

Constitution

Date: May 27th, 2010

**UNIVERSITY OF WOLLONGONG
RECREATION AQUATIC
CENTRE LIMITED**

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CORPORATIONS ACT (2001) (CTH)
COMPANY LIMITED BY GUARANTEE
CONSTITUTION
OF
UNIVERSITY OF WOLLONGONG RECREATION AQUATIC CENTRE LIMITED

PART I – OBJECTS, POWERS AND INTERPRETATION

1. NAME OF COMPANY

The name of the company is University of Wollongong Recreation Aquatic Centre Limited (“**Company**”).

2. OBJECTS OF COMPANY

The Company is established solely to:

- (a) To encourage, foster, promote, develop, extend and control sport and recreation programs services and facilities within the University;
- (b) to encourage and assist the establishment of amateur sporting clubs and recreational activities within the University;
- (c) to co-ordinate, encourage, assist and support the economic and sporting success, strength and stability of the Company and the Clubs and the represent the interests of the Clubs to the University and with other organisations and committees within the University;
- (d) to provide and maintain grounds, courts, playing fields, aquatic resources, materials, equipment and other facilities for amateur sport and recreation within the University;
- (e) control the granting of awards for sporting excellence and achievement and participation;
- (f) pursue through itself or other such entity commercial arrangements, including sponsorship and marketing, opportunities as are appropriate to further the Objects;
- (g) co-operate with or support any association, organisation, society or individual whose activities or purposes are similar to those of the Company or which advances sport and recreation within the University;
- (h) operate with, and promote mutual trust and confidence between the Company and the Members in pursuit of these Objects;
- (i) at all times act on behalf of, and in the interests of, the Members and the pursuit of these Objects;
- (j) use and protect the Intellectual Property;
- (k) promote the economic success, strength and stability of the Company;
- (l) promote the health and safety of sporting participants, officials and other individuals taking part in sport and recreation in the University in any capacity;

- (m) formulate and implement appropriate policies in relation to the operation of the Company and the conduct of and participation in sport and recreation within the University;
- (n) have regard to the public interest in its operation; and
- (o) undertake and or do all such things or activities as are necessary, incidental or conducive to the advancement of these Objects.

3. POWERS OF COMPANY

Solely for furthering the Objects the Company has the legal capacity and powers set out under section 124 of the Act.

4. INTERPRETATION

4.1 Definitions

In this Constitution unless the contrary intention appears:

Act means the Corporations Act 2001 (Cth).

Board means the body consisting of the Directors under **Rule 20**.

By-Law means any by-law, regulation or policy which may be made by the Board under **Rule 31**.

Chair means the Director elected to that position in accordance with this Constitution.

Club means an entity recognised by the Company under **Rule 6**.

Company Secretary means the person appointed to perform the duties of a company secretary of the Company.

Co-opted Director means a Director of the Company appointed by the Board in accordance with **Rule 20**.

Deputy Chair means the Director elected to that position in accordance with **Rule 28**.

Director means a member of the Board elected or appointed in accordance with this Constitution.

Executive Director means the person appointed to this position by the Shareholder who shall have such responsibilities as are set out in **Rule 29** or as determined by the Board from time to time.

General Meeting means the annual general meeting or any special general meeting of the Company.

Individual Member means a registered financial member of a Club.

Intellectual Property means all rights or goodwill subsisting in copyright, business names, names, trade marks (or signs), logos, designs, trade secrets, know-how, equipment, images, patents or service marks (whether registered or registrable)

relating to the Company or any event or activity of or conducted, promoted or administered by the Company.

Member means a member for the time being of the Company under Part II of this Constitution.

Objects means the objects of the Company set out in **Rule 2** of this Constitution.

Shareholder means the University of Wollongong established under the *University of Wollongong Act 1989 (NSW)*

State Act means the *Associations Incorporation Act 1984 (NSW)* as amended from time to time.

University means the University of Wollongong ABN established under the *University of Wollongong Act 1989 (NSW)* as represented by the Vice Chancellor or their nominee.

4.2 Interpretation

In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing any gender include the other genders;
- (e) references to persons include corporations and bodies politic;
- (f) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction); and
- (h) a reference to "writing" unless the contrary intention appears is to be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

4.3 Severance

If any provision of this Constitution or any phrase contained in it is invalid or unenforceable in any jurisdiction, the phrase or provision is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable. If the rule or phrase cannot be so read down it will be severed to the extent of the invalidity or unenforceability. Such severance does not affect the remaining provisions of this Constitution or affect the validity or enforceability of any provision in any other jurisdiction.

4.4 Expressions in Act

Except where the contrary intention appears, in this Constitution an expression that deals with a matter dealt with by a particular provision of the Act, has the same meaning as that provision of the Act.

4.5 Replaceable Rules Displaced

The replaceable rules referred to in the Act are displaced by this Constitution.

PART II – MEMBERSHIP

5. MEMBERS

5.1 Categories of Members

The membership of the Company is divided into the following categories:

- (a) Honorary Life Members who, subject to this Constitution, have no right to attend, debate or vote at General Meetings;
- (b) Life Members who, subject to this Constitution, have no right to attend, debate or vote at General Meetings;
- (c) Student Members who, subject to this Constitution, have no right to attend, debate or vote at General Meetings;
- (d) Temporary Members who, subject to this Constitution, have no right to attend, debate or vote at General Meetings;
- (e) URAC Employee Members who, subject to this Constitution, have no right to attend, debate or vote at General Meetings;
- (f) Clubs which, subject to this Constitution, have no right to attend, debate or vote at General Meetings;
- (g) Individual Members who, subject to this Constitution, have no right to attend, debate or vote at General Meetings;
- (h) University Employee Members who, subject to this Constitution, have no right to attend, debate or vote at General Meetings;
- (i) the University, which, subject to this Constitution shall have the right to attend, debate and vote at General Meetings of the Company; and
- (j) such other categories of members as are created from time to time under **Rule 5.2.**

5.2 Creation of new categories

The Board may create new categories of membership from time to time with such rights, privileges and obligations as the Board may determine, even if the effect of creating a new class is to alter the rights, privileges or obligations of existing categories of members.

5.3 Membership Process

Members will be entered on the register of Members upon consenting to act as a Member, or otherwise following the acceptance of an application for membership by the Board.

6. CLUBS

6.1 Recognition of Clubs

An entity which is a representative of, and controlling authority for, a sport or recreational activity within the University shall be recognised as a Club and shall administer that sport or recreational activity in accordance with the Objects.

6.2 Responsibilities of Club

Each Club shall:

- (a) be incorporated under the State Act; if they so desire, under conditions as agreed by the Board
- (b) provide the Company with copies of its annual financial statements, annual report and associated documents as presented to its members within 30 days of the Club's annual general meeting;
- (c) adopt in principle, the Objects and adopt rules which reflect and which are, to the extent permitted or required by the State Act, generally in conformity with this Constitution;
- (d) act in good faith and loyalty to ensure the maintenance and enhancement of the Company, its standards, quality and reputation for the collective and mutual benefit of the Members; and
- (e) at all times operate with, and promote, mutual trust and confidence between the Company and the Members in pursuit of the Objects.

6.3 Operation of Rules

The Company and the Clubs agree:

- (a) that they are bound by this Constitution and that this Constitution operates to create uniformity in the way in which the Objects and sport and recreation within the University are to be conducted, encouraged, promoted and administered;
- (b) to act in good faith and loyalty to each other to ensure the maintenance and enhancement of sport and recreation within the University;
- (c) to promote the economic and sporting success, strength and stability of each other and to act interdependently with each other in pursuit of the Objects; and
- (d) to act for and on behalf of the interests of sport and recreation within the University, the Company and the Members.

7. INDIVIDUAL MEMBERS

7.1 Deeming provision

All persons who were individual members (howsoever described) of a Club prior to the time of approval of this Constitution under the Act shall be deemed Individual Members from the time of such approval of this Constitution under the Act, and will be entitled to such benefits as are conferred on them by the Company, whether directly or indirectly.

7.2 Membership renewal

In order to remain Members, Individual Members must remain registered financial members of their Club in accordance with the procedures applicable from time to time.

8. SUBSCRIPTIONS AND FEES

8.1 Fees to be determined by Board

The annual fees and levies payable by members to the Company and the basis of, the time for and manner of payment of such fees and levies will be as determined by the Board from time to time.

8.2 Non-payment of Fees

Any member who has not paid all monies due and payable to the Company will (subject to the Board's discretion) have all rights under this Constitution immediately suspended from the expiry of the time prescribed for payment of those monies. Such rights will be suspended until such time as the monies are fully paid or such earlier time in the Board's discretion.

9. REGISTER OF MEMBERS

The Company Secretary will keep and maintain a register of members, specifying the name and address of each member together with the date on which the person became a member, and any other information as is required to be included in the register under the Act.

10. EFFECT OF MEMBERSHIP

Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and the Company and that they are bound by this Constitution and the By-Laws;
- (b) they will comply with and observe this Constitution and the By-Laws and any determination, resolution or policy which may be made or passed by the Board or any duly authorised committee;
- (c) by submitting to this Constitution and the By-Laws they are subject to the jurisdiction of the Company;

- (d) they will act with good faith and loyalty to each other to ensure the maintenance and enhancement of the Company, its standards, quality and reputation for the collective and mutual benefit for all Members;
- (e) they will not do or permit to be done anything which might adversely affect or derogate from the standards, quality and reputation of the Company;
- (f) they will at all times comply with any codes of conduct issued by the Board; and
- (g) this Constitution and By-Laws are necessary and reasonable for promoting the objects of the Company.

11. DISCONTINUANCE OF MEMBERSHIP

11.1 Termination of Membership

A person's membership of the Company ceases if the payment of monies due and payable to the Company (including but not limited to tuition fees) remain unpaid for two calendar months. Notice of default may be served by the Board on the Member and the Member removed from the register of Members. The Board may reinstate the Member and restore the name to the register on payment of all arrears if the Board thinks fit to do so.

11.2 Register to be Amended

Upon the Member ceasing to be a Member under **Rule 11.1** an entry, recording the date on which the Member ceased to be a Member will be recorded in the register.

11.3 Forfeiture of Rights

A member who or which ceases to be a Member, for whatever reason, must forfeit all right in and claim upon the Company and its property including Intellectual Property. Any Company documents, records or other property in the possession, custody or control of that Member must be returned to the Company immediately.

11.4 Membership may be Reinstated

Membership which has ceased, been withdrawn or terminated under this Constitution may be reinstated at the discretion of the Board, on application in accordance with this Constitution and otherwise on such conditions as it sees fit.

12. DISCIPLINE OF MEMBERS

Where the Board is advised or considers that a Member has allegedly:

- (a) breached, failed, refused or neglected to comply with a provision of this Constitution, the By-Laws or any resolution or determination of the Board or any duly authorised committee;
- (b) acted in a manner unbecoming of a Member or prejudicial to the Objects and interests of the Company; or
- (c) brought the Company into disrepute,

the Board may commence or cause to be commenced disciplinary proceedings against that Member, and that Member will be subject to, and submits unreservedly to the jurisdiction, procedures, penalties and appeal mechanisms (if any) of the Company which may be set out in the By-Laws.

12.2 Club Disciplinary Rules

Nothing in this rule impacts upon, or is intended to operate in any way, to effect or displace a Club's disciplinary rules. The Company may choose to not accept a matter under this rule where it considers it has been properly addressed by a Club.

12.3 Non Application of Rule

This **Rule 12** shall not apply to any incident or matter to which the member protection regulation of the Company applies. Any member protection related matter should be dealt with in accordance with the disciplinary procedure set out in the member protection regulation of the Company.

PART III - GENERAL MEETINGS

13. GENERAL MEETINGS

13.1 Meeting in accordance with Act

An annual general meeting of the Company must be held in accordance with the provisions of the Act and this Constitution and, subject to the Act, on a date and at a venue to be determined by the Board.

13.2 Special general meetings

All General Meetings other than the annual general meeting are special general meetings and must be held in accordance with this Constitution.

14. NOTICE OF GENERAL MEETING

14.1 Notice of General Meetings

Subject to the provisions of the Act relating to agreements for shorter notice, not less than twenty-one days' written notice (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) must be given of any General Meeting. The notice must be given to all persons who are entitled to attend the General Meeting and must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the meeting's business;
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
- (d) if a member is entitled to appoint a proxy, contain a statement setting out that the member has a right to appoint a proxy.

14.2 Place of Meeting

The Company may hold a meeting of its members at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

14.3 Entitlement to Attend General Meeting

Notwithstanding any other rule, no member may be represented at, or take part in a General Meeting, unless all monies then due and payable to the Company are paid.

15. BUSINESS

15.1 Business of General Meetings

The business to be transacted at the annual general meeting includes:

- (a) confirmation of the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting;
- (b) receipt from the Board and auditors of reports on the financial and operational activities of the Company during the last preceding financial year; and
- (c) appointment of the auditors in accordance with this Constitution.

15.2 Business Transacted

All business that is transacted at a General Meeting, and also all that is transacted at the annual general meeting, with the exception of those matters set out in **Rule 15.1** are special business. "Special business" is business of which a notice of motion has been submitted in accordance with **Rule 15.3**.

15.3 Notice of Motion

All notices of motion for inclusion as special business at a General Meeting must be submitted in writing (in the required form) to the Company Secretary not less than twenty eight days (excluding receiving date and meeting date) prior to the General Meeting.

16. SPECIAL GENERAL MEETINGS

16.1 Special General Meetings May be Held

The Board may, whenever it thinks fit, convene a special general meeting of the Company and, where, but for this rule more than fifteen months would elapse between annual general meetings, convene a special general meeting before the expiration of that period.

16.2 Requisition of Special General Meetings

- (a) The Board will on the requisition in writing by the University convene a special general meeting.
- (b) The requisition for a special general meeting must state the object(s) of the meeting, be signed on behalf of the University and be sent to the Company.

- (c) If the Board does not call and arrange a special general meeting to be held within twenty one days after the date on which the requisition is sent to the Company, the University may convene a special general meeting to be held not later than three months after the date on which the requisition was sent to the Company.
- (d) A special general meeting convened by the University under this Constitution must be convened in the same manner, or as nearly as possible as that, in which meetings are convened by the Board.

17. PROCEEDINGS AT GENERAL MEETINGS

17.1 Quorum

No business may be transacted at any General Meeting unless a quorum is present at all times during the meeting. A quorum for General Meetings of the Company is a majority of members entitled to vote at the General Meeting. In determining whether a quorum is present, individuals attending as proxies are not counted. If an individual is attending both as a member and as a proxy, the individual is counted only as a member.

17.2 Chair of Board to Preside

The Chair of the Board will, subject to this Constitution, preside as chair at every General Meeting. If the Chair is not present, or is unwilling or unable to preside, the Deputy Chair will preside as chair for that meeting only. If the Deputy Chair is not present, or is unwilling or unable to preside, the Directors will choose one of their number present who will, subject to this Constitution, preside as chair for that meeting only.

17.3 Adjournment of Meeting

- (a) If a General Meeting does not have a quorum present within thirty minutes after the time for the meeting set out in the notice of meeting, the meeting is adjourned to the date, time and place the Board specifies. If the Board does not specify one or more of these things, then the meeting is adjourned to:
 - (i) if the date is not specified – the same day in the next week;
 - (ii) if the time is not specified – the same time; and
 - (iii) if the place is not specified – the same place.
- (b) If no quorum is present at the resumed meeting within thirty minutes after the time for the meeting, then:
 - (i) if the meeting was called as a consequence of a requisition of members, the meeting is dissolved; and
 - (ii) in all other cases, the members present are a quorum, providing there is no less than three members present.
- (c) The Chair may, with the consent of any General Meeting at which a quorum is present, and must, if so directed by the meeting, adjourn the meeting from time to time and from place to place but no business will be transacted at any

adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

- (d) When a General Meeting is adjourned for thirty days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (e) Except as provided in **Rule 17.3(d)** it is not necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

17.4 Voting Procedure

At any General Meeting a resolution put to the vote of the meeting will be decided on a show of hands, unless a poll is (before or on the declaration of the result on the show of hands) demanded:

- (a) by the Chair; or
- (b) by at least three members entitled to vote on the resolution.

A demand for a poll may be withdrawn.

17.5 Recording of Determinations

Unless a poll is demanded under **Rule 17.4**, a declaration by the Chair that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Company is conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

17.6 Where Poll Demanded

If a poll is duly demanded under **Rule 17.4** on a matter other than the election of the Chair or the question of adjournment it must be taken when and in the manner the Chair directs. A poll on the election of the Chair or on the question of an adjournment must be taken immediately.

17.7 Resolutions at General Meetings

Except where a special resolution is required, all questions at General Meetings will be determined by the majority of votes. Each member is, subject to this Constitution, entitled to one vote at General Meetings. Except as otherwise provided in this Constitution, in the case of an equality of votes on a question at a General Meeting, the Chair is entitled to a casting vote.

17.8 Minutes

The Company Secretary must keep minutes of the resolutions and proceedings of each General Meeting in books provided for that purpose, together with a record of the names of persons present at all meetings.

17.9 Disallowance of Vote

A challenge to a right to vote at a meeting of members:

- (a) may only be made at the meeting; and

(b) must be determined by the Chair whose decision is final.

Every vote not so disallowed is valid for all purposes.

18. PROXIES AND POSTAL BALLOT

18.1 Appointment of Proxy

A member of the Company who is entitled to attend and cast a vote at a meeting of members may appoint a person as the member's proxy to attend and vote for the member at the meeting. No person may exercise more than two proxy votes at any one time. An appointment of a proxy is valid if it is signed by the member making the appointment and contains the following information and is in the form set out in **Appendix A**.

18.2 Voting by Proxy

A proxy appointed to attend and vote for a member has the same rights as the member:

- (a) to speak at the meeting; and
- (b) to vote; and
- (c) to join in a demand for a poll.

18.3 Delivery of Proxy Form

For an appointment of a proxy to be effective, the proxy form must be received by the Company at its registered office at least forty-eight hours before the meeting. If the meeting of the Company's members has been adjourned, a proxy form received by the Company at least forty-eight hours before the resumption of the meeting is effective for the resumed part of the meeting.

18.4 Validity of Proxy Vote

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:

- (a) the appointing member dies;
- (b) the member is mentally incapacitated; or
- (c) the member revokes the proxy's appointment.

18.5 Postal Ballot

Should an issue arise between General Meetings which requires a decision by members, the Board may call a postal vote in such manner as it considers necessary.

PART IV - THE BOARD

19. POWERS OF THE BOARD

The Board may exercise all of the powers of the Company except any powers that the Act or this Constitution requires the Company to exercise in General Meeting.

20. COMPOSITION OF THE BOARD

The Board comprises:

- (a) the Chair, appointed in accordance with **Rule 22**;
- (b) the Executive Director;
- (c) three Directors appointed by the University; and
- (d) up to five Co-opted Directors appointed by the Board.

No person may hold more than one position on the Board at any one time.

21. TERMS OF DIRECTORS

- (a) All Directors except Co-opted Directors shall be appointed for a term of three years, commencing from the date of their appointment.
- (b) Co-opted Directors shall be appointed in accordance with the Act for a term of one year, commencing from the date of their appointment.
- (c) All Directors are eligible to be appointed for second and subsequent terms.

22. APPOINTMENT OF CHAIR

- (a) The first Chair of the Company will be appointed by the University and, in accordance with **Rule 21**, shall hold office for a term of three years if the Chair is a Director other than a Co-opted Director or one year if the Chair is a co-opted Director.
- (b) Subsequent chairs of the Company shall be appointed by the University as soon as is practicable following a vacancy occurring in this position.

23. QUALIFICATIONS FOR CO-OPTED DIRECTORS

The Co-opted Directors may have specific skills in education, commerce, finance, marketing, law or business generally or such other skills which compliment the Board composition, but need not have experience in or exposure to operations of the Company.

24. VACANCIES OF BOARD MEMBERS

24.1 Grounds for Termination of Director

The office of a Director becomes vacant if the Director:

- (a) becomes bankrupt;

- (b) 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;
- (c) resigns office by written notice to the Company at its registered office;
- (d) becomes prohibited from being a director by virtue of the Act;
- (e) is replaced as a Director by the organisation which appointed him / her;
- (f) is absent without consent of the Board from meetings of the Board held during a period of six months;
- (g) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest in the manner required by this Constitution;
- (h) accepts remuneration, payment or other benefits other than in accordance with this Constitution;
- (i) is removed from office by special resolution under **Rule 24.2**; or
- (j) dies.

24.2 Removal of a Director

The Company in a General Meeting may remove any Director, before the expiration of their term of office, in accordance with the provisions of the Act. If a Director is removed in accordance with this rule the office of the Director becomes vacant and will be filled in accordance with the procedure set out in **Rule 24.3**.

24.3 Casual Vacancies

- (a) A vacancy in the office of any Director position shall be filled by the organisation entitled to appoint a person to that position as soon as is practicable following the occurrence of the vacancy.
- (b) Any Co-opted Director casual vacancy may be filled by the remaining Directors from among appropriately qualified persons, for the remainder of the Co-opted Director's term.

24.4 Remaining Directors May Act

In the event of a casual vacancy or vacancies in the office of a Director, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum.

25. MEETINGS OF THE BOARD

25.1 Board to Meet

The Board will meet as often as is deemed necessary in every calendar year (but on at least four occasions) for the dispatch of business and may adjourn and, subject to this Constitution, otherwise regulate, its meetings as it thinks fit. The Company

Secretary will, on the requisition of the Chair or four Directors, convene a meeting of the Board within a reasonable time.

25.2 Decisions of Board

Subject to this Constitution, questions arising at any meeting of the Board are decided by a majority of votes and all questions so decided are for all purposes to be deemed a determination of the Board. All Directors have one vote on any question. The Chair also has a casting vote where voting is equal. Proxy votes are not permitted for Board meetings.

25.3 Resolutions not in Meeting

- (a) A resolution in writing signed or assented to by facsimile, electronic mail or some other form of electronic communication by all the Directors is as valid and effectual as if it had been passed at a meeting of Directors duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Directors.
- (b) Without limiting the power of the Board to regulate their meetings as they think fit, a meeting of the Board may be held where one or more of the Directors is not physically present at the meeting, provided that:
 - (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously, whether by means of telephone or other form of communication;
 - (ii) notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board and such notice specifies that Directors are not required to be present in person;
 - (iii) in the event that a failure in communications prevents condition (i) from being satisfied by that number of Directors which constitutes a quorum, and none of such Directors are present at the place where the meeting is deemed by virtue of the further provisions of this rule to be held, then the meeting is suspended until condition (i) is satisfied again. If such condition is not satisfied within fifteen minutes from the interruption the meeting is deemed to have terminated; and
 - (iv) any meeting held where one or more of the Directors is not physically present is deemed to be held at the place specified in the notice of meeting provided a Director is there present and if no Director is there present the meeting is deemed to be held at the place where the Chair is located.

25.4 Quorum

- (a) At meetings of the Board the number of Directors whose presence (or participation under **Rule 25.3**) is required to constitute a quorum is half plus one of the Directors.
- (b) No business is to be transacted at a meeting of the Board unless a quorum is present and if, within half an hour of the appointed time of the meeting a

quorum is not present, the meeting is to stand adjourned to the same place, at the same hour of the same day the following week.

- (c) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.

25.5 Notice of Board Meetings

- (a) Unless all Directors agree to hold a meeting at shorter notice (which agreement is sufficiently evidenced by their presence), not less than three days' oral or written notice of the meeting of the Board must be given to each Director by the Company Secretary.
- (b) Notice of a meeting given under **Rule 25.5(a)** must specify the general nature of the business to be transacted at the meeting and no other business is to be transacted at the meeting, except business, which the Directors present at the meeting unanimously agree to treat as urgent business.

25.6 Validity of Board Decisions

All acts done by any meeting of the Board or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such member of the Board or that the members of the Board or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a member of the Board.

25.7 Chair of Board Meeting

The Chair will preside at every meeting of the Board. If the Chair is not present, or is unwilling or unable to preside, the Deputy Chair will preside as chair for that meeting only. If the Deputy Chair is not present, or is unwilling or unable to preside, the Directors must choose one of their number to preside as chair for that meeting only.

26. CONFLICTS

26.1 Directors' Interests

A Director is disqualified by holding any place of profit or position of employment in the Company or in any company or other legal entity in which the Company is a University or otherwise interested or from contracting with the Company either as vendor, purchaser or otherwise except with express resolution of approval of the Board. Unless approval is obtained from the Board, any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested will be void.

26.2 Conflict of Interest

A Director must declare his or her interest in any:

- (a) contractual matter; or
- (b) other financial matter;

in which a conflict of interest arises or may arise, and must, unless otherwise determined by the Board, absent himself or herself from discussions of such matter

and is not entitled to vote in respect of such matter. If the Director votes the vote will not be counted. In the event of any uncertainty as to whether it is necessary for a Director to absent himself or herself from discussions and refrain from voting, the issue should be immediately determined by vote of the Board, or if this is not possible, the matter must be adjourned or deferred.

26.3 Disclosure of Interests

The nature of the interest of such Director must be declared by the Director at the meeting of the Board at which the contract or other matter is first taken into consideration if the interest then exists or in any other case at the first meeting of the Board after the acquisition of the interest. If a Director becomes interested in a contract or other matter after it is made or entered into the declaration of the interest must be made at the first meeting of the Board held after the Director becomes so interested.

26.4 General Disclosure

A general notice that a Director is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under **Rule 26.3** as regards such Director and the said transactions. After such general notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm or company.

26.5 Recording Disclosures

It is the duty of the Company Secretary to record in the minutes any declaration made or any general notice given by a Director in accordance with **Rules 26.3** and **26.4**.

27. CHAIR

27.1 Roles and Responsibilities

The primary roles and functions of the Chair shall be to:

- (a) understand all statutory, Constitutional and procedural requirements for conducting meetings of the Company;
- (b) determine all meetings of the Board and the Company are properly convened and constituted and that a quorum is present;
- (c) inform him / herself as to the business and objects of meetings of the Board and the Company;
- (d) preserve order in the conduct of the present at meetings of the Board and the Company;
- (e) confine discussions within the scope of the meeting and within reasonable limits of time;
- (f) decide whether proposed motions and amendments are in order;
- (g) formulate for discussion and decision, questions which have been moved for the consideration of a Board or Company meeting;

- (h) decide points of order and other incidental matters which require decision at the time;
- (i) handle all matters in an impartial manner; and
- (j) supervise and accept reports from the Executive Director as set out in the employment contract and position description for that role.

28. DEPUTY CHAIR

At the first meeting of the Board following the annual general meeting each year, the Board shall elect from amongst its number one Director to act as Deputy Chair.

If the Chair is unable or unwilling to fulfil any of the duties assigned to that position in this Constitution then the Deputy Chair shall fulfil the chair's duties for any necessary period.

29. EXECUTIVE DIRECTOR

29.1 Appointment of Executive Director

The Executive Director shall be appointed by the University for such term and on such conditions as it thinks fit.

29.2 Executive Director to act as Company Secretary

The Executive Director shall act as and carry out the duties of Company Secretary. These duties shall include:

- (a) prepare the agenda for all Board meetings and all General Meetings;
- (b) record and prepare minutes of the proceedings of all meetings of the Board and the Company; and
- (c) regularly report on the activities of, and issues relating to, the Company.

29.3 Broad Power to Manage

The Company shall be managed by the Executive Director who may exercise all powers of the Company which are not, under the Act or these rules, required to be exercised by the Board or by the Company in General Meeting. The Executive Director shall administer the Company in accordance with this Constitution, the By-laws and all policy directions of the Board.

29.4 Executive Director May Employ

The Executive Director, in consultation with the Board, may employ such office personnel as are deemed necessary from time to time and such appointments shall be for such period and on such conditions as the Executive Director determine.

PART V - MISCELLANEOUS

30. DELEGATIONS

30.1 Board may Delegate Functions to Committees

The Board may by instrument in writing create or establish or appoint from among the Directors, the members, or otherwise, sub-committees or working groups to carry out such duties and functions, and with such powers, as the Board determines.

30.2 Delegation by Instrument

The Board may in the establishing instrument delegate such functions as are specified in the instrument, other than:

- (a) this power of delegation; and
- (b) a function imposed on the Board by the Act or any other law, or this Constitution.

30.3 Delegated Function Exercised in Accordance With Terms

A function, the exercise of which has been delegated under this rule, may whilst the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation. The Board shall develop a written charter for each sub-committee and working group which specifies the roles, functions and responsibilities (including all delegations and reporting obligations) and each sub-committee and working group must comply with such charter at all times.

30.4 Procedure of Delegated Entity

- (a) The procedures for any sub-committee or working group established will, with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under **Rule 25**. The quorum will be determined by the sub-committee or working group, but will be no less than the majority of the total number of sub-committee or working group members.
- (b) A Director or the Company Secretary will be ex-officio members of any sub-committee or working group so appointed.
- (c) Within seven days of any meeting of any sub-committee or working group, the sub-committee or working group must send a copy of the minutes and any supporting documents to the Company Secretary.
- (d) Persons appointed to any sub-committee or working group must comply with this Constitution, the By-laws (including codes of conduct) and any resolutions of the Board at all times in carrying out their roles on behalf of the Company.

30.5 Delegation may be Conditional

A delegation under this rule may be made subject to such conditions or limitations as to the exercise of any function or at the time or circumstances as may be specified in the delegation. Notwithstanding any delegation under this rule, the Board may continue to exercise any function which it has delegated to a sub-committee or working group.

30.6 Revocation of Delegation

The Board may by instrument in writing, revoke wholly or in part any delegation made under this rule, and may amend, repeal or veto any decision made by such sub-committee or working group under this rule where such decision is contrary to this Constitution, the By-Laws, the Act, the objects of the Company or the sub-committee's or working group's delegation.

31. BY-LAWS

31.1 Board to Formulate By-Laws

The Board may (by itself or by delegation to a committee) formulate, approve, issue, adopt, interpret and amend such by-laws, regulations and policies for the proper advancement, management and administration of the Company and the advancement of the objects of the Company as it thinks necessary or desirable. Such By-Laws must be consistent with this Constitution.

31.2 By-Laws Binding

All By-Laws made under this rule will be binding on the Company and members.

31.3 By-Laws Deemed Applicable

All by-laws, regulations and policies of the Company in force at the date of the approval of this Constitution under the Act insofar as such by-laws, regulations and policies are not inconsistent with, or have been replaced by this Constitution, are By-Laws under this rule.

31.4 Notices Binding on Members

Amendments, alterations, interpretations or other changes to By-Laws will be advised to members by means of notices approved by the Board and prepared and issued by the Company Secretary.

32. RECORDS AND ACCOUNTS

32.1 Accounting Records

The Board will cause proper accounting and other records to be kept and will distribute copies of financial statements as required by the Act.

32.2 Access to Records

The Board will from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of members not being Directors. No member (not being a Director) has any right of inspecting any accounting or other records of the Company except as conferred by statute or authorised by the Board or by a resolution passed at a General Meeting.

32.3 Auditor

- (a) An auditor will be appointed by the University on an annual basis. The duties of the auditor will be regulated in accordance with the Act. The Board shall fix the remuneration for the auditor.
- (b) The accounts of the Company (including profit and loss, balance sheet and cash flow statements) shall be examined by the auditor at least once in each financial year of the Company.

32.4 Negotiable Instruments

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by two Directors or as otherwise determined by the Board.

33. APPLICATION OF INCOME

33.1 Income and Property Applied to Objects

The income and property of the Company will be applied solely towards the promotion of the objects of the Company as set out in this Constitution.

33.2 No Income to Members

Except as prescribed in this Constitution:

- (a) no portion of the income or property of the Company will be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any member; and
- (b) no remuneration or other benefit in money or money's worth will be paid or given by the Company to any member who holds any office of the Company.

33.3 Payments in Good Faith

Nothing contained in **Rule 33.2** prevents payment in good faith of or to any member for:

- (a) any services actually rendered to the Company whether as an employee or otherwise;
- (b) goods supplied to the Company in the ordinary and usual course of operation;
- (c) interest on money borrowed from any member;
- (d) rent for premises demised or let by any member to the Company;
- (e) any out-of-pocket expenses incurred by the member on behalf of the Company; or
- (f) any other reason,

provided that any such payment may not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

34. WINDING UP

34.1 Winding Up of the Company

Subject to this **Rule 34**, the Company may be wound up in accordance with the provisions of the Act.

34.2 Liability of Members

The liability of the members of the Company is limited.

34.3 Members' Contributions

Every member of the Company undertakes to contribute to the assets of the Company in the event of it being wound up while a member, or within one year after ceasing to be a member for payment of the debts and liabilities of the Company contracted before the time at which he or she ceases to be a member, and the costs, charges and expenses of winding up and for an adjustment of the rights of contributors among themselves, such amount as may be required not exceeding \$1.00.

34.4 Distribution of Property on Winding Up

If upon winding up or dissolution of the Company there remains after satisfaction of all its debts and liabilities any assets or property, the same will not be paid to or distributed amongst the members of the Company but must be given or transferred to some body or bodies having objects similar to the objects of the Company and which prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company by this Constitution and which is also not carried on for profit and which is similarly exempt (or entitled to be exempt) from income tax. Such body or bodies to be determined by the members of the Company at or before the time of dissolution, and in default thereof by such judge of the relevant Supreme Court or such other court as may have or acquire jurisdiction in the matter.

35. NOTICE

35.1 Manner of Notice

The Company may give notice to any member:

- (a) personally;
- (b) by sending it by post to the address of the member as notified to the Board or the address for the member in the register of members or the alternative address (if any) nominated by the member; or
- (c) by sending it to the facsimile number or electronic address (if any) nominated by the member.

Any notice sent by post is taken to be given three days after it is posted. Any notice sent by facsimile or other electronic means is taken to be given on the business day after it is sent.

35.2 Entitlement to Notices

Notice of every General Meeting will be given in any manner authorised by this Constitution to:

- (a) every member except those members who have not supplied to the Company an address for the giving of notices to them; and
- (b) the auditor for the time being of the Company.

No other person is entitled to receive notices of General Meetings.

36. SEAL

36.1 Common Seal

The Company may have a common seal. If it does then:

- (a) the common seal must comply with the Act;
- (b) the Executive Director will provide for the safe custody of the common seal; and
- (c) the seal may only be used by the authority of the Board.

36.2 Execution under Common Seal

If the Company does have a common seal then it may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:

- (a) two Directors; or
- (b) one Director and the Company Secretary.

36.3 Execution without Common Seal

The Company may execute a document without using a common seal if the document is signed by:

- (a) two Directors; or
- (b) one Director and the Company Secretary.

36.4 Directors' Interests

A Director cannot witness or sign a document if the Director is interested in the contract or arrangement to which the document relates.

37. ALTERATION OF CONSTITUTION

No addition, alteration or amendment may be made to this Constitution unless it has been approved by special resolution in accordance with the Act.

38. INDEMNITY

The Company will indemnify its Directors and employees to the extent permitted under the Act against all damages and costs (including legal costs) for which any such Director or employee may be or become liable to any third party in consequence of any act or omission except wilful misconduct:

- (a) in the case of a Director performed or made whilst acting on behalf of and with the authority, express or implied of the Company; and
- (b) in the case of an employee, performed or made in the course of, and within the scope of his/her employment by the Company.

ANNEXURE A

UNIVERSITY OF WOLLONGONG RECREATION AQUATIC CENTRE LIMITED

I, _____ of _____ being a member of the
above-named Company, hereby appoint _____ of _____
or, failing that person, _____ of _____
to vote for me on my behalf at the general meeting of the Company, to be held on the
day of _____ 20____, and at any adjournment thereof.

Signed this _____ day of _____ 20____.

This form is to be used # in favour of the resolution.

against

Strike out whichever is not desired.

(Unless otherwise instructed, the proxy may vote as the proxy thinks fit.)