business Day after it is sent.

- 122 A certificate in writing signed by the Secretary or any officer of the Company that the envelope containing the notice was properly stamped, addressed and posted or delivered will be conclusive evidence of the service of such notice.

R Distribution of property on winding-up

- 123 If on the winding-up or dissolution of the Company after all its debts and liabilities have been satisfied there remains any property, then that property must not be paid to or distributed among the Members.
- 124 Instead, this property must be given or transferred to some other institution or institutions that have:
- 124.1 objects similar to the objects of the Company (if there is one); and
 - 124.2 a Constitution which prohibits the distribution of its income and property among its Members to an extent at least as great as is imposed on the Company under clause 7 of this Constitution.
- 125 Choosing which institution or institutions the Company will transfer this property to must be done by:
- 125.1 a special resolution of the Members at or before the time of the Company's dissolution; or
 - 125.2 if no such special resolution is passed, then by a Judge or Registrar of the Supreme Court or such other court of competent jurisdiction.

S Replaceable Rules displaced

- 126 Each of the provisions of the Act that would, but for this clause, apply to the Company as a replaceable rule is expressly displaced and does not apply to the Company.

T Definitions and Interpretation

127 In this Constitution:

Act means the *Corporations Act* 2001 (Commonwealth).

Annual General Meeting means the annual general meeting of Members.

Applicant means a person who lodges an Application under this Constitution.

Application means an application for Membership.

Appointed Director means a Director appointed by a Council Member;

Auditor means the auditor or auditors of the Company, if the Company is required to have one. If the Company is not required to have an auditor, but has one, then it includes any such auditor.

Board means the board of directors of the Company.

Business Day means Monday to Friday excluding public holidays in the State or Territory the Company is registered in.

Chair means the Director who is elected to this office in accordance with clause 100.

Company means TDO Limited.

Constitution means this Constitution, as amended.

Council Member has the meaning given in clause [17.2]

Deputy Chair means the Director who is elected to this office in accordance with clause 84.

Directors means the members individually or collectively of the Board.

Elected Director means a Director elected by Members;

Extraordinary Meeting means a General Meeting of Members other than an Annual General Meeting.

General Meeting means an Annual General Meeting or an Extraordinary Meeting of the Company.

Member means a person admitted to Membership in accordance with this Constitution.

Membership means Membership of the Company.

Non-Financial Member means a Member whose membership fees are due but are unpaid.

Ordinary Member has the meaning given in clause [17.3].

Register means the register of Members kept in accordance with the Act.

Registered Address means the address of a Member shown in the Register.

Registered Office means the registered office of the Company.

Representative means a person as described in clause 25.

Secretary means the Director who is elected to this office in accordance with clause 84.

Treasurer means the Director who is elected to this office in accordance with clause 84.

- 128 In this Constitution, unless the context requires otherwise:
- 128.1 a person includes a corporate body, association, firm, partnership, or other unincorporated body;
 - 128.2 a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
 - 128.3 this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
 - 128.4 a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Constitution;
 - 128.5 a word or phrase that is defined has the corresponding meaning in its other grammatical forms
 - 128.6 writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
 - 128.7 the singular includes the plural and vice versa;
 - 128.8 a gender includes all other genders; and
 - 128.9 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Constitution.

Schedule 1

Names and usual residential addresses of initial directors

Name of director	Usual residential address of director
[Director name]	[Director address]

Guarantee

The Members of the Company have each guaranteed the following amount on its establishment \$1.00.

Schedule 2

Statement by persons who have consented to be Members of the company

I consent to become a Member of the company. I agree to the form of this Constitution of the company.

Name of Member	Usual residential address
[Member name]	[Member address]

Execution

Executed by
TDO Limited ACN 616158822, in its capacity
as member, in accordance with section
127(1) of the *Corporations Act* 2001 (Cwth):

Peter Hammond Robson, director

Anthony Arnold Cheney, director



Probity Plan

CentrePoint Sports and Leisure Centre Aquatic and Building Upgrades

Tender 11/2019

Doc Version	Final/Draft	Date	Author	Reviewed by	Comments
	Draft	21/01/19	M. Kelly	R. Ryan M. Dicker	NA
1.0	Final	08/02/19	M. Kelly	R. Ryan M. Dicker	18 February 2019 Council Meeting Resolution Number:

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1. INTRODUCTION (BACKGROUND)

- 1.1 Blayney Shire Council is committed to observe rigorous probity measures at all times, but including in carrying out its purchasing and tendering. Council's General Manager will decide when a project requires the drafting of a probity plan and/or the engagement of an external Probity Advisor.
- 1.2 In this case Council intends to procure construction services for the Blayney CentrePoint Sports and Leisure Centre – Aquatic and Building Upgrades (**Project**) and the General Manager has determined that this Probity Plan is required for the Project. The General Manager has also decided that a Probity Advisor is to be appointed to oversee the Project.
- 1.3 While this Project has been in the planning stages since December 2015 the General Manager has ensured that all steps have been taken with probity in mind.
- 1.4 The process of inviting, receiving and evaluating tenders, and determining and notifying the successful tenderers will be referred to throughout this Probity Plan as the "Tender Process".
- 1.5 Except where otherwise indicated, a reference to a "tender" also applies to an EOI and a reference to a "tenderer" applies to an EOI applicant.

2. RELATED POLICIES AND PROCEDURES

- 2.1 Details of how the Tender Process is to be conducted are set out in detail in the Tendering Guidelines for NSW Local Government (October 2009) (**Guidelines**). In implementing the Probity Plan, the Guidelines must be observed.
- 2.2 Aside from the Guidelines, other internal policies and procedures will also apply including:
 - The adopted Code of Conduct;
 - Blayney Shire Council Procurement of Goods and Services Policy;
 - Blayney Shire Council Procurement Procedure;
 - Funding Deed between Council and Federal Government dated 8 October 2018; and
 - The Statement of Business Ethics.
- 2.3 This Probity Plan is to be read and implemented in conjunction with the policies and procedures above. In the event of an inconsistency in how the Tender Process is to be conducted the Guidelines prevail. The exception to this is where the inconsistency relates to the application of a probity principle or a probity consideration as detailed in this Probity Plan, in which case the Probity Plan prevails.

3. PURPOSE OF THIS PROBITY PLAN

- 3.1 This Probity Plan is to guide Council during the Project.
- 3.2 This Probity Plan is intended to assist Council Officials to ensure that the following accepted probity principles are observed:
 - Fairness and impartiality;
 - Transparency;
 - Accountability;
 - Maintaining security and confidentiality;

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- Managing conflicts of interest; and
- Obtaining value for money.

- 3.3 This Probity Plan serves as a guide to the Council in how to apply the probity principles and objectives, manage any probity risk which may arise and ensure appropriate records are created and saved.
- 3.4 Implementation of this Probity Plan will minimise the risk of potential liability that might otherwise arise out of the Project.

4. PROBITY PLAN APPLICATION

- 4.1 This Probity Plan is intended to apply to all stakeholders involved in the project, including but not limited to Council Officers. Council Officers includes: staff members, Councillors, advisors, and delegates of Council.
- 4.2 This Probity Plan must be approved by the General Manager prior to the opening of any tenders at a minimum.

5. PROCESS FOR AMENDMENT

- 5.1 This Probity Plan may be amended if required and as necessary by the endorsement of the General Manager. Reasons for amending the Plan must be clearly documented.

6. PROBITY PRINCIPLES

- 6.1 The Council's exercise of procurement functions requires it to be fair, open and to demonstrate the highest levels of integrity consistent with the public interest. It is impossible to prescribe rules for every situation.
- 6.2 Rather, it is incumbent on every Council Officer involved in the Tender Process to understand and apply the principles of probity set out below.
- 6.3 Obtaining Best Value**
- 6.3.1 Obtaining value for money is enhanced when there is open competition and the market is tested regularly. Impartial, open and competitive processes are an important stepping stone in achieving value for money.
- 6.3.2 Council understands that its budget reporting requirements may mean that astute contractors may be able to ascertain the Project's value and place a bid accordingly. Council will consider options such as, engaging a quantity surveyor, and seeking the tenderers to include savings in their bids, to ensure that it receives best value.
- 6.4 Transparency of the process**
- 6.4.1 If fairness and impartiality are not apparent and suppliers perceive there is a problem with the Tender Process, they may think twice about submitting an offer to Council and also be deterred from submitting future applications or tenders. As a result, competition will be lessened and the best deal may not be achieved.
- 6.4.2 Transparency may be increased by informing prospective tenderers of the assessment process, appointing a probity advisor and maintaining adequate process documentation. The selection and evaluation processes shall be consistent and conducted in accordance with predetermined criteria. Such processes will be open and reviewable.

6.5 Addressing Conflicts of Interest

- 6.5.1 All Council Officers must exercise their powers and discharge their duties in good faith in the best interests of Council, and for a proper purpose. Conflicts of interest arise when Council Officers are influenced, or appear to be influenced by interests other than those of Council when undertaking their job. This includes conduct and circumstances which result in personal gain at the expense of Council. Inadequate systems for dealing with conflicts of interest provide opportunities for corruption, maladministration and serious waste of public resources.
- 6.5.2 All Council Officers should avoid placing themselves under any financial or other obligation to outside individuals or organisations that might influence, or attempt to influence, them in the performance of their official duties. Any Council Officer involved in the Tendering Process is to declare any actual or perceived conflict of interest, which may compromise their position. This interest will be considered, advice sought from the Probity Advisor where necessary, and a decision made as to how to address the matter.

6.6 Confidentiality

- 6.6.1 Confidential information will be generated as a result of the Tender Process. Procedures will be implemented to ensure that no unauthorised release of confidential information occurs. The processes adopted for receiving and managing information are to ensure the security and confidentiality of intellectual property, proprietary information, or otherwise sensitive information.

6.7 Accountability

- 6.7.1 Council Officers are accountable for their actions in the conduct of the Tender Process. All aspects of the process will be recorded and stored in Council's record keeping system.

7. DESIGNATED ROLES

7.1 Governance and management structure

- 7.1.1 Declared Evaluation Roles are:
- a) Elected Councillors (via Council meeting);
 - b) Delegated Officer;
 - c) Chair of the Tender Evaluation Panel;
 - d) Technical Advisers;
 - e) Tender Evaluation Panel (and its members); and
 - f) Probity Adviser.
- 7.1.2 The Guidelines detail the particular functions and responsibilities of the, Tender Panel and any Council Officer participating in the Tender Process.
- 7.1.3 The General Manager may nominate another member of staff to exercise any of the functions and duties conferred on the Delegated Officer in this Probity Plan. This nomination is to be recorded in writing.

7.2 Delegated Officer

7.2.1 The Delegated Officer will ensure the procurement process complies with the Guidelines and Council's policies and procedures. The Delegated Officer's role is to;

- a) Provide strategic advice to the Tender Evaluation Panel;
- b) Facilitate the participation of external resources in the evaluation process in consultation with Council's General Manager.
- c) Act as the Contact Officer; and
- d) Review Council process.

7.2.2 The Delegated Officer will not have a voting role in the Tender Evaluation process.

7.2.3 For this project, the Delegated Officer is:

Name: Mr Anton Franze

Position: Director Corporate Services, Blayney Shire Council

7.3 Chair of the Tender Evaluation Panel

7.3.1 The Chair's role is to coordinate the tender evaluation meetings to ensure efficiency and effectiveness and to assist in the request for tender process.

7.3.2 The Chair reports to the Delegated Officer

7.3.3 For this project, the Chair is:

Name: Mr Mark Dicker

Position: Director Planning & Environmental Services, Blayney Shire Council

7.4 Technical advisors

7.4.1 Technical Advisor's roles are to provide specialist advice to the Tender Evaluation Panel in relation to one or more Weighted Evaluation Criteria, where the Tender Evaluation Panel determines that technical, financial or other specialist advice is required to enable the Tender Evaluation Panel to properly assess the Tenders against that criteria.

7.4.2 Technical Advisors are advisory only and will not score the submissions. At no time will Technical Advisors sit in a decision-making position on the Tender Evaluation Panel.

7.4.3 For this project, technical advice or assistance will be obtained from:

Company: Studio GA (architects)

Name: Mr Paul Gallagher

Position: Principle Architect

Name: Mr Jaysul Parmar

Position: Architectural Assistant

Name: Mr Devlyn Song

Position: Quantity Surveyor (Osborne+Song)

Company: DSA consulting (mechanical engineers)

Name: Mr David Shreeve

Position: Managing Director

Name: Mr Tony Esber

Position: Senior Mechanical Engineer

Company: Electrical Design Consulting

Name: Mr Leon Gower

Position: Director

Company: Terre Designs (aquatic engineers)

Name: Mr Livio Chiarot

Position: Director

Name: Mr Andy Varga

Position: Director

Company: Marsdens Law Group (contract)

Name: Mr Justin Thornton

Position: Partner

Company: Blayney Shire Council

Name: Mr Gordon Maccallum

Position: Senior Building Surveyor

7.5 Tender Evaluation Panel

7.5.1 The Tender Evaluation Panel comprises three Council staff members of varying levels of knowledge and experience.

7.5.2 All Tender Evaluation Panel members have voting rights, including the Chair.

7.5.3 The Tender Evaluation Panel Members for this Tender are:

Chair: Mr Mark Dicker

Members: Mr Charlie Harris, Mrs Tiffaney Irlam and Mr Nathan Skelly

7.6 Probity Adviser

7.6.1 The Probity Advisor is responsible for:

- Reviewing key project documents in the tender process (Request for Tender, Tender Evaluation Plan, Probity Plan) (from a probity perspective only);

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- Reviewing the implementation of this Probity Plan by the Council, the Tender Panel, staff and advisors;
- Providing the Council, the General Manager, Delegated Officer, the Tender Panel and staff, with advice on any probity risks or issues identified in the Tender Process (from a probity perspective only);
- Attending all briefings or meetings with tenderers, and attending briefings or meetings with Council's and other stakeholders, at the invitation of the Delegated Officer;
- Attending meetings or teleconferences with Tender Evaluation advisers at the invitation of the Delegated Officer;
- Providing a final probity report and other milestone reports (if requested) to the Council as required.

7.6.2 The Probity Advisor will not be in a scoring role upon the Tender Evaluation Panel nor have a decision-making function. The Probity Advisor appointed for this project is:

External Consultant: Monica Kelly, Prevention Partners NSW

8. PROBITY CONSIDERATION: CONFIDENTIALITY

- 8.1 This Probity Plan will assist Council to manage confidential information. Confidential information may be created internally, provided by external parties, and/or jointly created internally and by external parties.
- 8.2 As a public authority Council must make its decisions in a transparent manner wherever possible. Transparency of decision-making creates community trust. However, a balance must be struck between transparency and confidentiality. For this reason it is difficult to make prescriptive rules about confidentiality.
- 8.3 A significant quantity of confidential information is likely to be generated as a result of the Tender Process. The following procedures should be followed to ensure that the unauthorised release of confidential information does not occur.
- 8.4 If there are doubts about the confidentiality status of any information then it should be referred to the Delegated Officer or the Probity Advisor. Any information that is deemed confidential by the Delegated Officer or the Probity Advisor will be kept confidential.
- 8.5 Any information that could give anyone an unfair advantage must be kept totally confidential until such time as it is made publicly available to all tenderers.

8.6 Confidential Documents

- 8.6.1 The Delegated Officer and the Chair of the Tender Panel must ensure that the following items are maintained as confidential. The information below is considered 'confidential information':
 - Commercial-in-confidence, intellectual property, trade secrets, sensitive information, and personal information;
 - Confidential information produced as part of the evaluation process (e.g. meeting minutes, evaluation reports, advice or reports from advisors regarding evaluation of the applications or tenders, other reports to the Council);
 - Other information related to the Tender Process that is not publicly available; and

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- Any other information determined by the Delegated Officer, General Manager or Tender Panel to be confidential.

8.7 Confidentiality Deed

- 8.7.1 The Delegated Officer is to ensure that a Confidentiality Deed is executed by any person who has access to confidential information. A register of persons who have signed the Confidentiality Deed is to be maintained by the Delegated Officer.
- 8.7.2 All participants are to have the confidentiality provisions contained in the Confidentiality Deed and this Probity Plan explained to them by the Chair of the Tender Panel, the Delegated Officer or the Probity Advisor.

8.8 Confidential information accessibility

- 8.8.1 All confidential information must be secured and only accessible to the Delegated Officer, Tender Panel members, advisors and staff who have a legitimate reason for accessing them.
- 8.8.2 No person is to access the confidential information unless a Confidentiality Deed has been signed by that person and is in the custody of the Delegated Officer.

8.9 Copying files

- 8.9.1 Confidential information must not be copied without the permission of the Chair of the Tender Panel and the Delegated Officer. In the event that confidential information is copied, the Chair of the Tender Panel and/or Delegated Officer must make a file note describing what was copied, by whom, to whom it was given, and under whose authority the information was copied.
- 8.9.2 Paper information is to be kept in a secure place, which can be locked and is only accessible by the Delegated Officer and the General Manager. Extra copies will not be produced without the prior written approval of the Chair.

8.10 Computer access

- 8.10.1 The Delegated Officer is to ensure that all Tender Process information held on computer is stored on a dedicated Synergysoft file, access to which is only available to authorised tender panel members, necessary staff members and staff systems administrators only.
- 8.10.2 Councillors will be granted confidential information when the General Manager deems it necessary. Any Councillor or senior staff member who holds a conflict in this matter must be excluded from provision of confidential information as a regular part of the business paper routine.
- 8.10.3 To avoid inadvertently emailing confidential information to any Council Officer who holds a pecuniary or significant conflict of interest an email group/s should be established that includes only those Council Officers who are not conflicted and who have legitimate reason to receive the confidential information.
- 8.10.4 All emails to the group/s must use the group email, rather than including each email address separately. Emails to the group will be sent from; Tender Evaluation Panel Chair, Delegated Officer or General Manager with email addresses checked by a second Council Officer prior to sending. The Councillor portal will not be used to communicate with Councillors if any Councillor has declared a conflict of interest that eliminates their involvement in the Project.

- 8.10.5 Emails containing confidential information are not to be forwarded or printed without the prior consent of the Chair of the Tender Panel or the Delegated Officer.
- 8.10.6 Confidential reports or documents contained in any report to Council will be washed with a green background and clearly watermarked 'CONFIDENTIAL' as per current practice for Business Paper practice

8.11 Information removed from Council's offices

- 8.11.1 Confidential information should not be removed from Council's offices. Approval to remove confidential information from Council's offices may be provided by the Chair of the Tender Panel and the Delegated Officer if adequate security of the information can be guaranteed, and the removal is tracked in the Tender Documents Control Register (see Appendix A).
- 8.11.2 Where it is necessary to remove confidential information from Council's offices, its safe keeping is the responsibility of the person removing the information. The security to be implemented will be documented and provided to the Chair of the Tender Panel and the Delegated Officer. Confidential information must at all times be either in the personal possession of the individual, locked in a secure environment or if in electronic form access restricted by passcode. Vehicles and open offices are not considered to be a secure environment.

8.12 Use of Couriers

- 8.12.1 If confidential information cannot be securely transferred electronically, it must be hand delivered or couriered in secure packaging.

9. PROBITY CONSIDERATION: CONFLICTS OF INTERESTS

- 9.1 Conflicts of interests arise when persons are influenced, or appear to be influenced by interests other than those of Council when doing their job. Inadequate handling of conflicts of interests of persons involved in the evaluation or decision-making process could result in a perception of a lack of independence or potential for corruption which could affect the integrity of the Tender process.

9.2 Application

- 9.2.1 All those who are involved in the Tender Process in any capacity are required to make a full conflict of interests declaration, actual or perceived, which may impinge or be perceived to impinge on their capacity to conduct their duties in relation to the Tender Process.
- 9.2.2 The Declaration of Interests at **Appendix C** is to be completed prior to involvement in the Tender process or as soon as practical once this probity plan is approved and implemented by the General Manager. Any conflict of interest which is subsequently identified is to be immediately disclosed in writing to the Chair of the Tender Panel and the Delegated Officer.
- 9.2.3 The application of the Council Code of Conduct should not derogate from the requirements to adopt and follow the principles for managing conflicts of interests as set out in this Probity Plan.
- 9.2.4 For any external parties or advisers participating in the Tender Process, any conflict of interests obligations outlined in this Probity Plan need to be observed (as well as the conflict of interests obligations imposed under the Local Government Act 1993, Local Government (General) Regulation 2005 and the Council Code of Conduct.

9.3 Receiving declarations

- 9.3.1 The Chair of the Tender Panel and the Delegated Officer will be responsible for ensuring that all persons involved in the Tender Process, including advisors, sign the Declaration of Interests prior to involvement in the Tender process.
- 9.3.2 The Chair of the Tender Panel and the Delegated Officer are to receive any declarations subsequently disclosed by any participant and ensure it is handled in accordance with the requirements outlined below.

9.4 Handling declarations

- 9.4.1 For Council Officers, consideration of any declared conflicts of interests and the management of those declared conflicts should be handled by the Delegated Officer prior to involvement in the Tender process. Any conflicts of interests on the part of the Delegated Officer or senior management of the Council, should be referred to the General Manager.
- 9.4.2 The advice of the Probity Adviser should be obtained where the Chair of the Tender Panel or the General Manager are in doubt as to whether a conflict of interests exists, or how to handle a conflict.
- 9.4.3 All declared conflict of interests will be recorded by the Chair of the Tender Panel and the Delegated Officer with detail of decisions made and any action required.

9.5 Questions to ask in deciding what is a conflict of interests

- 9.5.1 It is the responsibility of the Council Officer to raise with the Chair of the Tender Panel and/or Probity Adviser any interest which might give rise to an actual or perceived conflict which might affect the integrity of the Tender Process.
- 9.5.2 The following questions will help the Council Officer with the interest in question to decide, in the first instance, whether a conflict of interests exists, or whether a person's behaviour could create the impression that it does, and so undermine confidence in Council.
- 9.5.3 If a person answers "Yes" to any of these questions below, they must seriously consider their position.
- Do I, a relative, partner or associate stand to gain or lose financially from Council's decision or action on this matter? (If so, this constitutes a conflict);
 - Do I, a relative, partner or associate stand to gain or lose my/our reputation because of Council's decision or action? (If so, this constitutes a conflict);
 - Have I contributed in a private capacity in any way to the matter before Council? (If so, this constitutes a conflict);
 - Have I made any promises or commitments in a private capacity in relation to the matter? (If so, this constitutes a conflict);
 - Have I received a benefit or hospitality from someone who stands to gain or lose from Council's decision or action? (If so, this constitutes a conflict);
 - Am I a member of an association, club or professional organisation, or do I have particular ties and affiliations with an organisation or individuals, who stand to gain or lose from Council's consideration of the matter? (If so, this may constitute a conflict);

- If you are or have been a Councillor - is the person an election campaign donor or someone who helped during my election campaign? (If so, this constitutes a conflict);
- Could there be benefits for me in the future that could cast doubt on my objectivity? (If so, this may constitute a conflict);
- If I do participate in assessment or decision-making, would I be unhappy if my colleagues and the public became aware of my association or connection? (If so, this likely constitutes a conflict); and
- Would a fair and reasonable person perceive that I was influenced by my personal interest in performing my public duty? (If so, this constitutes a conflict).

9.5.4 Other matters to consider:

- Do I need to seek advice or discuss the matter with an objective party; and
- Am I confident of my ability to act impartially and in the public interest?

9.6 Questions to ask when handling a disclosed interest

9.6.1 When such interests are declared, it is the responsibility of the Council Officer or Delegated Officer to determine appropriate strategies to minimise any risks associated with these interests. It would be prudent to seek advice of the Probity Advisor where there is doubt.

9.6.2 Where the Delegated Officer is deciding whether a conflict exists, and, if so, how the conflict is to be handled, it is important that the circumstances are assessed against established criteria. These criteria include:

- Does the matter fall within the definition of a pecuniary or non-pecuniary interest in the Council Code of Conduct;
- Is all the relevant information available to ensure proper assessment;
- What is the nature of the relationship or association that could give rise to the conflict;
- Has appropriate legal and other advice been obtained;
- Is the matter or issue one of public interest? Is it controversial;
- Could the Council Officer's involvement cast doubt on their integrity;
- Could the Council Officer's involvement cast doubt on Council's integrity;
- How would it look to a member of the public; and
- What is the best option to ensure impartiality, fairness and protection of the public interest?

9.7 Gifts and Favours

9.7.1 Gifts and favours can cause a conflict of interests because they create a sense of obligation in the receiver. The principles of the Code of Conduct and Council's Gift and Benefits policy will strictly apply to gifts and favours in relation to the Tender Process.

- 9.7.2 Council Officers involved in a tender process must not accept any gifts, hospitality or other benefits from potential suppliers or organisations relating to that particular tender, during the tender development phase, through to appointment of a successful tenderer/s.
- 9.7.3 Unless allowed under the Code of Conduct, no-one should seek or accept favours or gifts for services performed in connection with their Council functions or duties. Included in this category are gifts in kind, such as free accommodation or travel or entertainment vouchers.
- 9.7.4 The general principle to be followed is not to seek or accept favours or gifts from anyone who could benefit by influencing a decision. Details of any circumstances where an offer of a benefit or gift is made are to be immediately reported to the Delegated Officer or Probity Advisor, irrespective of whether the offer has been accepted.
- 9.7.5 Where a gift is given without the Council Officer's prior knowledge or consent, or where a gift is given as a token of goodwill to the Council, this should be immediately reported to the Chair of the Tender Panel or Probity Advisor as soon as possible. Gifts of more than token value should in all cases remain the property of Council as per its Code of Conduct.

10 PROBITY CONSIDERATION: ACCOUNTABILITY

- 10.1 Records of the Tender process must be maintained in order to allow for independent audit and review. The maintenance of appropriate records increases the accountability and transparency of the process.

10.2 Minutes of meetings

- 10.2.1 All key issues discussed and actions agreed at Tender Panel meetings (including any advisory committees or panels) will be recorded including:
- Meeting details;
 - Attendance and apologies;
 - Confirmation that Tender Panel members have no conflict of interest;
 - Reminder of confidentiality obligations;
 - Decisions and recommendations made;
 - Actions agreed; and
 - Responsibility and time frame.
- 10.2.2 The Chair of the Tender Panel will arrange for Minutes to be taken and the Delegated Officer will ensure the Minutes are maintained.
- 10.2.3 Where Council has appointed independent advisors, records will be made of all key issues raised by those advisors, and the meeting's deliberations on these issues.

10.3 Documentation

- 10.3.1 A file of any contact with prospective tenderers, or tenderers will be maintained by the Delegated Officer. Such documentation includes phone conversations, face-to-face meetings, and email contact.
- 10.3.2 The probity principles to apply in relation to such contact are fairness, transparency, and accountability. Council should be able to demonstrate that all contact with prospective tenderers or tenderers have been fair, proper, and impartial.

- 10.3.3 Queries from prospective tenderers or tenderers should be directed in writing via email to the Chair of the Tender Evaluation Panel.
- 10.3.4 Where meetings or phone calls with prospective tenderers or tenderers are unavoidable, Minutes will be retained recording the substantive issues of the discussion, with a copy provided to any participants on request. The file will be continually updated throughout the process. The information recorded will be accurate.
- 10.3.5 The Tender Panel will consider and establish record keeping procedures as a matter of urgency.

11. PROBITY CONSIDERATION: COMMUNICATION WITH TENDERERS

- 11.1 This Probity Plan aims to ensure a managed information sharing process which is appropriate to the nature of the Tender Process, is transparent, ethical, and meets the needs of Council, council customers and tenderers. The operation of these principles will be monitored by the Delegated Officer to ensure that they are effective, and amendments will be made with the General Manager's written approval as required.
- 11.2 In communicating with tenderers, the following requirements must be observed:
 - 11.3 Tenderer Briefing Sessions**
 - 11.3.1 A mandatory site inspection and briefing session the Project and any Request for Tender documents may be organised. Tenderers are to be provided with the opportunity to raise questions before the session, to be answered during the briefing – anonymity will be respected.
 - 11.3.2 A précis of the briefing session will be made available to any person who downloaded the tender documents and shall include any further information provided at the briefing session, such as answers to questions raised at the briefing session.
 - 11.3.3 The briefing session will provide an opportunity for tenderers: to visit the site, learn more about the proposed contract, and provide feedback on the proposed content and format of the Request for Tender documents.
 - 11.3.4 The briefing session will also provide an opportunity for Council to explain the purpose of the procurement, technical features, evaluation criteria, likely timetable, contractual or administrative issues and relevant Council or local government policies.
 - 11.3.5 Records of the briefing session should be maintained including:
 - Attendees;
 - Questions and answers;
 - Information provided; and
 - Issues arising during the briefing, if relevant and appropriate.
 - 11.3.6 The Probity Advisor will be invited to attend a briefing at the discretion of the Chair of the Tender Panel and the Delegated Officer.
 - 11.4 General Communication with Tenderers**
 - 11.4.1 No Council Officer is to deal with any tenderer or prospective tenderer without another Council Officer present whenever possible.

- 11.4.2 The main probity issue raised by procurement is the control of information in relation to the Tender Process to ensure that the awarding of the eventual contract is fair.
- 11.4.3 Any information that is not general public knowledge must only be communicated to a tenderer if it is communicated to all tenderers. Communication of such information should be in writing and forwarded through the Chair of the Tender Evaluation Panel;
- 11.4.4 No discussion should be held with any known tenderer in relation to any aspect of a tender or the evaluation process, without the prior approval or at the direction of the Chair of the Tender Panel and the Delegated Officer;
- 11.4.5 No tenderer will receive information that other tenderers did not receive, unless this information is expressly released by the Chair of the Tender Evaluation Panel. In this situation the Chair of the Tender Evaluation Panel will make a written record containing details such as what the information was, the entity the information was provided to, and reasons for doing so;
- 11.4.6 Tenderers should be advised to deal directly with the Chair of the Tender Evaluation Panel in all matters in relation to their tender or its current status. The preferred means of communication will be via email and/ or addenda issued through the website www.tenderlink.com/blayney/.
- 11.4.7 Details of any discussions with tenderers will be minuted, and copies of all correspondence will be copied to the Chair of the Tender Panel and the Delegated Officer, even where meetings and correspondence relating to a tender are of a non-specific nature;
- 11.4.8 Should any Council Officer be asked a specific question during a presentation or interview they should provide only a factual answer. They should not, under any circumstances, provide a personal opinion. Should they believe that the information provided in their answer is relevant to all tenderers and could be perceived as providing an unfair advantage to that tenderer they should advise the Chair of the Tender Panel and the Delegated Officer immediately;
- 11.4.9 Where inappropriately persistent inquiries or comments are made, the meeting or communication should be terminated. A file note should be prepared detailing the conversation. A copy of this file note should be forwarded immediately to the Chair of the Tender Panel and Delegated Officer;
- 11.4.10 If any tenderer or prospective tenderer request a copy of any document, approval must be obtained from the Chair of the Tender Panel and the Delegated Officer prior to delivery. To ensure that no tenderer receives an advantage, all other tenderers should be advised of the availability of this document;
- 11.4.11 Routine business meetings and social activities may continue as usual, but all Council Officers must exercise caution, and must not discuss the evaluation, selection procedures, or contents of any tender. However, if at any time a Council Officer feels conflicted for any reason such concerns are to be declared and managed appropriately; and
- 11.4.12 If any party in an unrelated business meeting or social situation seeks to raise issues in respect of the Tender Process, the Council Officer should indicate that it is not appropriate to discuss such matters. Such incidents should be reported to the Chair of the Tender Panel and the Delegated Officer.

11.5 Post tender negotiations with tenderers

- 11.5.1 If the Council determines that Council should conduct negotiations with preferred tenderers or any other parties, a negotiation protocol must first be developed and documented;
- 11.5.2 The advice of the Probity Advisor must be sought with respect to the negotiation protocol;
- 11.5.3 A team with appropriate skills, delegations, and expertise is to be appointed to conduct the negotiations.

11.6 Probity considerations: public consultation

- 11.6.1 The Project will attract public interest, curiosity and criticism. Council will keep the public fully informed of the Project's progress and timelines through Councils regular media channels.
- 11.6.2 No Council Official is to be involved in public consultation if they have a conflict of interests that is pecuniary or significant.
- 11.6.3 Council's spokesperson for the Project is the Deputy Mayor, who will be guided by the General Manager. If the Deputy Mayor discovers a conflict of interests that requires him to relinquish the role of spokesperson, the General Manager will request another Councillor to undertake this role.
- 11.6.4 If the General Manager discovers a conflict of interest that is either pecuniary or significant, she will avoid any dealings with the Project. The General Manager will in this instance recommend a senior staff member to the Council to replace her. Accordingly, the Council will resolve to assign a role to the replacement Council Officer.

12. PROBITY CONSIDERATION: COUNCIL OFFICER GUIDELINES

- 12.1 The following are general guidelines for any Council Officer indirectly connected with the Tender Process. The points raised in this section should be circulated by email to any relevant Council Officer once any Tender Process has begun.
- 12.2 External parties with whom Council has a business relationship may contact Council Officers (who do not have a direct involvement in the Tender Process) as part of normal day to day relationships and transactions. It is important that Council Officers adhere to the following guidelines throughout the entire process:
 - No discussion should be held with any tenderer about the Tender Process without the prior approval or at the direction of the Chair of the Tender Panel and Delegated Officer;
 - If a Council Officer has made a conflict of interests declaration that Officer is not to have any dealings with tenderers or prospective tenderers without the General Managers express authority to do so;
 - No tenderer should receive additional information to that which is publicly available in respect of the selection process;
 - Tenderers should be advised to deal directly with the Delegated Officer on matters in relation to the Tender process. Other Council Officers should refuse to forward any information or enter into discussions of this nature;

- Should any tenderer request a copy of any document, he/she should be referred to the Delegated Officer. No documents should be provided by any Council Officer other than the Chair of the Tender Panel or the Delegated Officer;
- Unusual or exceptional invitations from any party with an interest in the Tender Process should not be accepted;
- Routine business meetings and social activities may continue as usual, but Council Officers must exercise caution, and must not discuss the Tender Process or the contents of any tender; and
- Where any party in an unrelated business meeting or social situation seeks to raise issues in respect of the Tender Process or contents of any Tender, the Council Officer should indicate that it is not appropriate to discuss such matters.

APPENDIX B: CONFIDENTIALITY DEED

1. The parties to this deed warrant that all information created in relation to Blayney CentrePoint Sports and Leisure Centre – Aquatic and Building Upgrades (**Project**) becomes and remains the intellectual property of Council, unless otherwise stated.
2. This deed prevails over the inviting, receiving and evaluation of tenders, and award of contract or contracts for the Project (**Tender Process**).
3. Council agrees to allow certain Council Officers and Contractors access to Confidential Information. For the purpose of this deed 'Council Officers' means Council staff members, Councillors, advisors and delegates of Council.
4. Council Officers and the Contractor covenant and agree:
 - (a) To keep absolutely secret and confidential at all times all Confidential Information obtained by or of which the Contractor and/or Council Officers become aware;
 - (b) Not to directly or indirectly disclose to any person at any time the Confidential Information including that which the Contractor and/or Council Officers see, hear or comes into contact with in the course of the Tender other than as strictly authorised under and in accordance with this Deed;
 - (c) Not to copy, print, scan or otherwise replicate or distribute or remove any Confidential Information without the consent of the General Manager;
 - (d) To take all steps necessary to safeguard the confidentiality of the Confidential Information;
 - (e) Ensure that all Council instructions and procedures relating to confidentiality, access, control, copying and documentation are strictly adhered to and ensure that proper and secure storage is provided for all Confidential Information while in the possession or under the control of the Contractor and/or Council Officers;
 - (f) Take all precautions necessary to prevent any accidental disclosure of any Confidential Information;
 - (g) To use Confidential Information solely for the purposes of the Tender;
 - (h) To immediately report to the General Manager any unauthorised use, disclosure, copy or printing of the Confidential Information of which the Contractor and/or Council Officers become aware; and
 - (i) To use best efforts to obtain the return or destruction or deletion of any unauthorised copy or print-out of the Confidential Information.
5. The information below is considered 'confidential information':
 - Commercial-in-confidence, intellectual property, trade secrets, sensitive information, and personal information;
 - Confidential information produced as part of the evaluation process (e.g. meeting minutes, evaluation reports, advice or reports from advisors regarding evaluation of the applications or tenders, other reports to the Council);
 - Other information related to the Tender Process that is not publicly available; and

- Any other information determined by the Delegated Officer or Tender Panel to be confidential.
6. For the sake of this deed, 'confidential information' includes but is not limited to:
- (a) Commercial-in-confidence, intellectual property, trade secrets, sensitive information, and personal information
 - (b) Confidential information produced as part of the evaluation process (e.g. meeting minutes, evaluation reports, advice or reports from advisors regarding evaluation of the applications or tenders, other reports to the Council
 - (c) Other information related to the Tender Process that is not publicly available; and
 - (d) Any other information determined by the Delegated Officer or Tender Panel to be confidential.
7. On demand by the General Manager, the Contractor and/or Council Officers must:
- (a) Immediately deliver to the General Manager all Confidential Information in the Contractor and/or Council Officers' possession or control;
 - (b) Delete all Confidential Information held electronically in any medium in the Contractor's and/or Council Officers' possession or control; and
 - (c) Destroy all documents (including analyses, compilations, reports and memoranda) which were prepared by or for the Contractor and/or Council Officers and which were based wholly or partly on the Confidential Information, and delete all such documents held electronically in any medium in the Contractor and/or Council Officers' possession or control.
8. If, upon receipt of a demand pursuant to clause 7 the Confidential Information is not within the possession and control of the Contractor or Council Officers, then the Contractor and/or Council Officers must provide full particulars of the location of the Confidential Information and the identity of the person in whose possession it lies and take all steps to ensure that the person who has possession or control of the Confidential Information complies with Council's demand under clause 7.

2. Exceptions to Obligations

Council Consent to Disclosure

The Contractor and Council Officers acknowledge and agree that nothing in clause 1.7 prevents the General Manager from giving written consent to the use or disclose Confidential Information.

3. Acknowledgement of Council's Ownership and Obligations

The Contractor and the Council Officers acknowledge that:

- (a) The Confidential Information is and will at all times remain the property of Council; and
- (b) A breach of this Deed would be harmful to the interests of the Council in terms of its ability to perform its statutory functions, its commercial interests and potential liability and in terms of breaching its obligations to maintain the privacy of individuals whose information Council holds.

4. Warranties

1. The Contractor and Council Officers warrants that:

- (a) The Contractor and Council Officers understand the Privacy Laws applicable to the Tender and the Confidential Information;
- (b) The Contractor and Council Officers have disclosed all relevant information to the Council to allow the Council to make a determination as to whether or not it should allow the Contractor and Council Officers access the Confidential Information and allow the Contractor and Council Officers to use the Confidential Information for the purposes of the Tender.

5. Injunctive relief

On breach of this Deed, the Council is entitled to injunctive relief in addition to any other remedies available at law or in equity.

6. Continuing obligations

The Contractor's and the Council Officers' obligations under this Deed continue indefinitely and are for the benefit of and are enforceable by the Council and its successors and assigns.

7. No Assignment

The Contractor and the Council Officers shall not assign or purport to assign their rights or obligations under this Deed, without the prior written consent of the General Manager.

8. General

Each party to this Deed shall, and shall procure that its respective servants and agents shall, execute and deliver all such deeds, documents and instruments and do all such acts and things as are necessary to give full effect to the rights and obligations of the parties hereunder.

9. Notices

1. Any notice or demand given pursuant to this Deed shall be in writing and shall be delivered, posted or emailed to the relevant party as follows:

The Council

Address:

Attention: General Manager

Email:

The Contractor

Address:

Attention:

Email:

2. Any such notice shall be deemed to be received:

- (a) in the case of delivery, at the time of delivery;

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(b) if served by post, at the expiration of 48 hours from time of posting, notwithstanding that it may subsequently be returned through the Post Office unclaimed; or

3. Any party may at any time designate a substitute address or email address in Australia by ten days' notice in writing to every other party.

10. Amendment and Waiver

1. This Deed may not be modified or amended except by instrument in writing signed by all the parties hereto.
2. No waiver of any breach of any term of this Deed (including this sub-clause) shall be effective unless in writing signed by the party or parties having the right to enforce such breach and no such waiver shall be construed as a waiver of any subsequent breach.

11. Cumulative

1. The rights, obligations and remedies under this Deed are cumulative and not exclusive of any other rights, obligations or remedies.
2. Subject to other covenants of this Deed, the rights and obligations of the parties pursuant to this Deed are in addition to and do not derogate from any other right or obligation between the parties under any other Deed or contract to which they are parties.

12. Entire Agreement

This Deed constitutes the entire agreement between the parties and no representations, warranties, guarantees or other terms or conditions, whether express or implied and whether oral or in writing in relation to the subject matter of this Deed shall be of any force or effect unless contained in this Deed.

13. Governing Law

This Deed shall be governed by and construed in accordance with the laws from time to time in force in New South Wales and the parties hereto irrevocably submit to the nonexclusive jurisdiction of the Courts of that State and any Courts competent to hear appeals there from.

14. Severance

If any provision of this Deed is void, voidable by any party, unenforceable or illegal, it shall be read down so as to be valid and enforceable or, if it cannot be so read down, the provision (or where possible, the offending words) shall be severed from this Deed without thereby affecting the validity, legality of enforceability of the remaining provisions (or parts of those provisions) of this Deed which shall continue in full force and effect provided that the Deed as amended following such severance is not substantially different from this Deed.

15. Persons Bound

This Deed shall endure to the benefit of and be binding upon:

- (a) the parties hereto and their respective successors and assigns; and
- (b) any related corporation within the meaning of Section 50 of the Corporations Act.

Reference Schedule

Contractor details:

Contractor Name: _____
ABN: _____
Address: _____

Email: _____

Executed as a deed

Executed on behalf of)
[.....])
)

(ABN/ACN)
in accordance with section 127 of the
Corporations Act 2001 (Cth):

.....
Director Director/Secretary

.....
(Print) Full Name (Print) Full Name

.....
Witness Signature Witness Name

.....
Date
Executed as a deed by)
)
(.....))
Council officer (name): Signature

in the presence of Witness (name) Council Officer Position

Signature of Witness Date

APPENDIX C: DECLARATION OF INTERESTS

Recitals

This declaration must be signed by all persons engaged to undertake any function pertaining to the Project.

The definition of a conflict of interests for the purpose of the Project derives from the Model Code of Conduct. Accordingly, *a conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your role in relation to the Project.*

'Project' means CentrePoint Sports and Leisure Centre – Aquatic and Building Upgrades.

Declaration

I declare and undertake the following;

1. I am aware and undertake to comply with Council's Code of Conduct, as adopted.
2. I am fully aware of my obligations to manage all conflict of interests in carrying out my obligations and services to Council and to immediately disclose any actual or perceived conflicts of interest;
3. I have no known conflict of interest and am unaware of any potential conflict of interests which may influence my ability to provide services to Council; **OR** I have conflict of interests and make a declaration accordingly below; and
4. I will immediately notify Councils' General Manager in writing if any actual or perceived conflict of interests arises in relation to my role on the Project. I understand that any such declaration may exclude me from participation in the Project.

Declaration

I declare the following interests:

Nil to declare, OR:

.....

.....

.....

.....

.....

.....

Signature

Name

Date

Position

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APPENDIX D: CONFLICT DECLARATION REGISTER

The General Manager will maintain this register.

NAME	DATE	DECLARATION	MANAGEMENT OF CONFLICT
Cr Ferguson	17.12.18	Pecuniary – Contractor for a company that may tender for the project.	Management as per this probity plan, particularly sections 8 and 9.

APPENDIX E: CONFIDENTIAL DEED REGISTER

NAME	POSITION	ORGANISATION	DATE OF DEED