



Russell Kennedy
Lawyers

SHEPPARTON ART MUSEUM LIMITED



CONSTITUTION

A public company limited by guarantee under the
Corporations Act 2001 (Cth)

Russell Kennedy Pty Ltd ACN 126 792 470 ABN 14 940 129 185
Level 12, 469 La Trobe Street, Melbourne VIC 3000 PO BOX 5146AA, Melbourne VIC 3001 DX 494 Melbourne
T **+61 3 9609 1555** F + 61 3 9609 1600 info@rk.com.au

Liability limited by a scheme approved under Professional Standards Legislation

rk.com.au



TABLE OF CONTENTS

1	PURPOSES OF THE COMPANY	1
1.1	Principal Purpose	1
1.2	Supporting Purposes	1
1.3	Company powers as a body corporate	1
2	CHARITABLE AND NOT-FOR-PROFIT NATURE OF THE COMPANY.....	2
2.1	Income applied for the Purposes	2
2.2	Charitable purposes only	2
2.3	Winding up	2
2.4	Gift fund.....	3
3	MEMBERSHIP	3
3.1	Limited liability of Members / guarantee.....	3
3.2	Classes of Members and eligibility.....	3
3.3	Limit on number of Members	3
3.4	Member rights and obligations	4
3.5	Rights not transferrable	4
3.6	Membership period / subscription fees.....	4
3.7	Representatives.....	4
3.8	Register of Members, including closure of register	4
3.9	Change of Member details.....	5
4	BECOMING AND CEASING TO BE A MEMBER.....	5
4.1	Admission of Members	5
4.2	Resignation of Members	5
4.3	Ceasing to be a Member	5
4.4	Disciplining Members.....	5
4.5	Initial Members / transitional arrangements	6
5	GENERAL MEETINGS	6
5.1	Convening meetings — annual / special	6
5.2	Ordinary and special business	6
5.3	Notice of meeting.....	7
5.4	Postponement	7
5.5	Quorum	7
5.6	Meeting chair	8
5.7	Adjournment	8
5.8	Voting – show of hands / poll	8
5.9	Proxies	9
5.10	Use of technology	9
5.11	Circular resolution.....	10
6	BOARD.....	10
6.1	Nominations Committee	10
6.2	Structure of board / Number of directors	10
6.3	Election of directors	10
6.4	Appointment of Directors	11
6.5	Eligibility to be a Director	11
6.6	Deemed to be admitted as a Member	12
6.7	Limits on period of office as a Director	12
6.8	Term of office of Directors.....	12
6.9	Transition Period	12
6.10	Casual vacancies	13
6.11	Office bearers	14

6.12	Resignation of directors	14
6.13	Ceasing to be a director.....	14
6.14	Director remuneration and reimbursements	15
6.15	Initial board / transitional arrangements	15
7	BOARD POWERS	15
7.1	Management vests in Board	15
7.2	Power to delegate.....	15
7.3	Power to appoint Chief Executive Officer	16
7.4	Power to appoint Secretary.....	16
7.5	Power to make Regulations	16
8	BOARD MEETINGS	16
8.1	Number of meetings	16
8.2	Convening meetings	16
8.3	Notice of meeting.....	17
8.4	Quorum	17
8.5	Chair.....	17
8.6	Voting	17
8.7	Use of technology	17
8.8	Circulating resolutions	17
8.9	Conflicts and personal interests	18
8.10	Minutes.....	18
8.11	Validity of acts / procedural defects	18
9	COMMITTEES	18
9.1	Board's power to establish committees.....	18
10	ADMINISTRATION	19
10.1	Change of name	19
10.2	Amendment of Constitution.....	19
10.3	Accounts.....	19
10.4	Audits	19
10.5	Records and inspection	19
10.6	Service of notices	19
10.7	Indemnity of officers.....	20
10.8	Insurance.....	20
10.9	Company seal.....	21
10.10	Definitions.....	21
10.11	Interpretation rules.....	22
10.12	Application of Act.....	23
10.13	Application of ACNC Act.....	23

SHEPPARTON ART MUSEUM LIMITED

CONSTITUTION

1 PURPOSES OF THE COMPANY

1.1 Principal Purpose

The Principal Purpose of the Company is to establish and operate the Shepparton Art Museum as a public museum.

1.2 Supporting Purposes

In support of the Principal Purpose, the Supporting Purposes of the Company are to:

- 1.2.1 provide an inspiring, community hub for locals to frequently meet, socialise, and form as an essential part of their lifestyle;
- 1.2.2 present exemplary contemporary, international exhibitions of relevance to the public and particularly the region's diverse cultural communities;
- 1.2.3 provide opportunities for members of the public to learn, be challenged, think about, emotionally engage with and directly make their own art;
- 1.2.4 provide access to the art collections and significant ceramics collection in unique and engaging ways;
- 1.2.5 present Indigenous art and support local Indigenous artists to provide complementary programs;
- 1.2.6 support local artists in the development and presentation of their art and the creation of empowering experiences;
- 1.2.7 provide engaging experiences to members of the public of nature and art in the areas surrounding the Victoria Park Lake Precinct; and
- 1.2.8 operate as a not-for-profit, charitable organisation; and
- 1.2.9 do all lawful things consistent with, necessary or desirable to support and further the Principal Purpose.

1.3 Company powers as a body corporate

1.3.1 Solely to carry out the Purposes, the Company may, in any manner permitted by the Act and the ACNC Act:

- (a) exercise any power;
- (b) take any action; and
- (c) engage in any conduct or procedure,

which a public company limited by guarantee may exercise, take or engage in if authorised by its constitution.

1.3.2 Without limiting clause 1.3.1, the Company may pursue the Purposes by:

- (a) raising money to further the Purposes and secure sufficient funds to pursue the Purposes; and
- (b) receiving any funds and applying those funds in a manner that best attains the Purposes.

2 CHARITABLE AND NOT-FOR-PROFIT NATURE OF THE COMPANY

2.1 Income applied for the Purposes

2.1.1 The income and property of the Company:

- (a) must be applied solely towards the Purposes; and
- (b) must not be paid or given to a Member, directly or indirectly, by way of dividend, bonus or otherwise.

2.1.2 Clause 2.1.1 does not prevent the Company from paying a Member or Officer a reasonable and proper amount with the Board's prior approval in good faith for:

- (a) goods or services supplied to the Company;
- (b) interest on money lent to the Company; or
- (c) rent for premises let to the Company.

2.2 Charitable purposes only

Despite anything to the contrary in this Constitution, the Company is established:

2.2.1 solely to be a not-for-profit, charitable institution; and

2.2.2 to pursue not-for-profit, charitable Purposes in Australia only.

2.3 Winding up

Subject to 2.4, the Company's surplus assets, after satisfying all liabilities on wind up or dissolution:

2.3.1 must not be paid or given to Members or former Members (unless the Member is an institution to which clause 2.3.2 applies); and

2.3.2 must be paid to one or more funds, authorities or institutions which:

- (a) have charitable purposes similar to the Purposes;
- (b) prohibit their income and property from being paid to members on at least the terms of this clause 2;
- (c) are registered under the ACNC Act if the Company had been;
- (d) are income tax exempt under the ITAA if the Company had been;
- (e) can receive deductible gifts under the ITAA if the Company could and on the same basis; and
- (f) are selected at or before wind up or dissolution by:

- (1) special resolution of the Members;
- (2) failing clause 2.3.2(f)(1), by resolution of the Board;
- (3) failing clause 2.3.2(f)(2), by application to the Victorian Supreme Court.

2.4 Gift fund

The Company must establish and maintain a gift fund as follows:

- 2.4.1 the gift fund is for pursuing the Purposes;
- 2.4.2 the gift fund must receive all gifts of money or property received by the Company for the Purposes;
- 2.4.3 any money received because of gifts referred to in clause 2.4.2 must be credited to the gift fund's account;
- 2.4.4 the gift fund must not receive any other money or property; and
- 2.4.5 if the Company is wound up or has its deductible gift recipient endorsement revoked (whichever occurs first), the gift fund's surplus assets must be paid or transferred to one or more funds, authorities or institutions determined according to clause 2.3.2 which is endorsed as a deductible gift recipient on the same basis as the gift fund.

3 MEMBERSHIP

3.1 Limited liability of Members / guarantee

- 3.1.1 A Member's liability is limited to the guaranteed amount in clause 3.1.2.
- 3.1.2 If the Company is wound up, each Member and former Member in the previous year must contribute up to \$1.00 (one dollar) towards:
 - (a) the Company's liabilities contracted before the person ceased to be a Member; and
 - (b) costs, charges and expenses to wind up and adjust the rights of the contributories among themselves.

3.2 Classes of Members and eligibility

The Members of the Company comprise:

- 3.2.1 ordinary Members;
- 3.2.2 the Guardian Member; and
- 3.2.3 such other voting or non-voting classes whose rights, benefits, privileges, entitlements, obligations, liabilities, eligibility and status will be determined by the Board.

3.3 Limit on number of Members

The number of Members is unlimited unless the Members set a limit in general meeting.

3.4 Member rights and obligations

3.4.1 Ordinary Members

Ordinary Members and other voting Members have the right to receive notice of, attend, speak at and vote at general meetings if they have paid their annual membership subscription.

3.4.2 Guardian Member

The Guardian Member has the right to receive notice of, attend, speak at general meetings, but it does not have the right to vote at general meetings.

3.5 Rights not transferrable

A person's membership rights and privileges (excluding the Guardian Member):

- 3.5.1 apply only whilst the person is a Member; and
- 3.5.2 are personal and may not be transferred or transmitted.

3.6 Membership period / subscription fees

The Board may determine (other than for the Guardian Member):

- 3.6.1 the membership period (including common expiry dates) and the timing for membership to be renewed;
- 3.6.2 fees payable by Members, including any application fee to apply for membership, any entrance fee to be admitted as a Member and any annual membership subscriptions; and
- 3.6.3 whether fees are refundable or non-refundable.

3.7 Representatives

A Member which is a body corporate may appoint a representative in accordance with Part 2G.2 Division 6 of the Act.

3.8 Register of Members, including closure of register

- 3.8.1 The Company must maintain a register of Members in accordance with the Act and the ACNC Act, which contains the following details for current and recent former Members:
 - (a) name;
 - (b) addresses for notices; and
 - (c) membership start and end dates.
- 3.8.2 Separate to the register, the Company may maintain a database of personal Member details which are not used for notices.

3.9 Change of Member details

A Member must notify the Company if the Member's address for notices changes within 28 days of the change.

4 BECOMING AND CEASING TO BE A MEMBER

4.1 Admission of Members

4.1.1 The Board may admit in its absolute discretion a person as a Member upon application by that person in accordance with any procedure, form and other requirement specified in the Regulations.

4.1.2 The Board must consider all membership applications within a reasonable time after their receipt but need not provide reasons for admitting or refusing to admit a person as Member.

4.1.3 Successful applicants become Members when they are added to the register of Members.

4.2 Resignation of Members

4.2.1 A Member may resign as Member by written notice to the Company.

4.2.2 The resignation takes effect when the Company receives the Member's notice or on a later date specified in the notice.

4.3 Ceasing to be a Member

A person automatically ceases to be a Member if the person:

4.3.1 ceases to be a Director of the Company and the Member was admitted as a Member pursuant to clause 6.6 (except in relation to the Guardian Member);

4.3.2 does not renew the membership by the due date;

4.3.3 has not paid the annual membership subscription for 3 months after the due date;

4.3.4 becomes untraceable for 3 months because the Member cannot be contacted using the address on the register of Members;

4.3.5 dies;

4.3.6 becomes bankrupt or makes any arrangement or composition with the Member's creditors generally; or

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

4.4 Disciplining Members

The Board may at any time terminate a person's Membership or warn, fine, censure, suspend or expel a Member (except a Guardian Member), if the Member:

4.4.1 engages in Terminable Conduct, subject to:

- (a) the decision being made by two-thirds majority of all Directors whether they are all present and voting;
 - (b) the Member being afforded a reasonable opportunity to respond, in accordance with any Regulations, to the Board's allegations; and
 - (c) the Member's appeal rights (if any) set out in the Regulations;
- 4.4.2 refuses or neglects to comply with the provisions of this Constitution or the Regulations;
- 4.4.3 is found guilty by a court of an indictable offence; or
- 4.4.4 has a debt to the Company which remains unpaid for one year or more.

4.5 Initial Members / transitional arrangements

The initial Members of the Company are those persons named in the application to the Australian Securities and Investments Commission to register the Company.

5 GENERAL MEETINGS

5.1 Convening meetings — annual / special

- 5.1.1 General meetings other than annual general meetings are called special general meetings.
- 5.1.2 The Board must convene and hold annual and special general meetings of the Members if required by the Act and the ACNC Act.
- 5.1.3 The Board or 2 Directors may convene special general meetings of the Members.

5.2 Ordinary and special business

- 5.2.1 The ordinary business of an annual general meeting is to:
- (a) consider the Board's, financial and auditor's report;
 - (b) declare the Director election results;
 - (c) appoint an auditor if that office has or will become vacant at the meeting; and
 - (d) consider any other matter required by the Act or the ACNC Act.
- 5.2.2 Special business means:
- (a) for an annual general meeting — business which is not ordinary business according to clause 5.2.1; and
 - (b) for a special general meeting — all business specified in the notice of meeting.
- 5.2.3 The notice of meeting must specify the general nature of any special business, unless the Act or the ACNC Act requires otherwise.

5.3 Notice of meeting

- 5.3.1 At least 21 days' notice of any general meeting must be given specifying the place, date and time of the meeting, unless section 249H(2) of the Act or the ACNC Act requires or permits some other period of notice.
- 5.3.2 Notice of every general meeting must be given in writing in accordance with clause 10.6 to:
- (a) every Director;
 - (b) every Member entitled to attend who has supplied an address for notices to the Company;
 - (c) the Guardian Member; and
 - (d) the Company's auditor.
- 5.3.3 No other person is entitled to receive notices of general meetings.
- 5.3.4 A general meeting and any resolution passed at the meeting is not invalid merely because of:
- (a) the accidental omission to give notice of the meeting, unless the accidental omission to give notice of the meeting was to the Guardian Member; or
 - (b) the non-receipt of any such notice.

5.4 Postponement

- 5.4.1 The Board may postpone, relocate or cancel a general meeting which it convened by giving at least 5 days' notice to the Members.
- 5.4.2 Clause 5.4.1 does not apply to a meeting requisitioned by Members or convened by the Members, by individual Directors under clause 5.1.3 or by court order.

5.5 Quorum

- 5.5.1 A general meeting may not transact business unless a quorum is present when the meeting proceeds to business.
- 5.5.2 The quorum for general meetings is 50% voting Members present in person or by proxy.
- 5.5.3 If a quorum is not present within half an hour of the time scheduled to start the general meeting:
- (a) the meeting, if requisitioned by Members, is dissolved; and
 - (b) in any other case, the meeting is adjourned to such other place, date and time as the Board determines and notifies to Members (if required to do so by clause 5.7).
- 5.5.4 If a quorum of voting Members is not present within 30 minutes from the scheduled time to start the adjourned meeting, the meeting is dissolved.

5.6 Meeting chair

- 5.6.1 The Chair may chair a general meeting.
- 5.6.2 If the Chair is not present and willing to act the Deputy Chair may chair.
- 5.6.3 If the Chair and Deputy Chair are not present and willing to act:
- (a) the Directors present may choose one of their number to chair the meeting;
 - (b) if no Director is present, or if all the Directors present decline to chair, the Members present must choose one of their number to chair.
- 5.6.4 In addition to powers conferred by law, the meeting chair may:
- (a) determine the meeting's conduct and procedures to ensure proper and orderly discussion or debate;
 - (b) make rulings without putting a question to the vote, or terminate discussion or debate and require that matter to be put to a vote;
 - (c) refuse to allow debate or discussion on any matter which is not ordinary or special business; and
 - (d) refuse any person admission to a general meeting (including for causing offence or disruption), or expel the person from the general meeting and not permit them to return.
- 5.6.5 All procedural decisions by the meeting chair are final.

5.7 Adjournment

- 5.7.1 The meeting chair:
- (a) may, with the consent of any general meeting at which a quorum is present; and
 - (b) must, if so directed by the meeting,
adjourn the meeting to some other time or place.
- 5.7.2 The adjourned meeting may only transact unfinished business from the original meeting.
- 5.7.3 If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as required for the original meeting. It is not otherwise necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

5.8 Voting – show of hands / poll

- 5.8.1 A resolution put to the vote of the general meeting must be decided by a show of hands unless a poll is demanded pursuant to clause 5.8.3.
- 5.8.2 A declaration by the meeting chair that a resolution has on a show of hands been carried, carried unanimously, carried by a particular majority

or lost, and an entry to that effect made in the minutes is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

- 5.8.3 A poll must be held on a resolution before the general meeting if demanded on or before the meeting chair declaring the result by Members representing 10% or more of all Members entitled to vote.
- 5.8.4 The demand for a poll may be withdrawn.
- 5.8.5 If a poll is demanded:
- (a) when electing a meeting chair under clause 5.6 or on a question of adjournment, it must be taken immediately;
 - (b) otherwise, it must be taken at the general meeting at which it is demanded (or at its adjournment), in such manner as the meeting chair directs.
- 5.8.6 Any dispute regarding voting must be referred to the meeting chair, whose decision is final.

5.9 Proxies

- 5.9.1 A Member may appoint a proxy to act on the Member's behalf at any general meeting at which that Member may attend and vote.
- 5.9.2 A proxy must be a Member.
- 5.9.3 For the instrument appointing a proxy to be valid, it must be:
- (a) in writing and signed by the appointor;
 - (b) in the form complying with section 250A of the Act or some other Board approved form; and
 - (c) lodged with the Company at least 48 hours before the time for holding the meeting or adjourned meeting.
- 5.9.4 A vote given according to the proxy instrument is valid despite:
- (a) the death, or unsoundness of mind, of the appointor; or
 - (b) revocation of the instrument or of the authority under which the instrument was executed,
- if no knowledge in writing of that fact was received by the Company before commencing the meeting or adjourned meeting at which the instrument is used.

5.10 Use of technology

General meetings may be held at more than one place, provided that the technology that is used enables each Member present at all places the meeting is held to clearly and simultaneously communicate with every other such Member.

5.11 Circular resolution

- 5.11.1 The Board may if it thinks fit submit any question or resolution to the vote of all Members entitled to a vote at a general meeting by circular resolution, unless the Act or the ACNC Act requires a special or ordinary resolution to be passed at a general meeting.
- 5.11.2 The Board may determine in the Regulations:
- (a) the form of the circular resolution;
 - (b) the polling date;
 - (c) the method for responding to the circular resolution; and
 - (d) whether voting on the circular resolution is to be by secret ballot.

6 BOARD

6.1 Nominations Committee

- 6.1.1 The Company must establish a Nominations Committee which shall recommend candidates to be elected as Elected Directors to the Board.
- 6.1.2 The Nominations Committee will comprise 3 persons nominated by the Board and 2 persons nominated by the Guardian Member.
- 6.1.3 No more than 2 members of the Nominations Committee nominated by the Board in accordance with clause 6.1.1 may be existing Directors (at any given time).

6.2 Structure of board / Number of directors

- 6.2.1 The Board will comprise between 7 and 10 Directors as follows:
- (a) up to 7 Directors by and from the Members, on the recommendation of the Nominations Committee, in accordance with clause 6.3 ("**Elected Directors**") and to be declared at the first annual general meeting; and
 - (b) up to 2 directors appointed by the Guardian Member in accordance with clause 6.4 ("**Guardian Member Appointed Directors**"); and
 - (c) up to 1 director appointed by the SAM Foundation in accordance with clause 6.4 ("**SAM Foundation Appointed Directors**").
- 6.2.2 Upon being elected or appointed to the Board, Directors, who are not otherwise Members, must become Members of the Company.

6.3 Election of directors

- 6.3.1 Before each annual general meeting in a year in where:
- (a) one or more Director is completing his or her term on the Board; or
 - (b) a vacancy exists on the Board,

the Secretary must publicly call for Elected Director candidates.

- 6.3.2 Prior to a meeting referred to in clause 6.3.1 or otherwise at the request of the Board, the Secretary must convene a meeting of the Nominations Committee for the purpose of recommending candidates to be elected as Elected Directors.
- 6.3.3 The Nominations Committee may, but is not required to, interview all candidates for becoming an Elected Director.
- 6.3.4 The Nominations Committee must recommend candidates to be appointed as Elected Directors on the basis of their skills, background and expertise deemed necessary or desirable by the Board (including, without limitation, to complement the existing Directors) for the effective operation of the Board.
- 6.3.5 Nominations of candidates for election as a Director must be signed by the candidate and the members of the Nomination Committee, contain a consent to act as a Director signed by the candidate, and must be received at least 14 days before the annual general meeting.
- 6.3.6 If the number of nominations of candidates for election does not exceed the number of vacancies, those candidates will be declared elected at the annual general meeting.
- 6.3.7 If the number of nominations of candidates exceeds the number of vacancies, balloting lists must be printed containing in alphabetical order the names of the candidates nominated and sent to each Member at least 5 days before the annual general meeting.
- 6.3.8 At such annual general meetings, the Members may elect Elected Directors after considering the recommendations from the Nominations Committee conducting the selection process.
- 6.3.9 The meeting chair must announce the Elected Directors at the annual general meeting. Appointments take effect at the end of the annual general meeting at which the appointments are announced.

6.4 Appointment of Directors

Subject to this Constitution, the Act and the ACNC Act, the Guardian Member and the SAM Foundation may appoint directors in accordance with clause 6.2.1.

6.5 Eligibility to be a Director

A person is eligible to become a Director if he or she:

- 6.5.1 in the case of Elected Directors, is a Member or a representative of a Member;
- 6.5.2 is over the age of 18 years;
- 6.5.3 consents in writing to become a Director;
- 6.5.4 is not prohibited or disqualified or otherwise prevented from being a director of a company under the Act or a responsible person of a registered charity under the ACNC Act; and

6.5.5 is not an employee of the Company.

6.6 Deemed to be admitted as a Member

Any person who is appointed as a Director will be deemed to have been approved or accepted by the Board as a Member of the Company, although the Board may require a candidate to:

- 6.6.1 complete the application for membership referred to in clause 4; and
- 6.6.2 pay any moneys payable pursuant to Rule 3 in respect of any entrance fee and/or annual subscription.

6.7 Limits on period of office as a Director

If a Director has served 9 years or more continuously, then the Director may finish serving his or her current term of office but does not become eligible to be elected or appointed (whether or not to a casual vacancy) until he or she has not been a Director for a subsequent continuous period of 3 years

6.8 Term of office of Directors

- 6.8.1 An Elected Director holds office:
 - (a) from immediately after the annual general meeting at which his or her election was declared;
 - (b) for a term of three years between annual general meetings;
 - (c) until the end of the third annual general meeting after the one at which his or her election was declared.
- 6.8.2 A Guardian Member Appointed Director holds office:
 - (a) from the date the Guardian Member resolves to appoint the person;
 - (b) until no later than the end of the third annual general meeting after commencing as Appointed Director.
- 6.8.3 A SAM Foundation Appointed Director holds office:
 - (a) from the date that the SAM Foundation resolves to appoint the person;
 - (b) until no later than the end of the third annual general meeting after commencing as Appointed Director.
- 6.8.4 The Guardian Member or the SAM Foundation as the case may be may appoint an Appointed Director for a shorter term than under clause 6.8.2 if the Board so determines at the time of appointment.

6.9 Transition Period

- 6.9.1 Despite clause 6.2, the Company shall have 2 Directors from incorporation until its first general meeting, unless the Guardian Member or the SAM Foundation appoints one or more Appointed Directors in accordance with clause 6.4.

- 6.9.2 Despite clause 6.8, Elected Directors elected at the first general meeting of the Company are to retire from office as follows:
- (a) two Elected Directors shall retire at the end of the first annual general meeting after the one at which his or her election was declared;
 - (b) two Elected Directors shall retire at the end of the second annual general meeting after the one at which his or her election was declared; and
 - (c) all other Elected Directors shall retire at the end of the third annual general meeting after the one at which his or her election was declared.
- 6.9.3 The Elected Directors elected at the Company's first general meeting shall use their best efforts to unanimously decide on their initial terms of office pursuant to clause 6.9.2.
- 6.9.4 If the Elected Directors elected at the Company's first general meeting cannot agree on their initial terms of office in accordance with clause 6.9.3, this matter shall be decided by the meeting chair.
- 6.9.5 The term of office for each Elected Director subsequently elected will be governed by clause 6.8.

6.10 Casual vacancies

- 6.10.1 Subject to the Guardian Member's to remove and replace Directors in accordance with clause 6.13.3, if a casual vacancy occurs for any Elected Director office, the Board may appoint another eligible person in his or her place until the end of the next annual general meeting. The Members must then elect a person to fill the Elected Director in accordance with clause 6.3. The person elected will serve only for the balance of the term of the original Elected Director.
- 6.10.2 Subject to the Guardian Members to remove and replace Directors in accordance with clause 6.13.3, if a casual vacancy occurs for any SAM Foundation Appointed Director office, the SAM Foundation, may appoint another eligible person in his or her place for the balance of the departed Director's term.
- 6.10.3 If a casual vacancy occurs for any Guardian Member Appointed Director office, the Guardian Member may appoint another eligible person in his or her place for the balance of the departed Director's term.
- 6.10.4 The Board may continue to act despite vacancies on the Board. However, if there are less than 6 Directors the Board may only:
- (a) act in the case of emergencies;
 - (b) appoint persons to fill casual vacancies, excluding vacancies to Appointed Director positions; or
 - (c) convene a general meeting.

6.11 Office bearers

The Board may elect and remove the following office bearers from the Directors:

- 6.11.1 Chair; and
- 6.11.2 Deputy Chair.

6.12 Resignation of directors

- 6.12.1 A Director may resign as Director by written notice to the Company.
- 6.12.2 The resignation takes effect when the Company receives the Director's notice or on a later date specified in the notice.

6.13 Ceasing to be a director

- 6.13.1 The Members may remove any Elected Director in accordance with the Act.
- 6.13.2 The Guardian Member may at its discretion remove Guardian Member Appointed Directors in accordance with the Act.
- 6.13.3 The Guardian Member may remove some or all of the:
 - (a) Guardian Member Appointed Directors;
 - (b) Elected Directors and the SAM Foundation Appointed Directors and appoint substitute Directors for the balance of the term of the Director(s) that have been removed, at its discretion, where:
 - (1) an Insolvency Event occurs in relation to the Company;
 - (2) one or more Directors has breached his or her duties owed to the Company and/or its Members under the provisions of this Constitution, the Act or any other applicable law;
 - (3) one or more Directors is found guilty by a court of an indictable offence; or
 - (4) a major conflict within the Board exists.
- 6.13.4 A directorship automatically ceases if the Director:
 - (a) dies or is physically incapable of fulfilling his or her duties as a Director;
 - (b) becomes disqualified from being a director pursuant to the Act or ACNC Act;
 - (c) for more than 3 months is absent without permission of the Board from meetings of the Board held during that period;
 - (d) becomes a bankrupt or makes any arrangement or composition with personal creditors generally; or

- (e) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health.

6.14 Director remuneration and reimbursements

6.14.1 The Directors are not entitled to any fees or remuneration for undertaking the ordinary duties of a Director.

6.14.2 Despite clause 2.1.1:

- (a) the Directors may be reimbursed for reasonable travel and other expenses incurred by them when engaged in the Company's business, attending meetings or otherwise in carrying out the duties of a Director where payment does not exceed any amount previously approved by the Board; and
- (b) the Directors may be paid for any service rendered to the Company in a professional or technical capacity outside the scope of the ordinary duties of a Director where:
 - (1) the service and amount payable is on reasonable and proper terms; and
 - (2) the provision of that service has the Board's prior approval.

6.15 Initial board / transitional arrangements

The initial Directors of the Company are those persons named in the application to the Australian Securities and Investments Commission to register the Company.

7 BOARD POWERS

7.1 Management vests in Board

7.1.1 The Board is responsible for the governance, business and affairs of the Company. In addition to the specific powers conferred on the Board by this Constitution, the Board may exercise all the Company's powers which are not by the Act, the ACNC Act or this Constitution required to be exercised by the Members in general meeting.

7.1.2 The powers under clause 7.1.1 are subject to:

- (a) this Constitution;
- (b) the Act and the ACNC Act; and
- (c) such resolution, not being inconsistent with those provisions, as may be passed by the Members in general meeting.

7.1.3 A resolution under clause 7.1.2 does not invalidate any prior act of the Board which would have been valid before the resolution was passed or made.

7.2 Power to delegate

7.2.1 The Board may delegate its powers and functions in writing to:

- (a) an officer or employee of the Company; or
- (b) a committee under clause 9.

7.2.2 The Board may amend or revoke the terms of its delegation at any time.

7.3 Power to appoint Chief Executive Officer

- 7.3.1 The Board may appoint a Chief Executive Officer on such terms and conditions as the Board determines from time to time.
- 7.3.2 The Board may remove a Chief Executive Officer, subject to the terms of any agreement between the Company and the Chief Executive Officer.
- 7.3.3 The Chief Executive Officer is entitled to attend Board meetings and general meetings, if so directed by the Board from time to time.
- 7.3.4 The Chief Executive Officer will have the responsibilities determined by the Board.

7.4 Power to appoint Secretary

- 7.4.1 The Board must appoint at least one Secretary on such terms and conditions as the Board determines from time to time.
- 7.4.2 A Secretary may attend Board meetings and general meetings, if so directed by the Board from time to time.
- 7.4.3 The Secretary will have the responsibilities set out in the Act and the ACNC Act.

7.5 Power to make Regulations

- 7.5.1 The Board may from time to time make, vary and rescind Regulations in relation to the Company.
- 7.5.2 The Regulations for the time being in force, and which are not inconsistent with this Constitution, are binding on Members and have full effect accordingly.

8 BOARD MEETINGS

Subject to this clause 8, the Board may meet to consider business, adjourn and otherwise regulate its meetings as it thinks fit.

8.1 Number of meetings

The Board must meet at least 4 times per year.

8.2 Convening meetings

The Secretary must arrange a Board meeting:

- 8.2.1 at the request of the Chair; or
- 8.2.2 on the requisition of 2 or more Directors.

8.3 Notice of meeting

- 8.3.1 At least 5 days' notice of any Board meeting must be given unless the Board decides otherwise or in emergencies.
- 8.3.2 The notice must specify the business to be transacted. The Board may only transact business of a routine nature unless notice of any other business has been given either in the notice convening the meeting or in some other notice given at least 3 days' before the meeting.
- 8.3.3 The decision of the meeting chair as to whether business is routine is conclusive.

8.4 Quorum

- 8.4.1 The quorum for a Board meeting is a simple majority of the Directors entitled to attend and vote. A meeting at which a quorum is present may exercise all powers and discretions of the Board.
- 8.4.2 If a Board meeting is adjourned due to lack of quorum, the Chair must set a further date for the adjourned meeting.

8.5 Chair

- 8.5.1 The Chair may chair a Board meeting.
- 8.5.2 If the Chair is absent the Deputy Chair may chair.
- 8.5.3 In the absence of the Chair and the Deputy Chair, the Directors may appoint a meeting chair from among their number.

8.6 Voting

- 8.6.1 Each Director present and entitled to vote at a Board meeting has one vote. Proxy voting and alternate Directors are not permitted.
- 8.6.2 In the event of an equality of votes the meeting chair has a second or casting vote.

8.7 Use of technology

The Board may hold a technology enabled meeting if:

- 8.7.1 all Directors (other than any Director on leave of absence) have access to the technology to be used for the meeting; and
- 8.7.2 those Directors participating by technological means can hear, or can hear and read the communications of all other participating Directors.

8.8 Circulating resolutions

- 8.8.1 A written resolution signed or approved by technological means (other than any Director on leave of absence) is taken to be a decision of the Board passed at a Board meeting convened and held.
- 8.8.2 The written resolution may consist of:

- (a) several documents in the same form, each signed by one or more Directors and, such a resolution takes effect when the last Director signs such a document; or
- (b) permanent records indicating the identity of each Director, the text of the resolution and the Director's agreement or disagreement to the resolution, as the case may be, and such a resolution takes effect when the last Director indicates his or her approval.

8.9 Conflicts and personal interests

8.9.1 A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors written notice of the interest unless the ACNC Act or section 191(2) of the Act require otherwise.

8.9.2 A Director who has a material personal interest in a matter that is being considered by the Board must not be present while the matter is being considered, or vote on the matter, unless permitted to do so under the ACNC Act or section 195 of the Act.

8.10 Minutes

8.10.1 The Board must ensure that minutes of all proceedings of general, Board, committee meetings (and meetings of any other College entity) are recorded in a minute book within one month after the relevant meeting is held.

8.10.2 The minutes must be signed by the meeting chair at which the proceedings took place or by the meeting chair of the next succeeding meeting.

8.10.3 Minutes entered and signed are prima facie evidence of the proceedings to which they relate.

8.11 Validity of acts / procedural defects

8.11.1 An act or decision of the Board will not be invalid by reason only of a defect or irregularity in connection with the election or appointment of a Director.

8.11.2 For entered and signed minutes, unless the contrary is proved:

- (a) the meeting is deemed to have been convened and held;
- (b) all proceedings that are recorded in the minutes as having taken place are deemed to have taken place; and
- (c) all appointments that are recorded in the minutes as having been made are deemed to have been validly made.

9 COMMITTEES

9.1 Board's power to establish committees

The Board may establish committees as follows:

- 9.1.1 a committee will comprise two or more committee members, of which at least one must be a Director;
- 9.1.2 the committee members otherwise need not be a Director or Member;
- 9.1.3 the committee has the purpose set out in its charter approved by the Board, and may undertake the powers and functions delegated to it by the Board; and
- 9.1.4 in the absence of any provision in the committee charter, meetings and proceedings of any committee are governed by the provisions of clause 8.

10 ADMINISTRATION

10.1 Change of name

- 10.1.1 The Members may change the Company's name by special resolution in accordance with the Act.
- 10.1.2 Despite clause 10.1.1, the Board may apply to omit "Limited" from its name in accordance with the Act.

10.2 Amendment of Constitution

- 10.2.1 Subject to the Guardian Member first approving, in writing, the proposed amendments to this Constitution, the Members may amend this Constitution by special resolution in accordance with the Act and the ACNC Act.
- 10.2.2 If the Company is registered under the ACNC Act, a special resolution under clause 10.2.1 does not take effect if it would cause the Company to lose its entitlement to registration under the ACNC Act.

10.3 Accounts

The Board must cause:

- 10.3.1 proper accounting and other records to be kept in accordance with the requirements of the Act and the ACNC Act, and
- 10.3.2 financial statements to be made and laid before each annual general meeting as required by the Act and the ACNC Act.

10.4 Audits

A properly qualified auditor must be appointed and the auditor's duties regulated in accordance with the requirements of the Act and the ACNC Act.

10.5 Records and inspection

A Member (other than a Director) is not entitled to inspect any document of the Company, except as provided by law or authorised by the Board.

10.6 Service of notices

- 10.6.1 Notices must be in writing and may be given by the Company to any Member:

- (a) in person;
- (b) by sending it by post to the Member at the Member's registered address; or
- (c) by sending it to the address, facsimile number, e-mail address or other address supplied for receiving notices.

10.6.2 A notice sent by post is deemed to have been given 2 business days after it was posted. A notice sent by fax, or by other electronic means, is deemed to have been given on the next business day after it was sent.

10.7 Indemnity of officers

10.7.1 To the Relevant Extent, the Company indemnifies current and former Officers out of its assets against any Liability incurred by the Officer in or arising out of:

- (a) the conduct of the Company's affairs or business; or
- (b) the discharge of the Officer's duties,

unless the Liability arises out of conduct involving a lack of good faith.

10.7.2 To the Relevant Extent, the Company may execute any deed in favour of any current or former Officer to confirm the indemnities conferred by clause 10.7.1 in relation to that person to the extent the law does not preclude the Company from doing so.

10.7.3 Clause 10.7.1 applies whether or not any deed is executed under clause 10.7.2.

10.7.4 In this clause 10.7 and clause 10.8:

- (a) "**Liability**" includes cost, charge, loss, damage, expense or penalty; and
- (b) "**To the Relevant Extent**" means to the extent the Company is not precluded from doing so by law (including the Act).

10.8 Insurance

To the Relevant Extent:

10.8.1 the Company may pay or agree to pay premiums for directors and officers insurance to insure current or former Officers against any Liability incurred by the Officer in or arising out of:

- (a) the conduct of the Company's affairs or business; or
- (b) the discharge of the Officer's duties; and

10.8.2 the Company may execute any deed in favour of any current or former Officer to take out insurance referred to in clause 10.8.1, on such terms as the Board considers appropriate.

10.9 Company seal

- 10.9.1 The Board will determine whether or not the Company is to have a common seal and, if so, will provide for the safe custody of such seal.
- 10.9.2 The common seal, if any, of the Company may only be affixed to any instrument with the authority of the Board.
- 10.9.3 The affixing of the common seal must be attested by the signatures of persons authorised by the Board for that purpose.

10.10 Definitions

In this Constitution:

“**ACNC Act**” means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);

“**Act**” means the *Corporations Act 2001* (Cth);

“**Appointed Directors**” means the SAM Foundation Appointed Directors and the Guardian Member Appointed Directors;

“**Board**” means the board of Directors of the Company with a quorum to transact business;

“**Chair**” means the Director and office bearer under clause 6.11.1.

“**Company**” means the company named on page 1 of this Constitution;

“**Constitution**” means this constitution of the Company;

“**Council**” means the Greater Shepparton City Council ABN 59 835 329 843;

“**Director**” means a person for the time being who performs the role of director of the Company;

“**Deputy Chair**” means the Director and office bearer under clause 6.11.2.

“**Elected Director**” means a Director elected for the purposes of clause 6.2.1(a);

“**Guardian Member**” means the Council;

“**Insolvency Event**” means the occurrence of any one or more of the following events in relation to an entity:

- (a) an application is made to a court for an order that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed, unless the application is withdrawn, struck out or dismissed within 7 days after it being made;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator or a controller is appointed to any of its assets;
- (d) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors;

- (e) it proposes a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors, or its winding-up or dissolution;
- (f) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent or it is presumed to be insolvent under an applicable Law;
- (g) it becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event;
- (h) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act; or
- (i) a writ of execution is levied against it or its property;

“**ITAA**” means the *Income Tax Assessment Act 1997* (Cth);

“**Member**” means a person who is a member of the Company pursuant to clauses 3 and 4;

“**Officer**” has the meaning given in the Act;

“**Principal Purpose**” means the principal purposes set out in in clause 1.1;

“**Purposes**” means the Principal Purpose and the Supporting Purposes;

“**Regulations**” means regulations made by the Board under clause 7.5;

“**SAM**” means the Shepparton Art Museum;

“**SAM Foundation**” means the trustee for the Shepparton Art Museum Foundation Limited ABN 80 169 774 154;

“**Secretary**” means a secretary appointed under clause 7.4;

“**Shepparton Art Museum**” means the public museum to be established and operated by the Company;

“**Supporting Purposes**” means the supporting purposes set out in clause 1.2;

“**Terminable Conduct**” means conduct of a Member which, in the reasonable opinion of the Board:

- (j) is, has been or will be prejudicial to the Company’s interests;
- (k) is not that of a fit and proper person or a person of good fame and character;
- (l) is unbecoming of Members; and
- (m) is conduct similar to the above which is set out in the Regulations.

10.11 Interpretation rules

Unless the contrary intention appears in this Constitution:

- 10.11.1 words importing the singular include the plural, and words importing the plural include the singular;

- 10.11.2 words importing a gender include every other gender;
- 10.11.3 words used to denote persons generally or importing a natural person include any company, corporation, body corporate or other body (whether or not the body is incorporated);
- 10.11.4 a reference to a person includes that person's successors, legal personal representatives and permitted transferees;
- 10.11.5 a reference to an authority, institution, association or body ("**original entity**") that has ceased to exist, been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity;
- 10.11.6 a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- 10.11.7 where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- 10.11.8 headings and bold text are for convenience only and do not affect its interpretation; and
- 10.11.9 a Member is to be taken to be present at a general meeting if the Member is present in person or by proxy or attorney.

10.12 Application of Act

- 10.12.1 This Constitution is to be interpreted subject to the Act. However, the rules that apply as replaceable rules to companies under the Act do not apply to the Company.
- 10.12.2 Unless the contrary intention appears, a word or expression in a clause that is defined in section 9 of the Act has the same meaning in this Constitution as in that section.

10.13 Application of ACNC Act

This Constitution is to be interpreted subject to the ACNC Act.