

Constitution

APN Regional Property
Fund

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Constitution

APN Regional Property Fund

Date: 2004

Background:

- A. By deed of variation to the trust deed dated 18 December 2002, the deed was varied. By deed of variation dated 4 February 2003 the deed was varied, and a consolidated trust deed was adopted. By deed poll dated 10 August 2004 the deed was varied and a consolidated Constitution was adopted.
- B. Additionally, the Manager is satisfied that the changes contemplated by this deed do not adversely affect Members' rights. This deed hereby amends the trust deed.

Operative provisions:

This deed poll is declared by *APN Funds Management Limited* to be the constitution of the APN Regional Property Fund.

1 Name of Trust

1.1 Initial name

The Trust is called the APN Regional Property Fund or by such other name as the Manager determines from time to time¹.

1.2 Change of name

If a Manager retires or is removed its successor as Manager must, unless otherwise approved by the former Manager, change the name of the Trust to a name that does not imply an association with the former Manager or its business. The name must be changed within 2 months of the retirement or removal.

2 Assets held on trust

2.1 Manager to hold assets

The Manager must hold the Assets on trust for Members².

¹ If the Trust is a Registered Scheme, see Corporations Regulation 5C.1.02

² If the Trust is a Registered Scheme, see section 601FC(2) of the Corporations Act

2.2 Assets vest in Manager

The Assets vest in the Manager, but must be clearly identified as property of the Trust and held separately from the assets of the Manager and any other managed investment scheme if and to the extent that the Corporations Act so requires³.

3 Units

3.1 Nature of Units

The beneficial interest in the Trust is divided into Units.

3.2 Classes of Units confer equal, undivided interest

Subject to the rights, obligations or restrictions attaching to any particular Unit or Class, each Unit confers an equal undivided interest.

3.3 Interest conferred

Subject to any rights, obligations or restrictions attaching to any particular Unit or Class, a Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.

3.4 Classes

Subject to the Corporations Act, the Manager may create and issue Classes with such rights, obligations and restrictions attaching to the Units of such Classes as it determines. The rights of a Member under this constitution are subject to the rights, obligations and restrictions attaching to any particular Unit of a Class which they hold.

3.5 Rounding

Where any calculation performed under this constitution or the terms of a withdrawal offer results in the issue or redemption of a fraction of one Unit, that fraction may be rounded down or up to such number of decimal places as the Manager determines.

3.6 Rounding amounts

Any excess application or other money or property which results from rounding becomes an Asset.

3.7 Consolidation and division of Units

Units may be consolidated or divided as determined by the Manager.

3.8 Transfer of Units

Members may transfer Units.

³ If the Trust is a Registered Scheme, see section 601FC(1)(i)

3.9 Form of transfers

Transfers must be in a form approved by the Manager and be presented for Registration duly stamped.

3.10 When effective

A transfer is not effective until Registered.

3.11 Discretion to refuse

The Manager may refuse to record any transfer in the Register if:

- (a) the Manager has a lien on the Units;
- (b) the Manager has been served with a court order that restricts the ability of the Member to transfer the Units;
- (c) it may breach an Australian law to register the transfer;
- (d) a law related to stamp duty prohibits the entity from registering it;
- (e) the transfer is not in accordance with the terms of a relevant employee incentive scheme; or

If in the event the Trust is not listed:

- (f) in order to ensure compliance with the relevant provisions of clause 21; or
- (g) in the Manager's opinion it is not in the interests of the Trust to do so.

3.12 Joint tenancy

Persons Registered jointly as the holder of a Unit hold as joint tenants and not as tenants in common unless the Manager otherwise agrees.

3.13 Death, legal disability of Member

If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in any other case) will be recognised as having any claim to Units Registered in the Member's name.

4 Application Price for Units⁴

4.1 Method of calculation

Subject to clauses 4.2 and 20.1, a Unit must only be issued at an Application Price calculated as:

⁴ Required to be included by section 601GA(1)(a) if the Trust is a Registered Scheme

- (a) $\frac{(\text{Net Asset Value} + \text{Transaction Costs})}{\text{the number of Units in issue}}$
- (b) \$1.00.

4.2 Initial Public Offering

Unless the Manager determines to determine Application Price in accordance with clause 4.1, Units issued pursuant to an initial public offering of Units in the Trust will be issued at an Application Price of \$1.00 per Unit.

4.3 Timing of determination

In clause 4.1 the Net Asset Value and the number of Units in issue must be determined as at the next Valuation Time after:

- (a) the Manager receives the application for Units; or
- (b) the Manager receives the application money, or the property against which Units are to be issued is vested in the Manager

whichever happens later.

4.4 Rounding

The Application Price of a Unit may be rounded as the Manager determines. The amount of the rounding must not be more than 1% of the Application Price.

5 Application procedure

5.1 Application form

An applicant for Units must complete a form approved by the Manager if the Manager so requires. The form may be transmitted electronically if approved by the Manager.

5.2 Payment

Payment in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or a custodian appointed by it (accompanied by a recent valuation of the property, if the Manager requires), must:

- (a) accompany the application;
- (b) be received by or made available to the Manager or the custodian within such period before or after the Manager receives the application form as the Manager determines from time to time; or
- (c) comprise a reinvestment of distribution in accordance with clauses 9.9 to 9.11.

If the Manager accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable or

reimbursable out of the Assets, or, if required by the Manager, by the Member.

5.3 Manager may reject

The Manager may reject an application in whole or in part without giving any reason for the rejection.

5.4 Minimum amounts

The Manager may set a minimum application amount and a minimum holding for the Trust or in respect of particular Classes and alter those amounts at any time.

5.5 Issue date

Except in the case of a reinvestment of distribution in accordance with clauses 9.9 to 9.11, Units are taken to be issued when:

- (a) the Manager accepts the application;
- (b) the Manager receives the application money, or the property against which Units are to be issued is vested in the Manager; or
- (c) if the Manager receives the application money in uncleared funds, when those funds are cleared,

whichever happens later.

5.6 Reinvestment

Units which are issued on a reinvestment of distribution in accordance with clauses 9.9 to 9.11 are taken to be issued on the first day after the end of the Distribution Period in which the application in respect of those Units is deemed to have been received.

5.7 Number of Units issued

The number of Units issued to the applicant is the amount of the payment divided by the Application Price of a whole Unit. If the Manager considers that an input tax credit for the benefit of the Trust is likely to arise and is properly attributable to an application, the Manager may determine that, for the purpose of this clause, the amount of the payment is increased by an amount equal to the input tax credit. In other words, for the purposes of this clause, the amount of the payment is taken to be the sum of:

- (a) the application monies (after deducting the application fee payable under clause 20.1); and
- (b) the amount of the input tax credit.

6 Redemption Price of Units⁵

6.1 Redemption Price

Subject to clause 20.2, a Unit must only be redeemed at a Redemption Price calculated as:

$$\frac{\text{(Net Asset Value - Transaction Costs)}}{\text{the number of Units in issue}}$$

6.2 Timing of calculation

In clause 6.1 the Net Asset Value and the number of Units in issue must be determined:

- (a) while the Trust is Liquid, as at the next Valuation Time after the Manager receives the redemption request; or
- (b) while the Trust is not Liquid, at the time the withdrawal offer closes.

6.3 Rounding

The Redemption Price may be rounded as the Manager determines. The amount of the rounding must not be more than 1% of the Redemption Price.

7 Redemption procedures⁶

7.1 Request for redemption of Units

A Member may make a request for the redemption of some or all of their Units in any manner approved by the Manager and regardless of whether:

- (a) the Trust is a Registered Scheme and the Trust is Liquid; or
- (b) the Trust is not a Registered Scheme,

the Manager may give effect to that request in its sole discretion at the time and in the manner set out in this clause 7.

7.2 Withdrawing requests

A Member may not withdraw a redemption request unless the Manager agrees.

⁵ Required to be included by Section 601GA(4) if the Manager wishes to offer Members a right to withdraw from the scheme and if the Trust is a Registered Scheme

⁶ Section 601GA(4) requires these procedures to be fair to all Members if the Trust is a Registered Scheme

7.3 When Trust is Liquid⁷

Clauses 7.4 to 7.8 apply only while where clause 7.1 (a) applies or where clause 7.1 (b) applies and the Manager exercises its discretion to give effect to a redemption request.

7.4 Satisfying requests

Where the Manager gives effect to a redemption request, the redemption request must be satisfied in respect of a Unit by payment from the Assets of the Redemption Price calculated in accordance with clause 6. The payment must be made within 90 days of receipt of the request.

7.5 Minimum redemption amount

The Manager need not give effect to a redemption request in respect of Units having an aggregate Redemption Price of less than the minimum application amount or such other amount as determined by the Manager from time to time unless the redemption request relates to the balance of the Member's holding.

7.6 Source of funds

The Manager is not obliged to pay any part of the Redemption Price out of its own funds.

7.7 Clearing small balances

If compliance with a redemption request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Manager may treat the redemption request as relating to the balance of the Member's holding.

7.8 Discretionary redemption

If the Manager is not obliged to give effect to a redemption request, it may redeem some or all of the Units which are the subject of the request⁸.

7.9 When Trust is not Liquid⁹

If the Trust is a Registered Scheme, while the Trust is not Liquid¹⁰, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Manager in accordance with the provisions of the Corporations Act regulating offers of that kind¹¹. If there is no withdrawal

⁷ Required to be included by Section 601GA(4)(b)(4), (5) and (6) if the Trust is a Registered Scheme

⁸ Subject to section 601FC(1)(d) if the Trust is a Registered Scheme

⁹ Required to be included by Section 601GA(4)(c) if Members are to have right to withdraw and if the Trust is a Registered Scheme

¹⁰ For definition of a liquid scheme see Section 601KA(1)

¹¹ Refer sections 601KB to 601KE

offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.

7.10 No obligation to make offers

The Manager is not at any time obliged to make a withdrawal offer.

7.11 Treatment of prior requests

If the Manager receives a redemption request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

7.12 Clauses applicable whether or not the Trust is Liquid

Clauses 7.13 to 7.16 apply whether or not the Trust is Liquid.

7.13 Redemption Fee

The Redemption Fee (if any) is payable to the Manager out of the proceeds of redemption upon completion of redemption of the Units.

7.14 Sums owed to Manager

The Manager may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer any money due to it by the Member.

7.15 Transfer of Assets

The Manager may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request, pursuant to a withdrawal offer or in payment of a distribution. These Assets with any cash paid must be of equal value to the total amount due to the Member pursuant to the redemption request, withdrawal offer or distribution (based on a valuation done within one month before the date of the proposed transfer). If the Manager requires, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

7.16 Compulsory redemption

The Manager may redeem the Units of any Member without the need for a redemption request:

- (a) if the Trust is not Listed, at the discretion of the Manager; or
- (b) if the Trust is Listed, where the Manager is required to redeem the Units by the operation of:
 - (i) Australian legislation where the mechanism for redemption is contained in that legislation or has been approved by the Exchange;
 - (ii) a provision of this constitution that has been included in mandatory compliance with Australian legislation;
 - (iii) a court order; or

- (iv) a lien that is permitted by the Listing Rules.

7.17 Suspension of redemptions after termination

The Manager need not give effect to a redemption request received between the date the Trust is terminated and the date of winding up.

8 Valuation of assets

8.1 Periodic valuations

The Manager may cause an Asset to be valued at any time and, if the Trust is a Registered Scheme, must do so as and when required by the Corporations Act¹².

8.2 Net Asset Value

The Manager may determine Net Asset Value at any time, including more than once on each day.

8.3 Valuation methodology

The Manager may determine valuation methods and policies for each category of Asset and change them from time to time. Unless the Manager determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its historical cost¹³. Where the Manager values an Asset at other than its historical cost, the valuation methods and policies applied by the Manager must be capable of resulting in a calculation of the Application Price or Redemption Price that is independently verifiable.

9 Income and distributions to Members

9.1 Distributable income and Income

The Manager must determine the distributable income and the Income of the Trust for each Financial Year.

9.2 Determination of distributable income

Unless the Manager determines otherwise prior to the end of the Financial Year, distributable income will be:

- (a) the amount which if distributed in cash to Members for the period would prevent the Manager being liable to tax on the income of the Trust under section 99 or section 99A of the Tax Act for the Financial Year as if the period is a year of income; and

¹² See section 601FC(j) for Scheme Operator's obligations concerning valuation if the Trust is a Registered Scheme

¹³ ASIC Policy Statement 134, paragraph 29: constitution should set out how scheme property will be valued if the Trust is a Registered Scheme

- (b) any additional amount whether income or capital which the Manager considers appropriate for distribution for the period.

9.3 Classification as income or capital

The Manager may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

9.4 Present entitlement

A person who at any time during the Financial Year is or has been a Member, is presently entitled to the Income of the Trust for the Financial Year, in the proportion that the Income Distributions made to the Member in respect of the Financial Year bear to the sum of the Income Distributions made to all persons who are or have been Members at any time during the Financial Year.

9.5 Income Distributions

An Income Distribution in respect of a Member means an amount calculated by the Manager as follows:

- (a) in respect of a Distribution Period other than the Distribution Period commencing immediately after 30 June in any year, an amount calculated as follows:

$$\frac{A \times C}{B}$$

where

- A is the number of Units held by the Member at the end of the Distribution Period
- B is the number of Units held by all Members at the end of the Distribution Period
- C is an estimate of the distributable income for the Distribution Period (calculated as if the Distribution Period were a year of income); and

- (b) in respect of a Distribution Period commencing immediately after 30 June of the preceding Financial Year, an amount calculated as follows:

$$\frac{A \times C}{B} + D$$

where

- A is the number of Units held by the Member at the end of the Distribution Period

- B is the number of Units held by all Members at the end of the Distribution Period
- C is the amount (if any) by which the distributable income for the preceding Financial Year exceeded the aggregate of the estimates of distributable income calculated for the purposes of variable C in paragraph (a) above in respect of the previous Distribution Periods of that Financial Year
- D is the Income Distribution for the Income Period commencing immediately after 30 June of the preceding Financial Year calculated as in 9.5(a).

9.6 Satisfaction of present entitlement

The present entitlement of a Member to Income of the Trust for a Financial Year will be satisfied by the payment of the Income Distributions to the Member in respect of the Financial Year. Income Distributions must be paid to a Member within three months after the Distribution Calculation Date.

9.7 Other distributions

The Manager may at any time distribute any amount of capital or income to Members pro rata according to the number of Units held as at a time decided by the Manager. The distribution may be in cash or by way of additional Units.

9.8 Separate accounts

The Manager may keep separate accounts of different categories or sources of income, capital, or deductions or credits for tax purposes, and may allocate income, capital, deductions or credits from a particular category or source to particular Members.

9.9 Reinvestment

The Manager may decide whether to permit the Members who hold Units to reinvest some or all of any distribution to acquire Units.

9.10 Notification of reinvestment facility

If the Manager decides to permit reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.

9.11 Deemed application date for reinvestment

If reinvestment applies, the Manager is deemed to have received and accepted an application to reinvest immediately before the next Valuation Time after the end of the relevant Distribution Period.

9.12 Position on transfer of Units

A person registered as a Member on a Distribution Calculation Date is to receive the Income Distribution for the Distribution Period notwithstanding a transfer or transmission of Units after the Distribution Calculation Date.

10 Accounts, audit and reports

While the Trust is not a Registered Scheme, the Manager must comply with the requirements of Chapter 2M of the Corporations Act, in so far as they are relevant to the Trust, as if the Trust were a Registered Scheme.

11 Payments

11.1 Method

Money payable by the Manager to a Member may be paid in any manner the Manager decides.

11.2 Unpresented cheques

Cheques issued by the Manager that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money may, if the Manager so determines, be reinvested in Units at the Application Price prevailing at the next Valuation Time after the cheque is cancelled.

11.3 Failed electronic transfers

Where the Manager attempts to make a payment to a Member by electronic transfer of funds or any other means and the transfer is unsuccessful, the money may be reinvested in Units at the Application Price prevailing at the next Valuation Time after failure of the third attempt.

11.4 Whole amounts

Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.

11.5 Payment to joint Members

A payment to any one of joint Members will discharge the Manager in respect of the payment.

11.6 Deductions

The Manager may deduct from any amount to be paid to a person who is or has been a Member, or received from a person who is or has been a Member:

- (a) any amount of Tax (or an estimate of it); or
- (b) any other amount owed by the Member to the Manager or any other person,

which the Manager is required or authorised to deduct in respect of that payment or receipt by law or by this constitution or which the Manager considers should be deducted.

12 Powers of the Manager

12.1 General powers

Subject to this constitution, the Manager has all the powers in respect of the Trust that it is possible under the law to confer on a trustee and as though it were the absolute owner of the Assets and acting in its personal capacity.

12.2 Contracting powers¹⁴

Without limiting clause 12.1 and subject to the Manager's fiduciary duties, the Manager in its capacity as trustee of the Trust has power to borrow or raise money, to grant security and to incur all types of obligations and liabilities.

12.3 Investment powers

Without limiting clause 12.1, the Manager may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.¹⁵

12.4 Power of delegation¹⁶

The Manager may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Manager's power, including the power to appoint in turn its own agent or delegate.

12.5 Terms of delegation

The Manager may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Manager thinks fit.

12.6 Delegation to associates

The agent or delegate may be an associate of the Manager¹⁷.

12.7 Exercise of discretion

The Manager may in its absolute discretion decide how and when to exercise its powers.

¹⁴ Required to be included by Section 601GA(3) if the Trust is a Registered Scheme

¹⁵ Subject to section 601FC(4) if the Trust is a Registered Scheme

¹⁶ See also Section 601FB if the Trust is a Registered Scheme

¹⁷ Subject to Part 5C.7 if the Trust is a Registered Scheme

13 Retirement of Manager

13.1 Voluntary retirement

While the Trust is a Registered Scheme, the Manager may retire as the responsible entity of the Trust as permitted by law¹⁸.

13.2 Retirement when not registered scheme

While the Trust is not a Registered Scheme, the Manager may retire upon giving notice to Members. On retirement, the Manager may appoint in writing another person to be the Manager.

13.3 Compulsory retirement

While the Trust is a Registered Scheme, the Manager must retire as the responsible entity of the Trust when required by law¹⁹.

13.4 Removal of the Manager by Members²⁰

If the Members want to remove the Manager, they must call a meeting of Members to consider and vote on a resolution that the current Manager should be removed and a resolution choosing a person to be the new Manager. For purposes of this clause, the resolution of Members must be passed by more than 75% of Members of the Trust by value.

13.5 New Manager

Any proposed replacement manager must execute a deed by which it covenants to be bound by this constitution as if it had originally been a party to it.

13.6 Release

When it retires or is removed, the Manager is released from all obligations in relation to the Trust arising after the time it retires or is removed²¹.

13.7 Retirement benefit

The Manager is entitled, subject to any approval required by law, to agree with the incoming manager to be remunerated by, or to receive a benefit from, the incoming manager in relation to:

- (a) entering into an agreement to submit a proposal for its retirement to a meeting of Members, and nominating to the Members the incoming manager as its replacement; or

¹⁸ See Section 601FL. The change does not take effect until the ASIC alters its records: Section 601FJ

¹⁹ See Section 601FM and 601FA

²⁰ See Section 601FM

²¹ See section 601FR for the Scheme Operator's obligation to transfer records, etc. Sections 601FS restricts this release if the Trust is a Registered Scheme

(b) its retirement as Manager,

and is not required to account to Members for such remuneration or benefit.

14 Notices to Members

14.1 Form of notices

Subject to the Corporations Act, a notice or other communication required under this constitution to be given to a Member must be given in writing (which includes a fax) or in such other manner as the Manager determines, and be delivered or sent to the Member at the Member's physical or electronic address last advised to the Manager for delivery of notices.

14.2 Cheques

A cheque payable to a Member may be posted to the Member's physical address or handed to the Member or a person authorised in writing by the Member²².

14.3 Notices to joint Members

In the case of joint Members, the physical or electronic address of the Member means the physical or electronic address of the Member first named in the Register.

14.4 Deemed date of receipt

A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the law²³ (if the Trust is a Registered Scheme), the Manager may determine²⁴ the time at which other forms of communication will be taken to be received.

15 Notices to the Manager

15.1 Form of notices

A notice required under this constitution to be given to the Manager must be given in writing (which includes a fax), or in such other manner as the Manager determines.

15.2 Effective date

The notice is effective only at the time of receipt.

²² See Clause 16.3(c)

²³ See Section 601FC(1)(d)

²⁴ See Section 252G(4)

15.3 Authentication

The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member²⁵ unless the Manager dispenses with this requirement.

16 Meetings of Members

16.1 Corporations Act

The Manager may at any time convene a meeting of Members or a Class of Members, and must do so if required by the Corporations Act²⁶.

16.2 Member's request for Meeting

While the Trust is not a Registered Scheme:

- (a) the Manager must call and arrange to hold a meeting of Members to consider and vote on a proposed resolution on the request of Members with at least 50% of the votes that may be cast on the resolution; and
- (b) sections 252B(2), (3), (6), (7) and (8) of the Corporations Act apply to the calling of a meeting referred to in sub-paragraph (a) as if the Trust were a Registered Scheme.

16.3 Members' request when Registered Scheme

While the Trust is a Registered Scheme, the provisions of the Corporations Act apply to determine the circumstances if any in which a meeting must be convened on the request of Members.

16.4 Notice Period when not Registered Scheme

While the Trust is not a Registered Scheme, at least 10 days' notice of a meeting must be given to Members, or such shorter notice as they agree.

16.5 Notice Period when Registered Scheme

While the Trust is a Registered Scheme, the requirements for notice of meetings of Members is governed by the Corporations Act²⁷.

16.6 Manager may determine

Subject to this clause 16 and the Corporations Act²⁸ (if the Corporations Act applies), the Manager may determine the time and place at which a meeting

²⁵ See Clause 16.3(c)

²⁶ Refer Part 2G.4 if the Trust is a Registered Scheme

²⁷ Refer Part 2G.4 if the Trust is a Registered Scheme

²⁸ Refer Part 2G.4 if the Trust is a Registered Scheme

of Members will be convened and the manner in which the meeting will be conducted.

16.7 Quorum

The quorum for a meeting of Members is at least 2 Members present in person or by proxy together holding at least 10% of all Units, unless the Trust has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.

16.8 No quorum

If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:

- (a) if convened on the requisition of Members - dissolved; or
- (b) otherwise - adjourned to such place and time as the Manager decides.

At any adjourned meeting, those Members present in person or by proxy constitute a quorum.

16.9 Chairman

Subject to the Corporations Act²⁹ (if the Trust is a Registered Scheme) the Manager may appoint a person to chair a meeting of Members.

16.10 Chairman's decision final

The decision of the chairman on any matter relating to the conduct of the meeting is final.

16.11 Adjournment

The chairman has power to adjourn a meeting for any reason to such place and time as the chairman thinks fit.

16.12 Resolutions binding

A Resolution binds all Members, whether or not they were present at the meeting.

16.13 Objections

No objection may be made to any vote cast unless the objection is made at the meeting.

16.14 Proxies and voting while the Trust is a Registered Scheme

While the Trust is a Registered Scheme:

²⁹ Refer Part 2G.4 and Section 601FC(1)

- (a) the provisions of the Corporations Act governing proxies and voting for meetings of members of Registered Schemes apply to the Trust; and
- (b) the Manager may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

16.15 While the Trust is not a Registered Scheme

Clauses 16.16 to 16.21 apply while the Trust is not a Registered Scheme.

16.16 Voting

Voting is by a show of hands, unless a poll is duly demanded or the proposed resolution is required by law or by this constitution to be decided by a percentage of Units, or a percentage of votes able to be cast.

16.17 Number of votes

Each Member present in person or by proxy has:

- (a) on a show of hands, one vote; and
- (b) on a poll, one vote for each Unit they hold.

16.18 First named Member may vote

In the case of joint Members, only the first named in the Register may vote unless the Manager otherwise agrees. In the case of an equality of votes, the chairman has the casting vote.

16.19 Poll

A poll may be demanded before or on declaration of the result of a show of hands by either:

- (a) the chairman, or
- (b) at least 2 Members present in person or by proxy who together hold at least 10% of Units.

16.20 Proxies

A Member may be represented at a meeting by proxy. Proxies are governed by the provisions of the Corporations Act relating to Registered Schemes as if the Trust were a Registered Scheme.

16.21 Validity of defective proxies

The Manager may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

16.22 Class meetings

The provisions of this clause 16 apply with necessary changes to meetings of a Class of Members.

17 Rights and liabilities of Manager

17.1 Holding Units

The Manager and its associates may hold Units in the Trust in any capacity³⁰.

17.2 Other capacities

Subject to the Corporations Act³¹, nothing in this constitution restricts the Manager (or its associates) from:

- (a) dealing with itself (as trustee of the Trust or in another capacity), an associate or with any Member;
- (b) being interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), an associate or with any Member or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
- (c) acting in the same or a similar capacity in relation to any other managed investment scheme.

17.3 Manager may rely

The Manager may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Manager, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Manager who are in each case believed by the Manager in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Manager believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Trust; and
- (d) any other document provided to the Manager in connection with the Trust upon which it is reasonable for the Manager to rely;

³⁰ See Section 601FG, Section 253E and Part 5C.7 if the Trust is a Registered Scheme

³¹ Refer Part 5C.7 if the Trust is a Registered Scheme

and the Manager will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

18 Limitation of liability and indemnity in favour of Manager

18.1 Limitation on Manager's liability

The Manager is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust except to the extent (if any) that the Corporations Act imposes such liability.

18.2 Liability to non-Members

Subject to the Corporations Act, the liability of the Manager to any person other than a Member in respect of the Trust (including in respect of any contracts entered into as trustee of the Trust or in relation to any Assets) is limited to the Manager's ability to be indemnified from the Assets.

18.3 Indemnity in favour of Manager

The Manager is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust³².

18.4 Liability for delegates

To the extent permitted by the Corporations Act³³, the indemnity under clause 18.3 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.

18.5 Other rights of indemnity

This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Manager retires or is removed as trustee of the Trust.

19 Liability of Members

19.1 Liability limited

Subject to clauses 19.3 and 19.5, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.

³² See Section 601GA(2) if the Trust is a Registered Scheme

³³ See Sections 601FB(2) and 601GA(2) if the Trust is a Registered Scheme

19.2 Liability to Manager

A Member need not indemnify the Manager if there is a deficiency in the Assets or meet the claim of any creditor of the Manager in respect of the Trust.

19.3 Liability for Tax or User Pays Fees

The Manager is entitled to be indemnified by a Member or former Member to the extent that the Manager incurs any liability for Tax or User Pays Fees as a result of the Member's action or inaction, or as a result of an act or omission requested by the Member or former Member.

19.4 Liability of joint and former Members

Joint Members and former joint Members are jointly and severally liable in respect of all payments including payments of Tax to which clause 19.3 applies, and User Pays Fees.

19.5 Recourse

In the absence of separate agreement with a Member and subject to clause 19.4, the recourse of the Manager and any creditor is limited to the Assets.

19.6 Restrictions on Members

A Member:

- (a) must not interfere with any rights or powers of the Manager under this constitution;
- (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; or
- (c) may not require an Asset to be transferred to the Member.

20 Expenses of Manager

20.1 Application fee

The Manager is entitled in respect of each application for Units in the Trust which it accepts to a fee of up to 5% of the value of the application money or property. When calculating the number of Units to be issued, the application fee must first be deducted from the value of the application money or property.

20.2 Redemption fee

The Manager is entitled in respect of each redemption request to a fee of up to 2% of the value of the Units the subject of the redemption request, such fee to be deducted after the proceeds of the redemption of Units has been calculated.

20.3 Management fee

The Manager is entitled to a management fee of up to 1.0% per annum of the value of the Assets calculated quarterly and payable in arrears out of the Assets, from the date the Trust commences to the date of final distribution in accordance with this constitution.

20.4 Acquisition fee

The Manager is entitled to an acquisition fee of up to 5% of the value of an Asset acquired by the Trust, payable upon acquisition of that Asset and payable out of the Trust.

20.5 Waiver of fees and expenses

The Manager may accept lower fees and expenses than it is entitled to receive under this constitution, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.

20.6 Expenses

All expenses incurred by the Manager in relation to the proper performance of its duties in respect of the Trust³⁴ are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act. This includes expenses connected with:

- (a) this constitution and the formation of the Trust;
- (b) registering the Trust as a Registered Scheme;
- (c) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (d) any proposed acquisition, disposal or other dealing with an investment;
- (e) the administration or management of the Trust or its Assets and Liabilities;
- (f) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (g) Tax, including any amount charged by a supplier of goods or services, or both, to the Manager by way of or as a reimbursement for GST;
- (h) financial institution fees;
- (i) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Manager;

³⁴ Refer Section 601GA(2)(b)

- (j) preparation and audit of the taxation returns and accounts of the Trust and the fees and expenses of the auditor in preparing and auditing the tax returns and accounts of the Trust;
- (k) termination of the Trust and the retirement or removal of the Manager and the appointment of a replacement;
- (l) any court proceedings, arbitration or other dispute concerning a Trust including proceedings against the Manager, except to the extent that the Manager is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this clause 20.6(l) must be repaid;
- (m) the compliance committee established by the Manager in connection with the Trust (if any), including any fees paid to or insurance premiums³⁵ in respect of compliance committee members;
- (n) while there is no compliance committee, any costs and expenses associated with the board of directors of the Manager carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- (o) the preparation, implementation, amendment and audit of the compliance plan;
- (p) complying with any law, and any request or requirement of the ASIC;
- (q) the preparation, review, distribution and promotion of any prospectus or offering memorandum in respect of Units or other promotion of the Trust;
- (r) the admission of the Trust to the official list of Exchange and compliance with the Listing Rules, and the costs of establishing or participating in an exempt or other stock or financial market, by whatever name known;
- (s) the underwriting of any subscription or purchase of Units, including underwriting fees, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Manager of its obligations, representations or warranties under any such underwriting agreement;
- (t) the fees and proper disbursements, if any, of the solicitors of the Manager in advising the Manager on matters arising in connection with the discharge of its obligations under the constitution;

³⁵ See Section 601JG

- (u) the costs of preparing, printing and sending out to Members accounts, reports, distribution statements, cheques, circulars, and other notices; and
- (v) custodian fees.

20.7 GST

If the Manager is or becomes liable to pay GST in respect of any supply under or in connection with this Constitution then, in addition to any fee or other amount or consideration payable to the Manager in respect of the supply, the Manager is entitled to be paid out of the Assets an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST. This clause does not apply to supplies in respect of which the relevant fees are expressed as GST inclusive in this Constitution.

20.8 Effect of changed rate of GST

In relation to any fee that is expressed as GST inclusive in this Constitution, in the event of an increase in the rate of GST, the new GST inclusive fee is determined by converting the existing GST inclusive fee to a GST exclusive figure (based on the GST rate immediately prior to the new prevailing GST rate) and multiplying it by $(1+n)$ where "n" is the new prevailing rate of GST (expressed as a decimal).

20.9 Input tax credits

In the event that the Manager is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Manager by any person, or payable by the Manager by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this Constitution, the Manager is entitled to recover from the Fund by way of reimbursement an additional amount equivalent to the amount of such input tax.

20.10 Sums owed to the Manager

The Manager may redeem some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

21 Limitation of entitlement

21.1 In this clause the term 'the prescribed value' shall mean 15% of the beneficial interest in the Scheme.

21.2 Except as provided in this clause, a person shall not, either alone or together with any other person, acquire Units if any person who is not entitled to Units or is entitled to not more than the prescribed value would immediately after the acquisition be entitled to more than the prescribed value.

21.3 Manager's Consent

The restriction contained in clause 21.2 of this clause 21, shall not apply to or in relation to an acquisition or holding of a Unit or Units to which the Manager has given its prior written consent, which it may grant or withhold in its absolute discretion and subject to any conditions which the Manager in its absolute discretion may impose.

21.4 Relevant Interest

For the purposes of this clause a person shall be taken to acquire a Unit (in this clause 21.4 referred to as 'the Unit concerned') if:

- (a) the person acquires a relevant interest in the Unit concerned as a direct or indirect result of a transaction entered into by their or on their behalf in relation to the Unit concerned or in relation to any other securities; or
- (b) the person acquires any legal or equitable interest in Units or in any other securities and, as a direct or indirect result of the acquisition, another person acquires a relevant interest in the Unit concerned.

21.5 Person Concerned

For the purposes of this clause the Unit or Units to which a person (in this clause 21 and clause 21.6 referred to as the 'person concerned') is entitled includes:

- (a) Units in which the person concerned has a relevant interest; and
- (b) Units in which a person who is an associate of the person concerned has a relevant interest.

21.6 Associate

A reference in clause 21.5 to a person who is an associate of the person concerned shall be construed as a reference to:

- (a) if the person is a corporation:
 - (i) a director or secretary of the corporation;
 - (ii) a corporation that is related to the person concerned; or
 - (iii) a director or secretary of such a related corporation;

- (b) a person with whom the person concerned has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied:
 - (i) by reason of which the first-mentioned person, or the person concerned, may exercise, directly or indirectly control the exercise of, or may substantially influence the exercise of, any voting power attached to the Units;
 - (ii) under which the first-mentioned person may acquire from the person concerned, or the person concerned may acquire from the first-mentioned person, Units; or
 - (iii) under which the first-mentioned person, or the person concerned, may be required to dispose of Units in accordance with the directions of the person concerned, or of the first-mentioned person, as the case may be;
- (c) a person in concert with whom the person concerned is acting, or proposes to act, in relation to the acquisition or proposed acquisition of Units;
- (d) a person with whom the person concerned is, or proposes to become, associated, whether formally or informally, in any other way in relation to the Units; or
- (e) if the person concerned has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with another person as mentioned in clauses 21.6(b), (c) or (d) above, that other person.

21.7 Control

Subject to this clause 21.7, a person has a relevant interest in a Unit for the purposes of this clause if that person has power:

- (a) to exercise, or control the exercise of, the right to vote attached to that Unit; or
- (b) to dispose of, or to exercise control over the disposal of, that Unit,

a relevant interest in a Unit shall be disregarded:

- (c) if the Unit is subject to a trust, the relevant interest is that of a trustee; and
- (d) the trustee is a bare trustee.

For the purposes of clause 21.7(d) above, a trustee shall not be taken not to be a bare trustee by reason only of the fact that the trustee is entitled in his capacity as a trustee to be remunerated out of the income or property of the trust.

21.8 Power of Manager

- (a) The Manager may, within the limitations of clause 3.11, decline to allot or to register any transfer or transmission of a Unit if in the Manager's opinion, the allotment or registration thereof would or might result in or have the effect of causing an infringement or contravention of clause 21.2.
- (b) Where the Manager is satisfied that a person has acquired Units in such circumstances as might or would in the opinion of the Manager result in or have the effect of causing an infringement or contravention of clause 21.2, the Manager may do either or both of the following:
 - (i) by notice in writing to such person, require the person to dispose of the Units so acquired, or any part thereof, (in this clause 21.8 referred to as the 'specified Units') within such time as is specified in the notice, provided that in the absence of any such requirement by the Manager, the person concerned shall not be entitled in any way to set aside or cancel the transaction whereby they acquired the specified Units, nor to claim any refund or to otherwise recover any monies paid in respect thereto; and
 - (ii) prohibit the exercise of any voting or other rights attached to such Units and in the event of an exercise or purported exercise of such rights the same shall be disregarded for all purposes.
- (c) If the requirements of any such notice are not complied with by the person to whom the notice is addressed within the time specified in the notice, the Manager may cause the specified Units to be sold on the Exchange if they are Officially Quoted or, if they are not so quoted, in such other manner as the Manager may determine.
- (d) The Manager may:
 - (i) appoint a person to execute as transferor a transfer in respect of any Units sold in accordance with the provisions of clause 21.8(c) and to receive and give good discharge of the purchase money thereof; and
 - (ii) register the transfer notwithstanding that the certificate (if one has been issued) for such Units may not have been delivered to the Manager in which event the previous certificate (if any) shall be deemed to have been cancelled.

21.9 Manager not liable

Nothing in clause 21 shall render the Manager liable or responsible by reason of any person acquiring Units in contravention of clause 21 or failing to comply with the obligation imposed by clause 21.

21.10 Request for information

- (a) The Manager, before or at any time after allotting any Units or approving or rejecting any transfer or transmission of Units or at any other time and from time to time, may, by notice in writing to the applicant, allottee, transferee, transmittee or Member, require the person (or, where such person is a corporation, a competent officer thereof) to furnish the Manager such information or evidence (on oath or otherwise verified if the Manager should so require) as the Manager may consider likely to be of assistance in determining whether or not such person is eligible to become or remain a Member.
- (b) Without limiting clause (a) above, the Manager may at any time by notice in writing require a Member within two (2) Business Days after service of the notice, to furnish to the Manager:
 - (i) a statement in writing setting out:
 - (A) full particulars of the person's relevant interests in Units ('the Units') and of the circumstances by reason of which the person has that interest; and
 - (B) so far as it lies within his knowledge:
 - (aa) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the Units;
 - (ab) full particulars of each such interest and of the circumstances by reason of which the other person has that interest; and
 - (ac) full particulars of the name and address of each person (if any) who has given to the Member instructions in relation to any matter concerning the Units and of those instructions, and the date or dates on which those instructions were given; and
 - (C) a true copy of every letter, agreement, declaration of trust, deed and, without limitation, document in the person's possession or within the person's control creating, evidencing or referring to the interest of every other person (if any) who has a relevant interest in any of the Units held by the person.
 - (ii) where the Manager received, pursuant to a notice under clause 21.10 information that another person has a relevant interest in any of the Units; or another person has given instructions in relation to any matter concerning the Units; a statement in writing setting out:
 - (A) full particulars of any relevant interest that the person has in any of the Units and of the circumstances by reason of which the person has that interest; and

- (B) so far as it lies within the person's knowledge:
 - (aa) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the Units;
 - (ab) full particulars of each such interest and of the circumstances by reason of which the other person has that interest; and
 - (ac) full particulars of the name and address of each person (if any) who has given to the person to whom the notice is addressed instructions in relation to any matter concerning the Units and of those instructions, and the date or dates on which those instructions were given; and
 - (C) a true copy of every letter, agreement, declaration of trust, deed and without limitation document in the person's possession or within the person's control creating, evidencing or referring to the interest of every other person (if any) who has a relevant interest in any of the Units;
- (c) If the requirements of any notice referred to above are not complied with within the time so specified, the Manager may:
- (i) refuse to register a transfer of the Units within the limitations of clause 3.11;
 - (ii) prohibit the exercise of any voting or other rights attached to the Units and in the event of any exercise or purported exercise of such rights the same shall be disregarded for all purposes;
 - (iii) suspend the payment of any distributions or other monies payable on or in respect of the Units;
 - (iv) cause the Units to be sold upon any the Exchange if they are Officially Quoted or at such place as the Manager determines and at a price which the Manager, acting in good faith, determines or accepts.
- (d) In the event of any Units being sold pursuant to clause 21, the Manager may:
- (i) appoint a person to execute on behalf of a Member the transfer of the Units and to receive and to give a good discharge for the purchase money;
 - (ii) register the transfer notwithstanding that the certificates for the Units (if any) may not have been delivered to the Manager and issue a new Certificate to the transferee, in

which event the previous certificate shall be deemed to have been cancelled.

- (e) The purchase money in respect of the Units so sold less the expenses of sale shall be paid to the person in whose name the Units were registered immediately prior to the sale thereof. After the purchaser's name has been entered into the Register in respect of the Units, the title of the purchaser to the Units shall not be called into question on any legal ground in relation to the terms of this clause 21.

22 Duration of the Trust

22.1 Termination

The Trust terminates on the earliest of:

- (a) the date the Manager determines to wind up the Trust;
- (b) the date specified by the Manager as the date of termination of the Trust in a prospectus, disclosure statement or other offer document;
- (c) the 80th anniversary of the day before the Trust commenced; and
- (d) the date on which the Trust terminates in accordance with another provision of this constitution or by law³⁶.

22.2 Notification to Members

Where:

- (a) the Manager determines to wind up the Trust under clause 21.2(a);
- (b) a date in clause 21.2(b) or 21.2(c) occurs; or
- (c) the Trust terminates in accordance with clause 21.2(d)

the Manager must give notice to Members within 30 days.

23 Procedure on termination

23.1 Realisation of Assets

Following termination, the Manager must realise the Assets. This must be completed in one year if practical and in any event as soon as possible after that.

³⁶ See Part 5C.9 on winding up if the Trust is a Registered Scheme

23.2 Audit of winding up

If and to the extent that ASIC policy so requires and if the Trust is a Registered Scheme, the Manager must arrange for independent review or audit of the final accounts of the Trust by a registered company auditor.

23.3 Distribution following termination

The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, must be distributed pro rata to Members according to the number of Units they hold. The Manager may distribute proceeds of realisation in instalments.

23.4 Constitution continues to apply

Subject to the Corporations Act, the provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 22.3, but during that period the Manager may not accept any applications for Units from a person who is not an existing Member.

24 Amendments to this constitution

24.1 Manager may amend

While the Trust is a Registered Scheme, this constitution may be amended, if the Corporations Act allows:

- (a) by Resolution³⁷; or
- (b) by deed executed by the Manager.

If the constitution is amended by Resolution, the Manager may give effect to the amendments by executing a supplemental deed.

24.2 Amendment when not Registered Scheme

While the Trust is not a Registered Scheme, the Manager may by deed amend this constitution.

24.3 Statutory requirements

While the Trust is a Registered Scheme, if the Corporations Act or any relief from the provisions of the Corporations Act granted by the ASIC requires that this constitution contain certain provisions, then those provisions are deemed to be incorporated into this constitution at all times at which they are required to be included and prevail over any other provisions of this constitution to the extent of any inconsistency. Clause 23.1 does not apply to provisions deemed by this clause 23.3 to be incorporated in the constitution.

³⁷ The Required majority for such a Resolution under section 601GC(1)(a) is 75% (by value) of Members

25 Other provisions

- 25.1 If the Corporations Act or any declaration or exemption from the provisions of the Corporations Act granted by the ASIC requires that this Deed contain certain provisions, then those provisions:
- (a) are deemed to be incorporated into this Deed at all times at which, and to the extent to which, they are required to be included; and
 - (b) prevail over any other provisions of this Deed to the extent of any inconsistency.
- 25.2 Whilst any Units of a Class are officially quoted on an Exchange the Responsible Entity and each Member must comply with the provisions of the Listing Rules relevant to them.
- 25.3 If the Trust is admitted to the Official List, and subject to any waiver grant by an Exchange or other conditions on which the Trust is admitted the following provisions apply:
- (a) if the Listing Rules prohibit an act being done, the act shall not be done;
 - (b) nothing contained in this Deed prevents an act being done that the Listing Rules require to be done;
 - (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
 - (d) if the Listing Rules require this Deed to contain a provision and it does not contain such a provision, this Deed is deemed to contain that provision;
 - (e) if the Listing Rules require this Deed not to contain a provision and it contains such a provision, this Deed is deemed not to contain that provision; and
 - (f) if any provision of this Deed is or becomes inconsistent with the Listing Rules, this Deed is deemed not to contain that provision to the extent of the inconsistency.

26 Restricted interests

26.1 For the purpose of this clause 26:

- (a) **'Escrow Period'** means the escrow period in the relevant Restriction Agreement;

(b) **'Restricted Interest'** means an Interest that is a restricted security for the purposes of the Listing Rules;

26.2 A Member cannot dispose of Restricted Interests during the Escrow Period except as permitted by the Listing Rules or the Exchange.

26.3 The Responsible Entity will refuse to acknowledge a disposal (including registering a transfer) of Restricted Interests during the Escrow Period except as permitted by the Listing Rules or Exchange.

26.4 During such period as there is a breach of the Listing Rules relating to Restricted Interests, or a breach of a restriction agreement relating to Restricted Interests, the holder of the Restricted Interests is not entitled to any Distribution, or voting rights, in respect of the Restricted Interests.

27 Compliance committee

If a compliance committee is appointed in respect of the Trust, if any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act³⁸.

28 Complaints

If a Member submits to the Manager a complaint alleging that the Member has been adversely affected by the Manager's conduct in its management or administration of the Trust, the Manager must:

- (a) if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) where there is a compliance committee, refer the complaint to the committee for its consideration;
- (c) where there is no compliance committee, consider the complaint³⁹; and
- (d) communicate to the complainant in relation to the complaint as soon as practicable and in any event not more than 45 days after receipt by the Manager of the complaint:
 - (i) the determination of the compliance committee (or if clause 25(c) applies, the Manager);
 - (ii) the remedies (if any) available to the member; and

³⁸ See section 601JF

³⁹ In a manner consistent with the Manager's duties to act in the best interests of members and treat members equally. See sections 601FC(1)(c) and (d).

- (iii) information regarding any further avenue for complaint.

29 Interpretation

29.1 Definitions

In this constitution these words and phrases have the following meaning unless the contrary intention appears:

Application Price: the Unit price calculated in accordance with clause 4.

ASIC: the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

Assets: all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid or any amount in the distribution account.

Business Day: a day other than a Saturday or a Sunday on which banks are open for general banking business in Sydney and Melbourne.

Class: a class of Units.

Compliance Committee Member: a member of a compliance committee established by the Manager in connection with the Trust.

Corporations Act: the Corporations Act 2001 (Cwlth).

Distribution Calculation Date: the last day of each Financial Year and such other days as the Manager designates.

Distribution Period:

- (a) for the first distribution period, the period from the establishment of the Trust to the next Distribution Calculation Date;
- (b) for the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.

Exchange: means the recognised stock exchange the official list of which the Scheme is admitted to from time to time.

Financial Year:

- (a) for the first financial year, the period from the establishment of the Trust to the next 30 June;

- (b) for the last financial year, the period from 1 July before the date the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on 30 June in each year.

GST: a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

Income: for a Financial Year will be the amount the Manager determines to be the “net income” of the Trust under section 95(1) of the Tax Act for the Financial Year.

Income Distribution: in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under clause 9.5.

Liabilities: all present liabilities of the Trust including any provision which the Manager decides should be taken into account in determining the liabilities of the Trust.

Liquid: has the same meaning as in the Corporations Act⁴⁰.

Listed: means admitted to and not removed from the official list of the Exchange.

Listing Rules: means the official listing rules of the Exchange and any other rules of the Exchange which are applicable while the Scheme is admitted to the official list of the Exchange, except to the extent of any express written waiver by the Exchange.

Manager:

- (a) while the Trust is a Registered Scheme, the company which is registered with ASIC as the single responsible entity for the Trust under the Corporations Act; and
- (b) while the Trust is not a Registered Scheme, the trustee of the Trust, with the first trustee being APN Funds Management Limited.

Member: the person Registered as the holder of a Unit (including persons jointly Registered).

Net Asset Value: the value of the Assets calculated in accordance with clause 8 less the Liabilities.

Redemption Price: the price at which a Unit is redeemed calculated in accordance with clause 6.

⁴⁰ Refer Part 5C.6

Register: the register of Members kept by the Manager.

Registered: recorded in the Register.

Registered Scheme: a scheme registered by ASIC as a managed investment scheme under Chapter 5C of the Corporations Act.

Registration: recording in the Register.

Resolution:

- (a) a resolution passed at a meeting of Members in the Trust:
 - (i) on a show of hands, by the required majority of Members present in person or by proxy and voting on the show of hands; or
 - (ii) on a poll, by the required majority of votes cast by Members present in person or by proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Members holding the required majority of the Units in the Trust.

Except where this constitution or any applicable law provides otherwise, the “required majority” is a simple majority⁴¹.

Tax: all kinds of taxes, duties, imposts, deductions and charges imposed by a government including GST or any amount recovered from the Manager by way of reimbursement of GST or any amount included either expressly or impliedly in an amount paid or payable by the Manager on account of GST, together with interest and penalties.

Tax Act: the Income Tax Assessment Act 1936 (“1936 Act”), the Income Tax Assessment Act 1997 (“1997 Act”) or both the 1936 Act and the 1997 Act, as appropriate.

Transaction Costs:

- (a) when calculating the Application Price of a Unit, the Manager’s estimate of the total cost of acquiring the Assets; and
- (b) when calculating the Redemption Price of a Unit, the Manager’s estimate of the total cost of selling the Assets;

provided that, subject to the Corporations Act, the Manager may in connection with any particular application or request for redemption of Units deem these costs to be a lesser sum or zero.

Trust: the trust constituted under or governed by this constitution.

⁴¹ Circumstances where a special resolution is required to include a vote on amendments to this constitution if necessary (see section 601GC(1)(a)). For voting on winding up by Members and choosing a new responsible entity see sections 601FL and 601NB

Unit: an undivided share in the beneficial interest in the Trust as provided in this constitution.

User Pays Fees: any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Member; or
- (b) any act or omission requested by a Member,

which the Manager considers should be borne by that Member.

Valuation Time: a time at which the Manager calculates Net Asset Value.

29.2 Interpretation

Unless the contrary intention appears, in this constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the words “includes” or “including”, “for example” or “such as” when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (e) amend includes delete or replace;
- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
- (g) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution; and
- (h) a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively.

29.3 Other documents

A document does not become part of this constitution by reason only of that document referring to this constitution or vice versa, or any electronic link between them.

29.4 Constitution legally binding⁴²

This constitution binds the Manager and each present and future Member and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this constitution.

29.5 Severance

If all or part of any provision contained in this constitution is void or invalid or would otherwise result in all or part of this constitution being void or invalid for any reason, then such part is to be severed from this constitution without affecting the validity or operation of any other provision of this constitution.

29.6 Governing law

This constitution is governed by the law of Victoria.

29.7 Other obligations excluded

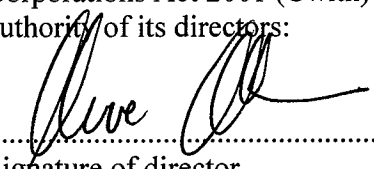
Except as required by the Corporations Act all obligations of the Manager which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any obligation of the Manager in its capacity as trustee of the Trust arising under any statute.

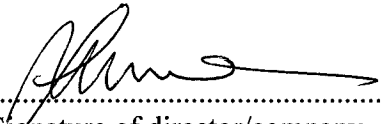
EXECUTED as a deed

⁴² Refer Section 601GB if the Trust is a Registered Scheme

Constitution Buildev Property Trust Signing page

EXECUTED by APN Funds)
 Management Limited in accordance)
 with section 127(1) of the)
 Corporations Act 2001 (Cwlth) by)
 authority of its directors:)


)
 Signature of director)
 CLIVE APPLETON)
)
 Name of director (block letters))


)
 Signature of director/company)
 secretary*)
 *delete whichever is not applicable)
 HOWARD BRENCHLEY)
)
 Name of director/company secretary*)
 (block letters))
 *delete whichever is not applicable)

DATED: 2004