

CONSTITUTION

OF

**TWEED RIVER ART GALLERY FOUNDATION LIMITED
ACN 003 230 073**

(a Company Limited by Guarantee)

**CORPORATIONS ACT 2001
A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL**

**CONSTITUTION
OF**

**TWEED RIVER ART GALLERY FOUNDATION LIMITED
ACN 003 230 073**

1. (a) The name of the Company is the
"TWEED RIVER ART GALLERY FOUNDATION LIMITED"
(hereinafter referred to as the "**Foundation**").
- (b) This Constitution replaces the Memorandum and Articles of Association whereby the Foundation became Incorporated on 5th. day of February 1987.
2. The Foundation is established for the support and benefit of the public art gallery owned and operated by Tweed Shire Council and known as the Tweed River Art Gallery ("the Gallery").

DEFINITIONS

3. In this Constitution:-

"Board" means the Board of Directors, which is the governing body of the Foundation;

"Act" means the Corporations Act 2001;

"Council" means the Council of the Shire of Tweed;

"Foundation" means the Tweed River Art Gallery Foundation Limited;

"Gallery" means the Tweed River Art Gallery;

"Non-Realisable Gift" means a gift of an asset which cannot be readily realised;

"Realisable Gift" means a gift of cash or an asset that can be readily realised;

"Secretary" means any person elected or appointed to perform the duties of a secretary of the Foundation and includes an Honorary Secretary;

"State" means the State of New South Wales;

"Treasurer" means any person elected or appointed to perform the duties of a Treasurer of the Foundation and includes an Honorary Treasurer;

"Value" means the value determined by the Board.

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing lithography photography and other modes of representing or reproducing words in a visible form.

Where herein used and where the context shall so admit words importing the singular number or plural number shall include the plural number and the singular number respectively and words importing the masculine gender shall include the feminine gender or neuter gender.

Words importing persons shall, unless the contrary intention appears, be construed as including companies corporations institutions organizations and public bodies.

4. The objects for which the Foundation is established are:-

- (a) to marshal from any sources deemed appropriate interest abilities and financial support for the benefit of the Gallery and in particular and without limiting the generality of the foregoing:
 - (i) to provide financial assistance to the Gallery to enable it to purchase works of art of all types;
 - (ii) to provide financial assistance to enable all works of art acquired by the Gallery to be maintained and preserved;
 - (iii) to provide financial assistance to enable the Gallery to stage exhibitions of all types of art at any venue deemed appropriate;
 - (iv) to provide financial assistance to enable the Gallery to participate in and lend and borrow works of art for any exhibition;
 - (v) to provide financial assistance to enable the Gallery to conduct guided tours of the Gallery and lectures and to produce publications to educate the public and particularly the younger members thereof in the interests and appreciation of art;
 - (vi) to provide financial assistance for the employment of any persons deemed necessary or desirable to enable the Gallery to carry out its functions;
 - (vii) to provide financial assistance for the acquisition of land or the acquisition construction or maintenance of buildings or facilities used or to be used by the Gallery;
 - (viii) to provide financial assistance to enable the Gallery to purchase plant and equipment of all types considered necessary or desirable to enable it to carry out their functions and render enhanced service to the public;
 - (ix) to solicit and accept donations bequests legacies and gifts of all types whether subject to any special trust or not to or for the benefit of the Gallery as may be stipulated by the donor, or for

the benefit of the Gallery at the discretion of the Foundation if no such stipulation is made, PROVIDED that in case the Foundation shall take or hold any property or money which may be subject to any trust the Foundation shall only deal with it in such manner as is allowed by law having regard to such trust and PROVIDED FURTHER that the Foundation may reject any donation bequest legacy or gift without assigning any reason for its rejection;

- (x) to raise money for the purposes aforesaid by any method deemed appropriate;
 - (xi) to provide financial assistance for continuing education for professional staff.
- (b) to invest and deal with the money of the Foundation (including income derived from investments and proceeds of investments) paid or accrued to the Foundation as a direct or indirect result of a particular gift and not immediately required by it for the purposes provided for in this Constitution which may be invested from time to time in or upon such stocks bonds funds shares securities first mortgage property trusts debentures or other investments of whatever nature or kind and wheresoever situate and whether involving liability or not as the board shall in its absolute and uncontrolled discretion think fit and with like absolute power of varying such investments from time to time to the intent that the Board shall have full and unrestricted powers of investing and transposing the investments of the Foundation as if the Board were absolutely entitled thereto beneficially. The Board is expressly empowered to invest the moneys and funds of the Foundation in accordance with the provisions of the Trustee Act 1925 (as amended) and the Regulations thereunder.
- (c) to purchase take on lease take in exchange hire and otherwise acquire to sell lease or otherwise dispose of or deal in or with real and personal property of every description,
- (d) to borrow or raise money in such manner as the Foundation shall think fit and to secure the same by giving mortgages charges or other securities over any part of the real and personal property present or future of the Foundation,
- (e) to make draw accept endorse discount execute and issue promissory notes bills of exchange warrants debentures and other negotiable or transferable instruments,
- (f) to insure against fire or otherwise any insurable property of the Foundation and to pay premiums on insurance or assurance policies which the Foundation may acquire by any means,
- (g) to act as trustee of trusts and funds which may be established for the benefit of the Gallery and to establish such trusts and funds,
- (h) to undertake the production of publications and the issue thereof to members of the Foundation and others,

- (i) to do all such things as are incidental or conducive to the attainment of the above objects and powers or any of them,

PROVIDED ALWAYS THAT in the exercise of the powers herein contained the Foundation shall not apply or seek to apply any conditions relating to the policy of the Gallery whether in the choice of works of art acquired or to be acquired by the Gallery or in the manner of display of its collection or otherwise howsoever in the conduct of the Gallery and FURTHER PROVIDED that the Board of the Foundation shall be at liberty at all times and in all respects to implement the foregoing Objects in its absolute discretion.

INCOME AND PROPERTY OF THE FOUNDATION

- 5. The income and property of the Foundation howsoever derived shall be applied solely towards the promotion of the objects of the Foundation as set forth herein and no portion thereof shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to the members of the Foundation PROVIDED THAT nothing herein shall prevent the payment in good faith of reasonable and proper remuneration to any officer or servant of the Foundation or to any member of the Foundation in return for services actually rendered to the Foundation BUT SO THAT no member of the Board shall be appointed to any salaried office of the Foundation or any office of the Foundation paid by fees AND THAT no remuneration or other benefit in money or money's worth shall be given by the Foundation to any member of the Board except repayment of out-of-pocket expenses.

LIMITED LIABILITY OF MEMBERS

- 6. The liability of members is limited.
- 7. Each member of the Foundation undertakes to contribute to the property of the Foundation in the event of the same being wound up while he is a member or within one year after he ceases to be a member for payment of the debts and liabilities of the Foundation contracted before he ceases to be a member and of the costs charges and expenses of winding up and for adjustment of the rights of the contributories among themselves such amount as may be required not exceeding the sum of Twenty Dollars (\$20.00).

MEMBERSHIP

- 8. (a) Membership of the Foundation shall be available to all natural persons companies corporations institutions or public bodies who qualify for Membership in accordance with Clauses (9) and (10) hereof.
- (b) Nothing herein contained or implied shall derogate from or affect the Membership of any Member (including Foundation Members) listed on the Register of Members prior to the Resolution of the Annual General Meeting or Extraordinary General Meeting adopting the Constitution.

QUALIFICATION AND APPLICATION FOR MEMBERSHIP

9. (a) Qualification for membership shall be the making of a gift or gifts to the Foundation whether in cash or in kind of a value which shall be determined by the members at the Annual General Meeting of the Foundation. The amounts referred to in Clause (10) hereof shall remain fixed until varied as herein provided.
- (b). All gifts made to the Foundation shall remain the absolute property of the Foundation.
- (c) All applications for membership shall be in writing and shall be in such form as shall be prescribed by the Board from time to time. The Board may decline to accept any application or gift without assigning any reason therefor.

CLASSIFICATION OF MEMBERSHIP

10. Subject to Clause (9) (a) hereof there shall be four classifications of membership :-
 - (a) Persons who make a gift of \$1,000.00 or more but less than \$5,000.00 shall qualify as **Members** of the Foundation.
 - (b) Persons who make a gift of \$5,000.00 or more but less than \$15,000.00 shall qualify as **Silver Members** of the Foundation.
 - (c) Persons who make a gift of \$15,000.00 or more but less than \$30,000.00 shall qualify as **Gold Members** of the Foundation.
 - (d) Persons who make a gift of \$30,000.00 or more shall qualify as **Platinum Members** of the Foundation.
11. Members may at any time progress to a higher classification by making such additional contributions as will qualify them for membership at the appropriate higher classification.

CESSATION OF MEMBERSHIP

12. A member may resign from membership of the Foundation by giving notice in writing delivered to the registered office of the Foundation and he shall thereupon cease to be a member.

THE BOARD OF DIRECTORS

13. The Board shall be members of the Foundation comprised of:-
 - (a) The President;
 - (b) The Vice-President;
 - (c) The Honorary Secretary;

- (d) The Honorary Treasurer;
- (e) Three other Directors to be elected from the Members;
- (f) One representative of the Council being the Mayor of the Shire of Tweed or a serving Councillor nominated by the Mayor of the Shire of Tweed in the place of the Mayor;
- (g) The Director of the Gallery or in his/her absence the Acting Director of the Gallery.

The representatives elected pursuant to paragraphs (a) to (e) hereof shall be elected at the Annual General Meeting of the Foundation to be held each year and (unless such office shall be previously vacated by reason of the death of any such representative or otherwise as prescribed by this Constitution) shall hold office until the next ensuing Annual General Meeting when they shall retire from office but shall be eligible for re-election.

ELECTION OF DIRECTORS

14. The election of members of the Board shall take place in the following manner:
 - (a) Any two members of whatever category shall be at liberty to nominate any other member to serve as a member of the Board.
 - (b) The nomination, which shall be in writing and signed by the member and his proposer and seconder, shall be lodged with the Secretary prior to the commencement of the Annual General Meeting of the Foundation at which the election is to take place.
 - (c) In case there shall not be a sufficient number of candidates nominated the remaining vacancy or vacancies shall be filled by election from the floor at the Annual General Meeting or by the Board at any time.
 - (d) A Board Member appointed under clause (13) (f) or (g) shall not hold the position of President, Vice President, Secretary or Treasurer.

REMOVAL OF DIRECTORS

15. A member of the Board who has been elected thereto may be removed by an ordinary resolution of a meeting of the members and his place may be filled by an ordinary resolution of a meeting of the members at the same or subsequent meeting. A vacancy caused by any such removal shall not be a casual vacancy. Any such meeting shall be caused and conducted in similar manner to a General Meeting of the Foundation.

CASUAL BOARD VACANCIES

16. Subject to Clause (15) hereof the Board shall have power at any time and from time to time to appoint any member to the Board to fill a

casual vacancy. Any officer or other member of the Board so appointed shall hold office only until the next following Annual General Meeting.

VACATION OF DIRECTORS OFFICE

17. A member of the Board shall cease to be a member thereof if he/she:-

- (a) ceases to be a member thereof by virtue of the Act;
- (b) becomes bankrupt or makes an arrangement or composition with his creditors;
- (c) become prohibited from being a member therefor by reasons of any order made under the Act;
- (d) becomes unsound of mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (e) resigns his office by notice in writing to the Foundation;
- (f) for more than four (4) months is absent without leave of the Board from meetings of the Board held during that period;
- (g) holds any office of profit under the Foundation;
- (h) ceases to be a member of the Foundation;
- (i) is removed by the members;
- (j) is directly or indirectly interested in any contract or proposed contract with the Foundation PROVIDED THAT a member shall not vacate his office by reason of his being a member of any corporation society or association which has entered or proposes to enter into a contract with the Foundation if he shall have declared the nature of his interest in manner required by the Act.

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

18. (a) The business of the Foundation shall be managed by the Board who shall pay all expenses incurred in promoting the Foundation and may exercise all such powers of the Foundation as are not, by the Act or by this Constitution, required to be exercised by the Foundation in general meeting subject nevertheless to any provision herein contained or any provision of the Act and as may be prescribed by the Foundation in general meeting PROVIDED THAT any rule regulation or by-law of the Foundation made by the Board may be disallowed by the Foundation in general meeting and PROVIDED FURTHER that no resolution of or regulation made by the Foundation in general meeting shall invalidate any prior act of the Board which would have been valid if that resolution or regulation had not been passed or made.

- (b) The Board may exercise all the powers of the Foundation to borrow and raise money and give security by mortgage charge or lien over all its property or any part thereof and to issue debentures and other securities whether outright or as security for any debt liability or obligation of the Foundation.
- (c) All cheques promissory notes drafts bills of exchange and other negotiable instruments and all receipts for money paid to the Foundation shall be signed drawn accepted endorsed or otherwise executed as the case may be by any two members of the Board or in such other manner as the Board from time to time determine provided that at no time shall fewer than two persons so act in regard to cheques promissory notes drafts bills of exchange and other negotiable instruments.
- (d) The Board may invest money of the Foundation in such manner as the Board may in its absolute discretion determine and from time to time vary such investments as provided by Clause 4 (b) hereof.
- (e) The Board may appoint any professional or other assistance or service required by the Foundation in the carrying out of its activities and pay reasonable remuneration and fees therefor.
- (f) The Board may open any banking account and operate the same in the ordinary course of business.
- (g) The Board shall cause Minutes to be kept of all meetings of Members and Directors in accordance with the provisions of the Act.

PROCEEDINGS OF THE BOARD OF DIRECTORS

- 19. The Board may meet together for the dispatch of business adjourn and otherwise regulate its meetings as it thinks fit. Questions arising at any meeting shall be decided by a majority of votes and a determination by a majority of the members of the Board shall for all purposes be deemed a determination of the Board. In the case of an equality of votes the Chairman will have a second or casting vote. Two members of the Board may at any time requisition the Secretary to summon a meeting of the Board .
- 20. A member of the Board shall declare his interest in any contract or proposed contract with the Foundation in which he is interested or any matter arising thereout. The Board in its absolute discretion shall determine whether or not there is a conflict of interest and resolve to exclude such member from the meeting until a vote is taken. That member shall not vote in respect of any such contract or proposed contract but if he does so vote his vote shall not be counted.
- 21. The quorum necessary for transacting the business of the Board shall be five (5). The President shall preside as Chairman and if at any meeting he is not present within ten minutes after the time appointed for holding the meeting the Vice-President shall be Chairman or if he is not so present then the members of the Board present shall choose one of their number to be Chairman of the meeting.

22. The continuing members of the Board may act notwithstanding any vacancy in the Board but if and so long as their number is reduced below the number fixed by Clause (21) hereof as the necessary quorum of the Board the continuing member or members may act for the purpose of increasing the number of members of the Board to that number or of summoning a general meeting of the Foundation, but for no other purpose.
23. The Board may delegate any of its powers and functions (not being duties imposed on the Board as the directors of the Foundation by the Act or the general law) to one or more sub-committees consisting of such member or members of the Foundation as the Board thinks fit. Any sub-committee so formed shall conform to any regulations that may be imposed by the Board and subject thereto shall have power to co-opt any member or members of the Foundation and all members of such sub-committees shall have one vote.

GENERAL MEETINGS

24. (a) Annual General Meetings shall be held in accordance with the Act. All General Meetings of Members other than Annual General Meetings shall be called Extraordinary General Meetings.
- (b) All General Meetings shall be held at a place and time determined by the Board.
- (c) Notice of all General Meetings shall be twenty-one (21) days or such other period as provided by the Act.
25. The Board may whenever it thinks fit convene an Extraordinary General Meeting and shall on the requisition of at least ten (10) Members convene an Extraordinary General Meeting subject to the provisions of the Act.
26. Subject to the provision of the Act relating to special resolutions and agreements for shorter notice, twenty-one (21) days' notice at least (exclusive of the day on which the notice is served or deemed to be served) specifying the place, the day and the hour of meeting and in case of special business the general nature of that business shall be given to the members of the Foundation.
27. All business of an Extraordinary General meeting shall be special and shall be dealt with in accordance with the Act and this Constitution.

PROCEEDINGS AT GENERAL MEETINGS

28. The annual accounting year of the Foundation shall end on 30th June each year. The business of the Annual General Meeting shall be to receive and consider the Statutory Financial Accounts and Reports the election of Officers and other members of the Board and the fixing of the qualifications for each Classification of Membership.
29. No business shall be transacted at any General Meeting unless a quorum of members is present at the time when the meeting proceeds to business. Ten (10) members present in person shall be a quorum

30. If within half an hour from the time appointed for the meeting a quorum is not present the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Board may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present in person or by proxy shall be a quorum.
31. The President shall preside as Chairman at every general meeting of the Foundation or if there is no President or if he is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act the Vice-President shall be the Chairman or if he is not present or is unwilling to act then the members present shall elect one of their number to be Chairman of the meeting.
32. The Chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or the business to be transacted at an adjourned meeting.
33. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless (before or on the declaration of the result of the show of hands) a poll is demanded –
- (a) by the Chairman; or
 - (b) by at least three members present in person or by proxy.

Unless a poll is so demanded a declaration by the Chairman 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 Foundation shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

34. If a poll is duly demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairman directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.
35. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.
36. A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote,

whether on a show of hands or on a poll, by his committee or his trustee or by such other person as properly has the management of his estate, and any such committee, trustee or other person may vote by proxy or attorney.

37. The instrument appointing a proxy (including the representative of any member which is a company or corporation) shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or if the appointor is a corporation either under seal or under the hand of any officer or attorney duly authorised. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A member shall be entitled to instruct his proxy to vote in favour of or against any proposed resolution. Unless otherwise instructed the proxy may vote as he thinks fit.
38. The instrument appointing a proxy (including a representative of a member company or corporation) shall be in the form more particularly set out following Clause (45) hereof.

ACCOUNTS AND AUDITOR

39. The Board shall:
- (a) pay all moneys raised by the Foundation as soon as practicable after collection to the Foundation's Bank account and the Treasurer may reimburse thereout all reasonable costs and expenses incurred in raising such moneys PROVIDED however that the Foundation may if it thinks fit raise or accept moneys specifically given for the purpose of being managed and applied by the Foundation itself for the accomplishment of its objects and in such event the Foundation may bank any moneys so given in a special purpose bank account in its own name and manage and apply them accordingly.
 - (b) cause such Financial Accounts and Reports to be laid before each Annual General Meeting in accordance with the Act.
 - (c) cause proper accounting and other records to be kept with respect to all sums of money received and expended by the Foundation and the manner in respect of which the receipt and expenditure take place and the assets and liabilities of the Foundation and shall distribute copies of the Financial Accounts and Reports (including every document required by law to be attached thereto) accompanied by a copy of the Auditor's report as required by the Act; and
 - (d) cause the Company to have an Auditor at all times in accordance with the Act.

SEAL

40. The Company has determined in accordance with the Act that it shall not have a Common Seal.

NOTICES

41. A notice may be given by the Foundation to any member by any means as provided by the Act
42. Notices of every general meeting shall be given to the Auditors for the time being of the Foundation and to every member except those members who (having no registered address within the Commonwealth of Australia) have not supplied to the Foundation an address within the Commonwealth of Australia for the giving of notices to them. No other person shall be entitled to receive notices of general meetings.

INDEMNITY

43. Any member of the Board, Auditor, Secretary, Treasurer and other officer and employee of the Foundation shall be indemnified out of the assets of the Foundation against any liability incurred by him in defending any proceedings whether civil or criminal taken against him by reason of his actions in relation to or connected with the Foundation in which judgment is given in his favour or in which he is acquitted or in connection with any application under the Act in which relief is granted to him by the Court in respect of any negligence, default, breach of duty or breach of trust.

BY-LAWS

44. The Board may in its discretion determine by-laws for the operation of the Foundation not otherwise provided for in this Constitution.

WINDING UP

45. If upon the winding up or dissolution of the Foundation there remains, after satisfaction of all debts and liabilities, any property whatsoever the same shall not be paid to or distributed among the members of the Foundation but shall be given or transferred to the Council of the Shire of Tweed to be used for the benefit of the Gallery and in so far as effect cannot be given to the aforesaid provision then to a public art gallery or public museum or an institution consisting of a public art gallery and public museum which complies with and obtains the benefit of the provisions of the Income Tax Assessment Act, 1997 of the Commonwealth of Australia such public gallery public museum or institution to be situate within the State of New South Wales and to be determined by the members of the Foundation at or before the time of dissolution or in default thereof by such Judge of the Supreme Court of New South Wales as may have or acquire jurisdiction in the matter and in so far as effect cannot be given to the aforesaid provision then to some charitable object within New South Wales which satisfies the provisions of the Income Tax Assessment Act, 1997.