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| Application by:  | <b>Brookfield</b><br><br>Brookfield Regional Networks (Victoria) Pty Ltd (ABN 69 163 231 696)  |
| Application for: | <b>Gas Distribution Licence</b><br>Brookfield Regional Networks (Victoria) Pty Ltd applies for a limited scope licence under section 25 of the <i>Gas Industry Act 2001</i> to provide services by means of a distribution pipeline in Victoria. |
| Contact person:  | Mr Ted Bell<br>Legal, Risk and Compliance Manager  |
| Date submitted:  | 8 <sup>th</sup> November 2016  |

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## **ABBREVIATIONS**

**AEMO** – Australian Energy Market Operator

**AER** – Australian Energy Regulator

**BEA** – Brookfield Energy Australia Pty Ltd

**BRE** – Brookfield Regional Energy (Victoria) Pty Ltd

**BRN** – Brookfield Regional Networks (Victoria) Pty Ltd

**BTGNH** – Brookfield TGN Holdings Pty Ltd

**CNG** – compressed natural gas

**ENWAVE** – Enwave Australia Pty Ltd

**ESC** – Essential Services Commission

**ESV** – Energy Safe Victoria

**EWOV** – Energy and Water Ombudsman Victoria

**RDV** – Regional Development Victoria

**RGIP** – Regional Gas Infrastructure Program

**TGN** – Tas Gas Networks Pty Ltd

**TGR** – Tas Gas Retail Pty Ltd

## Executive Summary

The Victorian Government's 2013-14 Budget announced the Energy for the Regions program (Program). This Program is to invest \$100 million through the Regional Growth Fund to drive new investment in regional communities and new industry and business opportunities. The Program was to fast-track delivery of natural gas to an initial 14 towns, invest in a major upgrade to Mildura's natural gas supply capacity, and fund a feasibility study of the provision of natural gas to communities along the Murray River. Through the Program, the State Government aims to make natural gas available to these communities via the creation of alternative means of delivering natural gas where traditional pipeline delivery is not economic.

This Program, administered by Regional Development Victoria (RDV) has since been continued under the Regional Gas Infrastructure Program (RGIP) with the aim to supply reticulated natural gas to communities across regional and rural Victoria.

The RGIP is now fully committed. RDV has finalised agreements to supply natural gas to a total of 18 regional Victorian towns under the RGIP. RDV has reached agreement with Brookfield Regional Networks (Victoria) Pty Ltd, Brookfield Regional Energy (Victoria) Pty Ltd and Tas Gas Retail Pty Ltd (Developer) to supply natural gas to 11 regional towns namely Heathcote, Invermay, Lakes Entrance, Maldon, Orbost, Terang, Kerang, Nathalia, Robinvale, Marong and Swan Hill (Regional Towns) (Project).

In Victoria, gas distribution networks are generally connected to high pressure transmission pipelines which are linked into the Victorian natural gas network. In this traditional supply chain, distributors are responsible for the distribution network from the offtake of the transmission pipeline up to and including the meter installed at the customer's property. However, in the case of these eleven geographically dispersed communities, it is not economically viable to connect these communities via traditional pipeline infrastructure to the main Victorian gas network.

Instead BRN is proposing to build a traditional distribution network to supply natural gas to its customers but that network will receive gas via a virtual pipeline solution which involves BRE compressing natural gas in compressor at 'Mother Stations' in regional and metro locations, trucking the compressed gas to the outskirts of each town to a 'Daughter Station', where gas is stored and depressurised and injected into the network. The initial proposed reticulation boundaries are set out in the maps at [Appendix C](#).

This Project commenced in October 2014 and it is expected that all Regional Towns will have access to reticulated natural gas within four years. As a result of this Project, a total of at least 12,500 residents and industries will be able to connect to natural gas.

Through a Development Agreement (Agreement) the Developer has agreed to deliver natural gas to customers in the Regional Towns utilizing the CNG infrastructure outlined above and RDV have agreed to provide funding to assist the Developer to complete the Project. A copy of the Agreement has been provided to the ESC.

This innovative model will enable the supply of natural gas to these towns for the first time and the provision of those services has been made possible through the support of the Victorian Government and the co-ordination of various additional Brookfield entities responsible for purchasing gas, transporting CNG and retailing natural gas to end use customers. It is the most economical way of providing natural gas reticulation to these towns.

The provision of gas to each Regional Town will initially commence with a single retailer option and thus consumers will not have a choice to change to an alternate retailer until such time as an alternate retailer chooses to enter the market.

The key factors that will affect gas pricing in the townships include:

- a) any change in the retail gas commodity price obtainable by Brookfield Energy Australia at the Mother Station sites;
- b) any material change in trucking transportation costs; or
- c) ensuring competitiveness with competing fuels such as LPG.

To enable this supply model and the successful provision of natural gas distribution services to customers in these Regional Towns, BRN requires a Gas Distribution Licence under section 25 the *Gas Industry Act 2001*.

BRN believes that the issuance of a distribution licence is consistent with the ESC's objectives under the *Essential Services Commission Act 2001* and the *Gas Industry Act 2001*:

- consumers in the towns that have access to distributed natural gas and choose the service will only do so where they determine they will be better off;
- the supply of natural gas will enable more competition in the existing Regional Towns for energy services comprising electricity, LPG and wood thereby stimulating improved efficiency and services in the sector;
- services will be provided and the business operated in compliance with all laws, regulations and codes to ensure the service is reliable and safe; and
- all consumers (including low income and vulnerable consumers) will benefit from competition and choice.

BRN has the technical capacity to provide the services. BRN's parent company, Tas Gas Networks (TGN), is a gas distribution business in Tasmania offering services to approximately 46,500 commercial and residential services. BRN will draw on the expertise and personnel of TGN, as required, to assist in the provision of distribution services and to utilize and access the systems, processes and procedures required to plan, construct, maintain and operate the system. TGN and BRN will also share services and expertise relating to managing the business and ensuring compliance with obligations.

BRN will be financially viable. BRN has provided business models and cash flow models for the next 5 years demonstrating the viability of the business. Revenue will be received through distribution charges paid by retailers for distribution services and the costs to be incurred by BRN will reflect the financing costs of construction and the ongoing maintenance and operations of the business.

Revenue forecasts reflect the forecast connections and loads expected in the Regional Towns. These forecasts have been reviewed through Brookfield's corporate governance processes.

Where costs reflect charges from third party suppliers, arrangements and agreements are in place to manage the costs, provide incentives for efficiencies and incorporate ongoing reviews and procedures for resolving conflicts. BRN's internal cost forecasts are based on those experienced by TGN to provide similar services in another jurisdiction as well as consideration of construction costs experienced in Victoria.

BRN is owned by TGN which has demonstrated compliance in the provision of natural gas distribution services under a regulatory licence in Australia over the last 13 years. TGN will be providing support to BRN in the form of corporate services including Commercial, Finance, Human

Resources, IT Support and Legal, Risk and Compliance. In addition, the services to be provided by BRN have the support of the State Government through the Agreement.

BRN looks forward to a positive outcome from the application process and the commencement of this new and innovative approach to the provision of distributed natural gas services in Victoria.

## Section 1: The applicant and nature of the application

### 1.1 The Applicant

Name: Brookfield Regional Networks (Victoria) Pty Ltd

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A copy of BRN's certificate of registration and Constitution is located at [Appendices A and B](#).

BRN is a new entity within the Brookfield group established to provide distribution services in Brookfield's unique operating model and intends to construct, maintain and operate the 11 discrete gas distribution networks.

### 1.2 Type of licence sought

BRN seeks to apply for a licence under section 25 of the *Gas Industry Act 2001* to provide services by means of a distribution pipeline in Victoria as a part of the Victorian State Government's Regional Gas Infrastructure Program. The provision of gas to the Regional Towns networks under the program will be via the use of a unique compressed natural gas virtual pipeline delivery model owned by BRE.

This licence would be limited in scope and scale to the areas identified in section 1.4 of this application (and see [Appendix C](#)). It is requested that this licence comes into effect as soon as practicable.

### 1.3 Fit and proper person

BRN is part of the Brookfield global group of companies, an alternative asset manager focussed on property, renewable power and infrastructure assets with over US \$240 billion of assets under management. In Australia, Brookfield global groups' operating platforms include infrastructure, commercial office, construction, services and residential development.

The Brookfield global group has the systems, processes and personnel in place to ensure viable and sustainable operations of the business and the ability to deliver on stated corporate objectives.

BRN has put in place an experienced and effective Board and Executive team to carry out the operations and deliver on the objectives of BRN to positively contribute to the commercial returns of the global group.

BRN submits that BRN, its parent entities, and its Executive and Board (experience and capability outlined in section 3.3 of this application) satisfy the requirements that the licence be granted to a fit and proper person.

For further entity and corporate structure information, please refer to sections 1.7 and 1.8.

## 1.4 Proposed scope of operations in Victoria

For simplicity, BRN proposes that the area covered by the licence be expressed in terms of the following postcodes, albeit that the proposed reticulation may not extend to all premises in these postcodes. The proposed reticulation boundaries are set out in the maps at [Appendix C](#).

| Area           | Postcode |
|----------------|----------|
| Lakes Entrance | 3909     |
| Orbost         | 3888     |
| Terang         | 3264     |
| Invermay       | 3352     |
| Heathcote      | 3523     |
| Marong         | 3515     |
| Maldon         | 3463     |
| Kerang         | 3579     |
| Swan Hill      | 3585     |
| Robinvale      | 3549     |
| Nathalia       | 3638     |

### 1.4.1 Market size

The agreed footprint of network reticulation with RDV will see approximately 12,500 households and small businesses passed. It is anticipated that there will be organic growth of the reticulated area beyond the agreed footprint with RDV where customer demand results in viable extensions of the network and this may result in over 50% of the market being connected over time. Further information regarding market analysis of each town is provided in BRN's business case.

### 1.4.2 Background

The Victorian Government's 2013-14 Budget announced the *Energy for the Regions* Program. This Program is to invest \$100 million through the Regional Growth Fund to drive new investment in regional communities and new industry and business opportunities. The Program was to fast-track delivery of natural gas to an initial 14 towns, invest in a major upgrade to Mildura's natural gas



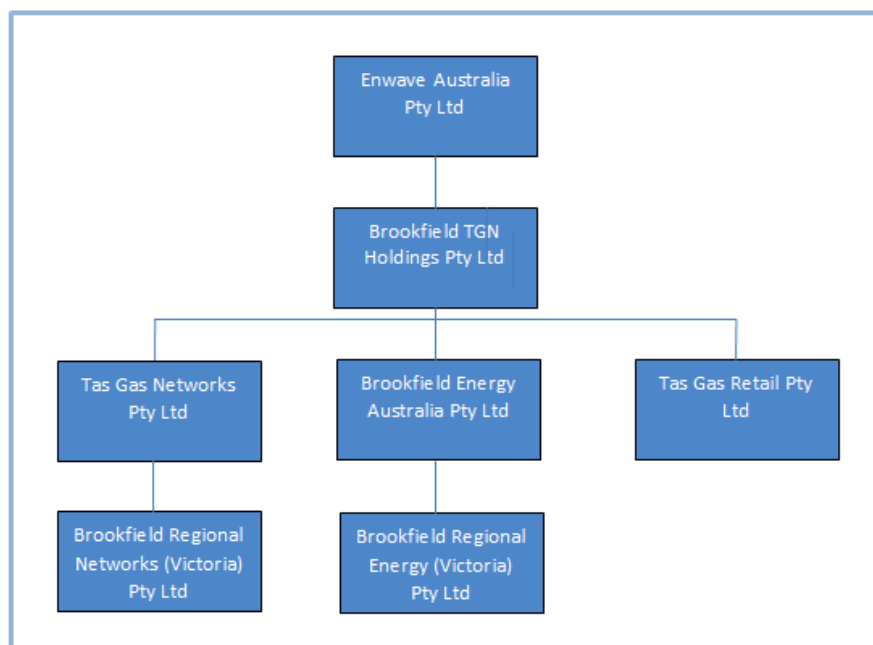
supply capacity, and fund a feasibility study of the provision of natural gas to communities along the Murray River.

This Program has since been continued under the RGIP with the aim to supply reticulated natural gas to communities across regional and rural Victoria to facilitate the creation of alternative means of delivering natural gas to Victorian energy consumers where traditional pipeline delivery is not economic. The Program is administered by RDV.

The RGIP is now fully committed. RDV has finalised agreements to supply natural gas to a total of 18 regional Victorian towns under the RGIP. RDV has reached agreement with the Developer, through the provision of an \$85 million agreement dedicated to the development of the necessary infrastructure, to supply natural gas to the Regional Towns shown above. These Regional Towns will be connected using a compressed natural gas solution that will be owned by BRE.

However, as these towns are geographically dispersed and are relatively small in size, it was not viable to construct a series of high pressure gas transmission lines to connect these towns to the Victorian market. Instead BRN, in partnership with BRE and TGR proposed an innovative natural gas supply model whereby: natural gas is purchased via a retailer from the Victorian market; compressed in a compressor at the Mother Station in regional and metro locations that receive gas from a gas distribution network connection from the single retail provider; trucked to the outskirts of each town to Daughter Stations; and where gas is stored, depressurised and in turn reticulated via pipes to homes and businesses within each town.

The diagram below illustrates the structure of Enwave Australia Pty Ltd (Enwave), the parent company of Brookfield TGN Holdings Pty Ltd (BTGNH), and its subsidiaries that are responsible for enabling natural gas to be distributed in the Regional Towns:



Without these entities being part of the BTGNH group, this innovative model would not have been envisaged and implementation would have been difficult. Cooperation and shared vision has been essential to the success of the conception and construction of this Project.

However it should be stressed that these entities operate as separate entities with their own Boards and governance structures to deliver the services and there will be a strict ring fencing policy in place between BRN and TGR to ensure non-discriminatory access to other retailers wishing to enter the market. A copy of the Ring Fencing Policy is attached in [Appendix J](#).

In this distribution model, BRN, as the distributor, will have contracts in place with BRE and TGR (and any other retailers wishing to enter the market) to provide gas distribution services from the output flange of the custody transfer meter, placed downstream of each Daughter Station, to customers connected to the distribution system.

## 1.5 Supply Model

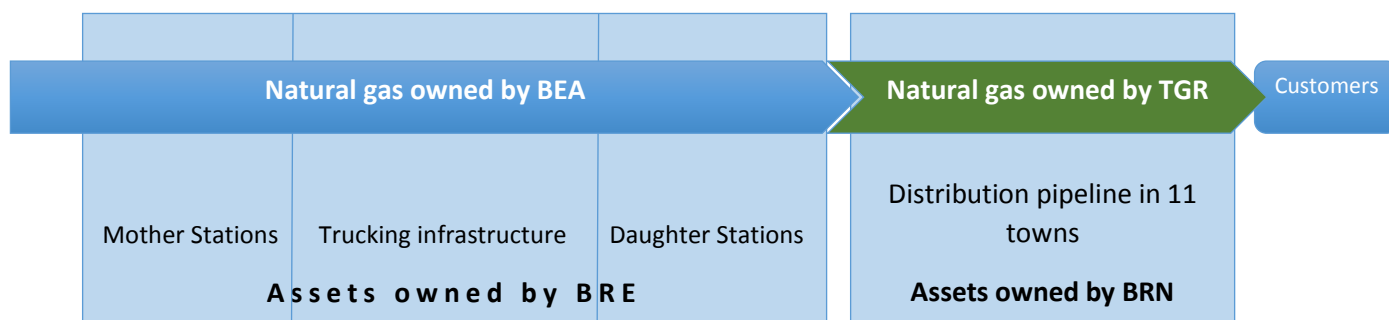
In this innovative supply, model arrangements for the supply of natural gas to BRE's compression and dispensing infrastructure will be undertaken by BEA. BEA will purchase, as a retail gas customer, from an existing retailer/s (BEA will not be a participant (buyer) in the wholesale market).

BRE will lead the way in an innovative delivery method of natural gas through the use of highly sophisticated equipment "virtual pipelines" by compressing and trucking CNG to the outskirts of the towns where it will be decompressed and supplied through BRN's conventional gas distribution network.

BRN's role in the Project is to establish and operate a distribution network in each of the Regional Towns. This network will commence from an output flange down stream of the custody transfer meter at the Daughter Station (owned by BRE) in each town. BRN will enter into a retail arrangement to distribute gas (purchased from BEA) to the retailer's customers. In order for this Project to commence TGR will be the foundation retailer for the Regional Towns. BRN will also be responsible for physical connections of customers to the network, and installing and reading customer meters.

The Developer expects all Regional Towns to have access to reticulated natural gas within four years. As a result of this Project, a total of at least 12,500 residents and industries will be able to connect to natural gas.

The supply chain, between the various Brookfield entities within this Project, is shown in the figure below:



The commercial agreements are currently undergoing final legal sign off however to provide comfort and reassurance to the ESC that the appropriate agreements will be in place we have attached the draft versions to this licence application ([Appendices H & I](#)). Also attached is a Customer Transfer and Reconciliation Code which is proposed to apply to all parties operating in the distribution area in lieu of the Retail Market Procedures (RMPs) as set out in this application ([Appendix M](#)).

The Daughter Stations do not form part of the distribution network they are an integral part of the “virtual pipeline” transportation system that carries the gas from Mother Stations connected to the covered Victorian gas distribution network to the local network in each town.

Therefore, BRE, as the owner and manager of the “virtual pipeline” transportation system, also owns the Daughter Stations (as well as the trucks, transportable storage modules and Mother Stations and all other associated infrastructure linked to the transportation system).

Under the proposed model the Daughter Stations are not traditional custody transfer stations. They are sophisticated and specialised CNG Dangerous Goods Storage and Handling facilities requiring specialised expertise to deal with the management of dangerous goods under the *Dangerous Goods Act 1985*. BRN, as a typical gas distributor, does not have that specialised expertise and so it is essential that BRE, a company with expertise in handling CNG in accordance with the Dangerous Goods Act, does have the responsibility and control of the Daughter Stations.

BRN, operating as a typical local network distributor, specialises in managing the gas distribution networks that commence at the output flange of each custody transfer meter which is placed downstream of each Daughter Station. BRN is not responsible for the “virtual pipeline” or the manner of transportation and management of gas to the custody transfer meter and has no expertise with the transfer, storage and handling of CNG or management of Dangerous Goods facilities which require substantially greater compliance processes than a typical network custody transfer station.

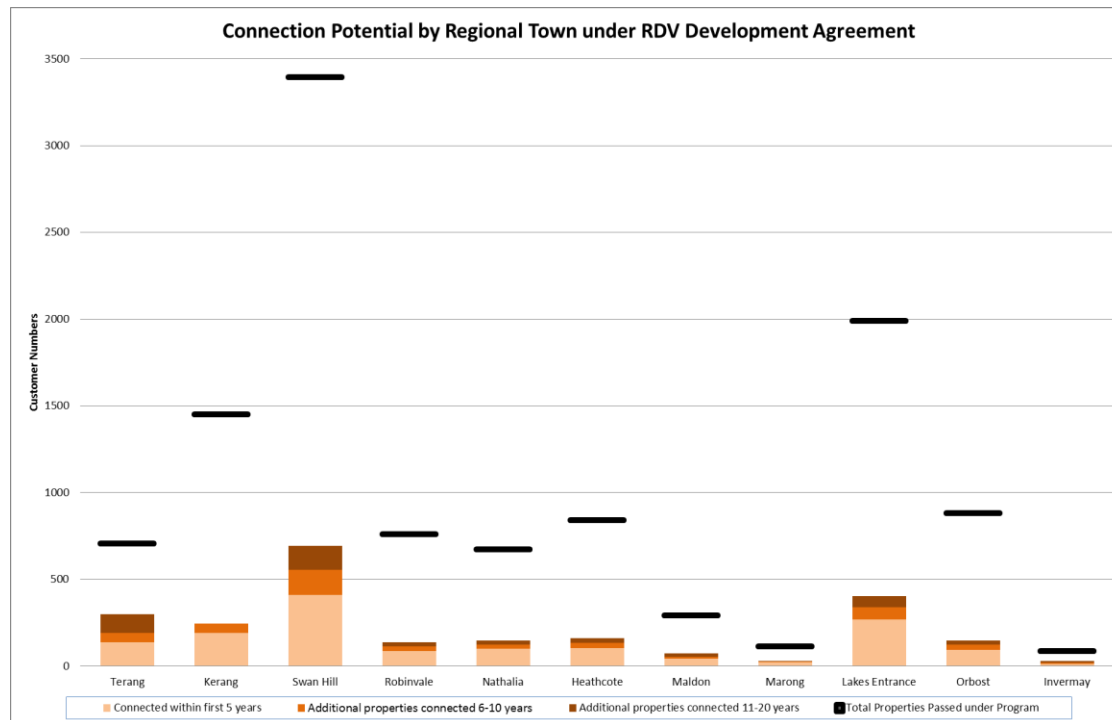
The four main components of the supply chain that make provision of natural gas viable are set out below.

### 1.5.1 Distribution Network Area

There are approximately 12,500 households and small businesses expected to be covered by the footprint of the distribution network. It is anticipated that over a period of 10 years the conservative connection rate will be approximately 20% or approximately 2,400 customers in total across Regional Towns. Each customer is expected to consume up to 30 GJs of gas per annum (the total annual consumption at year 10 would be comparable to what a single small industrial customer may

consume in a year). In comparison, the largest incumbent Victorian gas distributor has 687,000 customers.

The graph below is a conservative view of the number of anticipated connections at the five, ten and twenty-year mark and shows the potential opportunity for further connection growth. The graph does not include any potential for connecting properties not included in the Program.



The estimated connection rate is based on a high level survey carried out in 2014 by the BRN commercial team. This is a pessimistic view of the number of connections likely and in some towns connection rates could, over time, be closer to the 30-50% rate or greater as seen in other recent Victorian Government supported regional township rollouts.

It is anticipated that the delivered cost of natural gas may not be sufficiently competitive to entice residents using fuel sources such as wood and electricity to pay the high conversion cost to connect to natural gas however the tariff will be set at a rate which is competitive with LPG for residential customers. It should be noted however that the sourcing of free wood in a number of the proposed townships is now being restricted by local authorities, which may entice a switch for some residents. Details of this analysis may be found in the business case.

Engagement with commercial and industrial customers indicates that natural gas will not be competitive with LPG prices which are directly linked to low oil prices (a trend felt across Australia). However if oil prices rise and natural gas becomes competitive with bulk LPG supplied to local commercial and industrial customers in each town then the connection rate will be significantly higher. As can be seen by the above graph there is plenty of scope for an increase in connections should there be a change in oil or electricity prices.

In addition to the agreed number of properties passed under the Agreement, there will be opportunities to expand into other areas within certain towns due to new sub divisions and mains

extensions that are commercially viable for BRN to fund. Thus the opportunity for additional connections is greater than shown in the graph when non Program properties are factored in. At the time of application non Program opportunities in Marong, Swan Hill and Lakes Entrance are being finalised.

### 1.5.2 Injection of gas in to the distribution system

The way natural gas will be injected in to the distribution network is described below.

BRE will transport the CNG to each Daughter Station where it will de-compress the CNG and inject it in to the network. BRE will own and operate these stations and have arrangements in place with BEA to deliver CNG commodity to the station and with an agreement with BRN for BRE to supply the natural gas into the distribution network.

Retailers will have access to the receiving stations and can purchase the natural gas from BEA and arrange for BRE to compress the gas, transport the CNG to the Daughter Stations and de-compress and inject the gas into the network. Alternatively, a retailer could invest in their own facilities to compress and transport natural gas to the Daughter Stations and enter in to an arrangement with BRE to de-compress and inject the natural gas in to the BRN distribution network. The retailer would also enter into an agreement with BRN to supply the gas to the customers on their behalf.

### 1.5.3 Supply Chain

The four main components of the supply chain that make provision of natural gas viable are as follows:

**Mother Stations** – The Project allows for the construction of three (3) independent compression and dispensing stations for CNG into bulk storage located around Victoria. These stations are owned and operated by BRE. The Mother Stations will be connected via a single meter to a traditional Victorian distribution network. BRE's parent entity, BEA will run a competitive tender process to purchase the gas to be compressed at the compression stations.

**Key Considerations** – Traditionally wholesale gas is purchased by a retailer and transported through transmission pipelines to distribution networks where it is supplied to customers. In this supply chain, the retailer is chosen by BEA based on a competitive price. Only one retailer will be able to supply gas to each Mother Station for compression and transportation. As BEA is a retail customer purchasing gas from a retailer on the Victorian distribution network, the gas has been fully accounted for in the retail market by AEMO.

**CNG Transport** - A number of prime movers in B-double configuration owned and managed by BRE will transport bulk CNG from Mother Stations and deliver it to the Daughter Stations in each town. BRE will be managed by BEA. Retailers will be able to contract with BEA for the supply of gas at each Daughter Station.

**Key considerations** – It is anticipated that due to the small market size of these townships, it will not be cost effective for retailers to organise their own independent CNG compression and transportation (including regulatory and compliance requirements). There are currently no other

providers within Victoria with the CNG facilities or truck modules undertaking this service. There are also no other providers in Australia who are currently delivering natural gas to small regional townships in this manner. This however does not preclude a provider from competing with BRE nor seeking equitable access to Daughter Station facilities.

**Daughter Stations** – Owned and managed by BRE, each station receives CNG from CNG transport and stores it on-site at each town. As gas is needed, it is automatically decompressed and supplied into a conventional gas distribution network for supply to customers. BEA in conjunction with BRE will monitor the levels of CNG in storage and will maintain at least two (2) days of supply on site at all times, scheduling deliveries accordingly. Retailers will likely enter into arrangements with BEA to purchase the de-compressed natural gas and have it injected in to BRN's distribution network. Where there is more than one retailer, each retailer's purchases will be determined based on metering data provided by BRN.

**Key Considerations** – Retailers will have access to the Daughter Station facility for the purposes of accessing gas provision and for the purposes of injecting their own gas should they make an investment in compliant transportation infrastructure.

Retailers will be able to contract with BEA for the purchase of natural gas downstream of the flange from the Daughter Stations and will be charged on the basis of their respective customer consumption which will be provided by BRN on the basis of customer meter reads and/or estimates for each town.

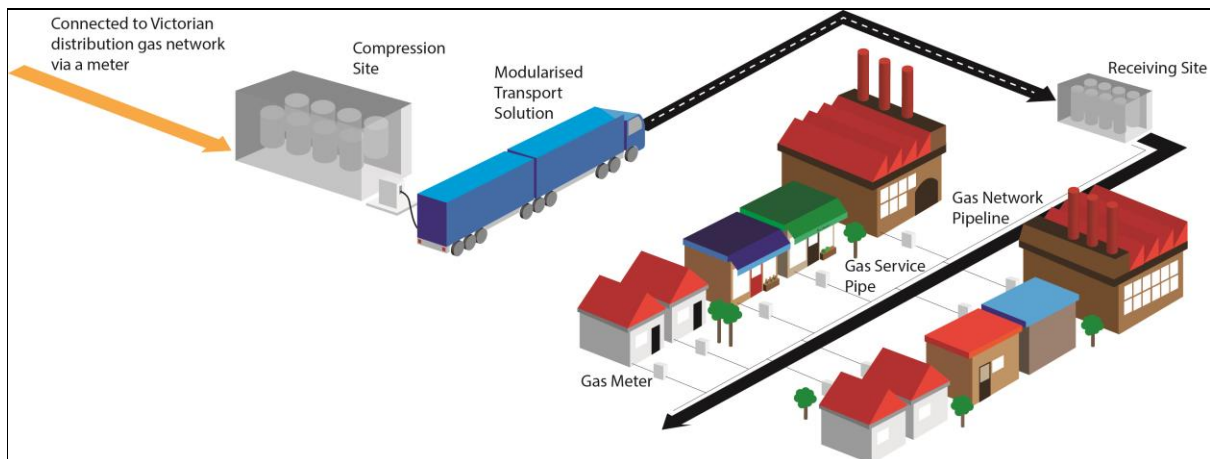
**Town Distribution Networks** - From the outlet of each Daughter Station, BRN will roll out a conventional gas distribution network within each town enabling consumers to access reticulated natural gas.

**Key considerations** - Traditionally a distributor is responsible for gas supplied via a meter on a transmission pipeline into the distribution network where it is supplied to customers. In this supply chain, the distributor will be responsible for the gas supplied through a meter from the Daughter Station into the distribution network. Otherwise the natural gas distribution network will operate as a traditional network in so far as the distributor's role in facilitating the supply of natural gas to customers and undertaking meter readings.

**AEMO Registration** - Through the licensing process it has been established that it will be cost prohibitive for BRN and the retailer(s) to put in place systems and procedures to register with AEMO and comply with the RMPs (and associated Gas Interface Protocol). In addition AEMO are satisfied that the gas (which will be purchased from an existing Victorian Distribution Network) has been adequately accounted for.

**Key considerations** - It is proposed that a customer transfer and reconciliation code will apply to BRN and the retailer/s operating in these towns. The code is closely aligned to the RMP's with the one difference being that BRN will play the role of AEMO with regard to facilitating customer transfers between retailers, connections and disconnections from the Network.

## Supply Chain summary diagram:



Further information on the Project is available at [www.vic.tasgas.com.au](http://www.vic.tasgas.com.au)

## 1.6 Licence conditions

BRN are seeking the following variation to the standard licence conditions:

### 1.6.1 AEMO and Retail Market Procedures

Following discussions with AEMO, and in consideration of the small number of customers in each township, the separation of these townships from the Victorian Declared System, the high cost of compliance, and the small unique operating model, BRN is seeking a variation to the conditions of the distribution licence to remove the requirement to register with AEMO and operate under the RMPs. In seeking a variation, a lower cost alternative model is proposed which will not impact on customers and, based on experience interstate, may be acceptable to other retailers also seeking to enter these markets.

AEMO operates the energy markets and systems, delivers planning advice and as such administers the RMPs in Victoria. Of relevance to the Victorian gas sector, registration is required for participants in the declared wholesale gas market and regulated retail markets, with scope for some exemptions.

For the purposes of section 91BI of the National Gas Law, BRN will not be a service provider for the declared transmission system, will not inject natural gas into the declared transmission system, will not operate storage facilities connected to the declared transmission system, and will not buy or sell natural gas in the declared wholesale gas market. AEMO's functions relate to the transport and wholesaling and retailing in the Victorian declared transmission and distribution system, gas injections and withdrawal from the system, and buying and selling in the declared wholesale and retail gas market. BRN will not be carrying out any of these activities in these declared systems.

It should be noted that the Gas Interface Protocol and AEMO's FRC Hub was established for the purposes of dealing with large numbers of connections and the associated large volume of transactional communication between a distributor and multiple retailers to facilitate: customer movement; meter management; service orders; trouble orders; disconnections and reconnections; and many other data sharing aspects.

For instance, Multinet, a typical Victorian Distributor, has around 680,000 customers and hence the Gas Interface Protocol and the FRC Hub enables these processes to be streamlined due to the large transactional volumes between multiple parties. In comparison, BRN transaction levels and retailer communication will be significantly lower with its customer base of approximately 12,500 customers. The use of the Gas Interface Protocol and AEMO FRC Hub is unlikely to enable the most efficient management of a small amount of transactions due to the implementation cost and higher fixed and ongoing costs of using the system compared to other efficient alternatives which enable compliance whilst meeting the ESC's objectives.

BRN seeks a variation to the conditions of the distribution licence to remove the requirement to register with AEMO and operate under the RMPs. The cost to BRN of registering with AEMO is estimated to be in excess of \$200,000 in the first year and over \$150,000 in subsequent years. It is estimated that the cost would equate to an additional \$45 per GJ in the first year and, even if full connection targets are met after 20 years, the cost of registering would still add in excess of \$3 per GJ to the delivered cost of natural gas to these Regional Towns. Further detail is provided at [Appendix N](#) for ESC's reference.

BRN has held discussions with AEMO about the need to register as a market participant and the associated high costs. AEMO have communicated to us that they are not impacted by BRN not being registered. If BRN is not registered there will be no requirement to comply with the RMPs or the Gas Interface Protocols (see email from AEMO at [Appendix O](#))

BRN considers that due to the small number of customers in each township, the geographical separation of these townships, the high cost of compliance and unique operation model that registration with AEMO makes it difficult for BRN to meet the ESCs objectives with respect to efficient distribution services and scope for competition (in this case the provision of an alternative competitive fuel source) that promotes the long term interests of the Victorian customers.

Therefore, in lieu of the requirement to comply with the RMPs, BRN proposes to put in place a code for both retailers and the distributor to give effect to the requirements under the RMPs appropriate with its supply model. Under this approach, the distributor provides the coordination role traditionally provided by AEMO, particularly with regards to facilitating a smooth process for customer transfers. A code substantially similar to the one attached to this application (see [Appendix M](#)) is successfully implemented in another Australian jurisdiction and is incorporated into state legislation. Such a code would only continue until such time as registration is required and if AEMO require adherence with the RMPs and the associated Gas Interface Protocol.

Hence BRN is requesting that its distribution licence makes explicit a clause along the following lines:

"Any obligations created by this licence that reference the Australian Energy Market Operator (AEMO) or the Retail Market Procedures (Victoria) either directly or by incorporation of matters covered by those Procedures shall apply only if:

- (i) BRN becomes registered as a Distributor (in relation to the Victorian retail market) with AEMO, or
- (ii) any of the pipelines in Victoria serviced by Brookfield Regional Networks Pty Ltd (BRN) become 'covered' pipelines under the *National Gas Law*; or
- (iii) any of the pipelines serviced by BRN become part of the Victorian 'declared distribution system' under the *National Gas (Victoria) Act 2008* (Vic); and



- (iv) until the preceding conditions are triggered a Customer and Transfer Reconciliation Code (Code) will be in place in lieu of the application of the Retail Market Procedures (Victoria).

The Code will be submitted to the Commission for its review and acceptance. Any amendments to the Code, sought by affected parties, will be submitted to the Commission for its consideration and approval. BRN acknowledges that the Commission, in consultation with affected parties, is able to make amendments to the Code as it sees fit.”

### **1.6.2 Third Party Retailer Access**

Due to the complexities associated with the proposed CNG infrastructure there is a need to ensure equitable third party retailer access. BRN requests that its distribution licence includes the following clauses:

## **1. THIRD PARTY ACCESS TO CNG INFRASTRUCTURE**

### **1.1 Obligation to negotiate in good faith**

- (a) Where any person seeks access to any infrastructure that is owned or operated by the Licensee, the Licensee must:

- (i) negotiate in good faith where the access sought by the person can be provided in a safe manner; and
- (ii) use its best endeavours to reach agreement on terms that are fair and reasonable having regard to the long term interests of consumers.

- (b) The Licensee must not engage in any conduct for the purpose of preventing or hindering any person from seeking and/or obtaining safe access to any infrastructure that is owned or operated by the Licensee.

### **1.2 Provision of information to the Commission**

- (a) The Commission may request the Licensee to provide it with information in relation to the operation of its CNG Infrastructure.

- (b) Any requests for information by the Commission may include information concerning:

- (i) the capacity of the gas reticulation network in a location including the contracted capacity;
- (ii) the capacity of the gas reticulation network in a location that is currently available or may be available in the future;
- (iii) the number of requests for access to the CNG Infrastructure received by the Licensee within a prescribed period of time and the status of those requests;
- (iv) details of any agreements entered into by the Licensee and any third party (including a related body corporate) under which the Licensee provides access to its CNG Infrastructure to any person;

- (v) any proposals by the Licensee to carry out an extension/expansion to the CNG Infrastructure;
- (vi) the operation and maintenance of the CNG Infrastructure (including costs incurred or to be incurred by the Licensee).

### **1.3 Compliance with Condition by related body corporate**

- (a) Any obligation or requirement imposed on the Licensee under this Licence shall extend to any related body corporate of the Licensee.
- (b) To the extent necessary, the Licensee shall procure the compliance of all its related bodies corporate with the conditions of this Licence.
- (c) If the CNG Infrastructure ceases to be owned, operated or controlled by a related body corporate of the Licensee, the Licensee must, and must procure that its related body corporate (as applicable) procures the third party to execute a deed of covenant (in a form and on terms acceptable to Commission) under which that person agrees to be bound by the conditions of this Licence.

### **1.4 Non-compliance with Licence Conditions**

- (a) In addition to any rights or remedies which may be available under the Gas Industry Act 2001 (Vic) or the Essential Services Commission Act 2001 (Vic), if the Licensee does not comply with clauses 1.1, 1.2 or 1.3 of these Conditions, then:
- (b) The Commission may provide the Licensee with a Notice of Non-Compliance setting out the nature of the Licensee's non-compliance.
- (c) Upon receiving a Notice of Non-Compliance, the Licensee will have 10 business days (unless otherwise agreed) in which to satisfactorily remedy the non-compliance. Prior to carrying out any steps to remedy its non-compliance, the Licensee must advise the Commission on what steps it proposes to take to remedy its non-compliance.
- (d) If the Commission does not object to the Licensee's proposed course of action to remedy its non-compliance, the Licensee must expeditiously carry out its proposed steps to remedy its non-compliance.
- (e) If, after the expiration of 10 business days (or the period otherwise agreed) from the issue of the Notice of Non-Compliance, the non-compliance has not been remedied and no other arrangement for its remedy has been agreed to by the Licensee and the Commission, the Commission may request the Licensee to prepare and submit to it an undertaking, in terms that are satisfactory to the Commission.
- (f) If requested by the Commission, the Licensee must, within 10 business days (unless otherwise agreed) of the Commission's request, prepare and submit an undertaking in respect of the relevant CNG Infrastructure and submit it to the Commission.
- (g) If the Licensee fails to submit an undertaking to the Commission within 10 business days (or the period otherwise agreed) of the Commission's request, the Commission may impose on the Licensee an undertaking that has been prepared by the Commission which is in terms that are satisfactory to the Commission.

### **1.5 Obligation to notify Commission**

If the Licensee becomes aware that any CNG Infrastructure will cease to be owned, operated or controlled by a related body corporate of the Licensee, the Licensee must notify the Commission of such information.

#### **1.6 Variation of Licence**

- (a) The Commission may, in its absolute discretion, vary the conditions of this Licence by a notice to the Licensee if any CNG Infrastructure ceases to be owned, operated or controlled by a related body corporate of the Licensee.
- (b) Condition 1.6(a) does not limit the circumstances in which the Commission may vary the conditions of this Licence.

#### **DEFINITIONS:**

- 1. **'CNG Infrastructure'** includes the CNG Infrastructure and Reticulation Infrastructure as defined in the Development Agreement entered on 22 September 2014 by the State of Victoria, Brookfield Regional Networks Pty Limited, Brookfield Regional Energy Pty Limited, and Tas Gas Retail Pty Ltd.
- 2. **'Related body corporate'** includes a body corporate related to the Licensee as defined in section 9 of the *Corporations Act 2001 (Cth)*.

#### **1.7 Entity information**

BRN is a wholly owned subsidiary of Enwave, which is part of the global Brookfield group.

Brookfield is a global alternative asset manager focused on property, renewable power and infrastructure assets with over US\$240 billion of assets under management. In Australia, Brookfield's operating platforms include infrastructure, commercial office, construction, services and residential development.

The following figure shows Brookfield's global scale:



## 1.8 Corporate Structure

Other licences obtained by the group for similar activities delivering niche, innovative projects such as district energy systems in NSW are held by the group including:

- Brookfield District Energy
- Central Park – Tri-generation
- FLOW Systems – Water Utilities Licence (NSW)
- FLOW Systems – Retail Licence (NSW)
- Tas Gas Networks – Distribution Licence (Tasmania)
- Tas Gas Networks – Pipeline Licence (Tasmania)
- Tas Gas Retail – Retail Licence (Tasmania)

To date, Brookfield has no unsuccessful gas licence applications in Victoria or any other jurisdiction.

## 1.9 Board members

The role of the Board is to represent the shareholder and to promote and protect the interests of the company.

| Name               | Title  |
|--------------------|--|
| Dr Anthony Vaughan | BRN Director and Chairman of the BTGNH Board<br>Brookfield Infrastructure: Senior Vice President – Australian Operations               |
| Michael Tebbutt    | BRN Director and Board member of the BTGNH Board<br>Vice President and CFO of Brookfield Infrastructure Group's Australian operations. |
| Jeff Kendrew       | BRN Director and Board Member of the BTGNH Board<br>Brookfield Infrastructure: Managing Partner  |

No board members have previously been disqualified.

The experience of the Board is set out below.

### Dr Anthony Vaughan

Anthony is Senior Vice President –Brookfield Infrastructure Group Australia. Anthony holds a Bachelor of Engineering (Mechanical) from Queensland Institute of Technology, a Masters in Maintenance Management, and a PhD from Central Queensland University. He is a Certified Professional Engineer with the Institute of Engineers, Australia and a member of both the Institute of Asset Management (UK) and Australian Institute of Company Directors.

Anthony is a director on a number of other operating company boards within the Brookfield Group including BTGNH and BEA.

#### **Michael Tebbutt**

Michael joined Brookfield Infrastructure Group Australia in June 2011 as Group Financial Controller before assuming the role of Vice President and CFO of Brookfield Infrastructure Group's Australian operations. In his role he has had experience in a range of financial reporting and infrastructure business matters including advising on acquisitions and ventures. Prior to joining Brookfield, Michael was Senior Audit Manager at PricewaterhouseCoopers, Sydney which included a 5 year secondment to New York. Michael holds a Bachelor of Business (Accountancy) from the University of Technology, Sydney and has been a member of the Institute of Chartered Accountants in Australia since 2002.

Michael is a director on a number of other operating company boards within the Brookfield Group including DBCT Management, BTGNH, and Flow Systems.

#### **Jeff Kendrew**

Jeff is a Managing Partner and the Chief Development Officer of Brookfield Infrastructure Group Australia (BIG). Jeff was previously Prime Infrastructure's CEO from 2007 and Managing Director from 2009, prior to joining Brookfield in March 2010. Prior to joining Prime Infrastructure, Jeff was General Manager, Corporate Development for Powerco Limited, an electricity and gas distribution business in New Zealand, and also the General Manager of Operations for Wairarapa Electricity Limited, also in New Zealand.

Jeff holds a Bachelor of Engineering (Electrical) from the University of Canterbury New Zealand, and MBA (Technology Management) from Deakin University. He is a member of the Australian Institute of Company Directors and Electrical Engineers, New Zealand.

Jeff is a director on a number of other operating company boards within the Brookfield Group including DBCT Management, Brookfield Rail, BTGNH, BEA, Flow Systems, and Quadrant Energy.

### **1.10 Compliance**

BRN is not facing any prosecutions or regulatory complaints against it or associated persons or key personnel.

## Section 2: The Commission's objectives

BRN understands that in performing its functions and exercising its powers, the objective of the ESC is to promote the long term interests of Victorian consumers (s. 8(1) of the *Essential Service Commission Act 2001 (Victoria)* (ESC Act)). BRN also understands that in assessing an application the ESC will have regard to the price, quality and reliability of essential services (s. 8(2) ESC Act). The *Gas Industry Act 2001* also sets the objectives to promote a consistent regulatory approach between the gas industry and the electricity industry and to promote the development of full retail competition (s. 18).

As noted above, the granting of the gas distribution licence will permit natural gas to be offered to customers in the Regional Towns to which natural gas is currently not reticulated. This will offer a new service to these customers (an alternative to existing energy sources) that would be unlikely to occur but for the Victorian Government's agreement with BRN. Customers will not be required to connect to the network or enter a contract with a retailer. The provision of gas supply services, will need to compete with existing energy providers (including electricity, as well as LPG and wood fuel sources common in these areas).

Based on Brookfield's experience in providing gas to consumers in Tasmania, it is submitted that the proposal will promote the long-term interests of Victorian consumers by making available an additional reliable and efficient energy choice and stimulating competition in energy services that is likely to result in improved services and lower prices to consumers.

BRN understands that in seeking to achieve the ESC's objectives, the ESC should have regard to the following matters to the extent that they are relevant in any particular case:

### **A. Facilitate efficiency in the industry and incentives for long term investment**

The availability of an additional energy option will stimulate competition in the provision of energy services, driving efficiencies in investment and the supply of energy services. Distribution networks consist of long life assets that can continue to provide services for decades. BRN has an incentive continue to invest in the maintenance and operation of these assets to maximise the service performance of these assets.

Currently the only gas supplied in the Regional Towns is from bottled gas delivered to premises. Reticulated natural gas will be able to utilise economies of scale and deliver natural gas efficiently and cost effectively. Consumers will also not need to reorder gas cylinders. The gas reticulation infrastructure will ensure ongoing, long term investment in the Regional Towns.

### **B. Facilitate the financial viability of the industry**

The areas proposed to be included within the scope of the licence are all areas that have previously been determined to be uneconomic for reticulated natural gas supply. This is the rationale behind the government's RGIP program. Hence, the BRN network in these areas will in no way affect any other activities or opportunities within the industry. The Directors of BRN are of the view that a successful application for a gas distribution licence in Victoria will over time further promote the financial viability of the Victorian energy industry. The proposal will ultimately provide consumers in the Regional Towns an additional option of energy choice.

### **C. Degree of, and scope for, competition within the industry**

The provision of reticulated natural gas will increase competition and the scope for competition through increasing the options for energy supply resulting in choice for consumers and stimulating competition pressure on prices and services.

BRN considers that the ability to reticulate natural gas in the proposed areas will provide for significant benefits for consumers in the Regional Towns, who previously did not have access to reticulated natural gas. The Agreement will add much needed competition to existing energy sources in these towns. This will provide an additional option for consumers and will introduce a degree of competition from other energy sources such as electricity, bottled gas, or wood. The Agreement does not mandate that any customers must connect to the network so natural gas will need to be price and service competitive with other energy sources to attract and retain customers.

Brookfield, through its agreement with Regional Development Victoria has agreed to a price cap where tariffs through the vertically integrated supply chain cannot be more than 15% greater than the tariffs of the nearest town with natural gas supplied through the Victorian declared market. This price cap applies when the Developer achieves a residential customer take up of greater than 60% of the premises passed in any Regional Town where the average residential customer load exceeds 25 GJ per annum. Should another retailer choose to enter a town(s), the price cap provision falls away in lieu of a competitive pricing mechanism.

### **D. Health, safety, environmental and social legislation applying to the industry**

BRN and its parent and related parties have a demonstrated track record in complying with and achieving targets related to health, safety and environment. The directors of BRN are committed to providing a safe workplace that is committed to the sustainability of the environment and the wellbeing of its employees and customers. All employees and suppliers will have similar values and operate within a compliance culture and focus. BTGNH has operated distribution networks in Tasmania (through TGN) for many years in compliance with relevant industry codes and standards related to its employees and customers. BTGNH recently celebrated 4 years without any lost time injury.

### **E. The benefits and costs of regulation (including externalities and the gains from competition and efficiency) for— (i) consumers and users of products or services (including low income and vulnerable consumers); (ii) regulated entities**

BRN is committed to complying with its obligations under the distribution licence. However, BRN has sought relief from some conditions as a result of identifying that the cost of complying with these additional conditions are greater than the benefits customers will receive as a result of compliance.

BRN's small but dedicated and experienced team will offer an excellent service consistent with that experienced by TGN's customers.

BRN supports the ESC's continued review of obligations on licence holders, particularly in relation to those obligations which may provide limited benefits to customers and, potentially, limit competition. BRN looks forward to the support of the ESC in relation to the Brookfield innovative supply model and its commitment to balancing the interests of the customer with the cost of compliance.



## **F. Consistency in regulation between States and on a national basis**

BRN, a small scale entity, is part of a group of companies operating in more than one jurisdiction and strongly supports consistency of approach in regulations between states and nationally. BRN believes that the issuing of a gas licence for the proposed model would not be inconsistent with regulation between states and nationally particularly if the licence enabled BRN to operate consistently with its parent company operations in Tasmania.

The proposed model is the first regional township model of its kind in Australia and BRN also believes that the objective of consistency should not be a barrier to innovation.

## **Section 3: Technical capacity**

### **3.1 BRN's ability to provide distribution services**

Starting from 1 August 2016, BRN intends to provide gas distribution services in the Regional Towns in country Victoria. End users will not be automatically connected to the network. The decision to connect an individual customer will be made by BRN based on various factors including the distance to passing network infrastructure and connection costs, likely demand of the user, and the obligations under the Agreement.

BRN will draw on the systems, processes, resources and staff of Tas Gas Networks (TGN), BRN's parent company. TGN is a natural gas distributor, delivering natural gas to homes and businesses in Tasmania. Its network makes gas available to approximately 50,000 of Tasmania's commercial and residential customers.

TGN began operations in May 2003 with the commencement of design processes. The construction of its network was divided into two major stages. The first stage of the project, which was completed in July 2005, involved the laying of 100 km of gas pipe in the urban areas of Hobart, Launceston, Longford, Westbury, Bell Bay, Wynyard and Devonport. The second stage, which was completed in April 2007, involved laying a further 612 km of gas pipe across Hobart, Launceston, Burnie and Devonport. Since this time further extensions have resulted with more than 1,500km of pipe laid in Tasmania. TGN's primary focus is on owning and operating the gas network, with other parties becoming involved in the retailing of gas.

BRN's parent company TGN is an experienced distributor in Tasmania. TGN has appropriate governance arrangements and a suite of policies to ensure that the business has people, processes and systems to deliver its full range of services in a manner that is compliant with all industry, regulatory, legislative and best practice requirements.

All TGN and BRN's distribution functions are conducted in-house including:

- network operations;
- maintenance and incident management;
- contract management;

- compliance functions;
- asset management / engineering; and
- meter reading and billing.

BRN is supported with internal services through TGN such as:

- Legal, Risk and Compliance;
- Corporate Services i.e. Human Resources and Administration;
- Financial Services;
- Information Technology; and
- Administration.

If required, BRN will engage external consultants and subject matter experts to provide supplementary industry support.

BRN will be, as far as possible, utilising TGN's existing infrastructure to support its Victorian operations, and/or adapting the existing systems and expertise in Tasmania to deliver its services in Victoria via:

- Construction and maintenance capability – construction of the networks is to be undertaken by experienced and competent contracting firms that have demonstrated experience in delivering projects in a timely manner. A comprehensive tendering process and assessment regime is in place to aid the selection process. Maintenance of the network is to be undertaken by BRN Field Technicians strategically located in order to respond to any issues in accordance with nominated protocols and response requirements.
- Emergency response management – a call handling facility has already been established for Victoria. This service will provide 24/7 emergency response handling and tracking via TGN's On Call and Emergency management structure. This structure includes, but is not limited to, the following key roles; Duty Engineers, First Response Technicians, Contracted service providers, Media Management specialists and Senior Management colleagues. Localised and broader industry support (i.e., mutual aid agreements) will be in place with the CFA, SES, Councils and other distribution companies within Victoria. The Emergency Response phone number for the BRN towns has been selected; this number will be broadly advertised in the White Pages and communicated within the appropriate brochures and retailer information packages.
- Billing System – BRN will utilise TGN's existing billing and customer management system as its Victorian platform. Through this system, customer interactions are managed and recorded for enhanced customer experience, compliance and reporting functionality. This software is specifically designed for utility billing and is supported by our finance software package installed in 2009. This system completes multiple functions including:
  - accounts payable;
  - accounts receivable;
  - asset management;
  - inventory;
  - job costing;
  - cash management; and

- general ledger and financial reporting.
- Metering – meters will be installed in compliance with the *Distribution System Code*, including the provisions for installation standards, testing, and recording and provision of metering data. These will be met, as applicable, with the *Market Rules* and *Retail Rules*.
- BRN will read the meters as frequently as is required to enable the retailer to discharge its obligations and exercise its rights consistent with the *Energy Retail Code* and the applicable *Retail Rules* (clause 8.1 (a) *Gas Distribution System Code*). Best endeavours will be used to read them every 3 months and in any event at least once in every 12 -month period.
- Customer protection – BRN will utilise automated processes within their management system to assist customer service representatives to comply with the Retail Code. BRN has appropriate policies and procedures for customer information collection and management that is compliant with the *Privacy Act 1988*.
- Complaints procedures – All complaints are handled in line with the TGN complaints and handling policy and procedures, which ensures that requirements set in the Australian Standard ISO 10002 (2006) Complaint Handling are met. Customer complaints are recorded and handled in the first instance by the BRN connections and billing teams with the ability to immediately escalate to their managers. If the complaint cannot be resolved at this level a direct escalation path exists to the LRC Manager. In any event all customer complaints are recorded in a central database and their progress tracked by the LRC team.
- Disputes – Established protocols for dispute resolution processes are consistent with the Australian Standards and will include membership with the Energy and Water Ombudsman of Victoria (EWOV).
- Legal, Risk and Compliance, Corporate Services (encompassing Human Resources, IT and building/infrastructure management), Executive Services and Finance – BRN will be supported by corporate services provided by its parent company, TGN. Corporate services provide the necessary policies and procedures for a safe and effective working environment for BRN's staff, systems and compliance activities.

These policies govern staff behaviours within the business and risk is managed through the knowledge and adherence to these policies. The policies are endorsed and supported by senior management and the Board.

- Document retention – Document control, amendments, review and retention is managed through our controlled document store "Sharepoint". A hierarchy of access and user functionality is in place to manage Sharepoint access.
- Staff capabilities – The Victorian-based project team comprises: Project Director, Operations Manager, Technical Specialists, seven Field Technicians, Two Supervisors, Contracts Administrator and a Program Officer, additional contract specialists and support roles will be engaged as and when the work demands necessitate.

Tasmanian support groups/staff include: Finance, Legal Risk and Compliance, Asset Management, Corporate Services and Commercial. Although demand driven, the number of Tasmanian support colleagues working on the Project on any given day is estimated to be in the order of 10- 15.

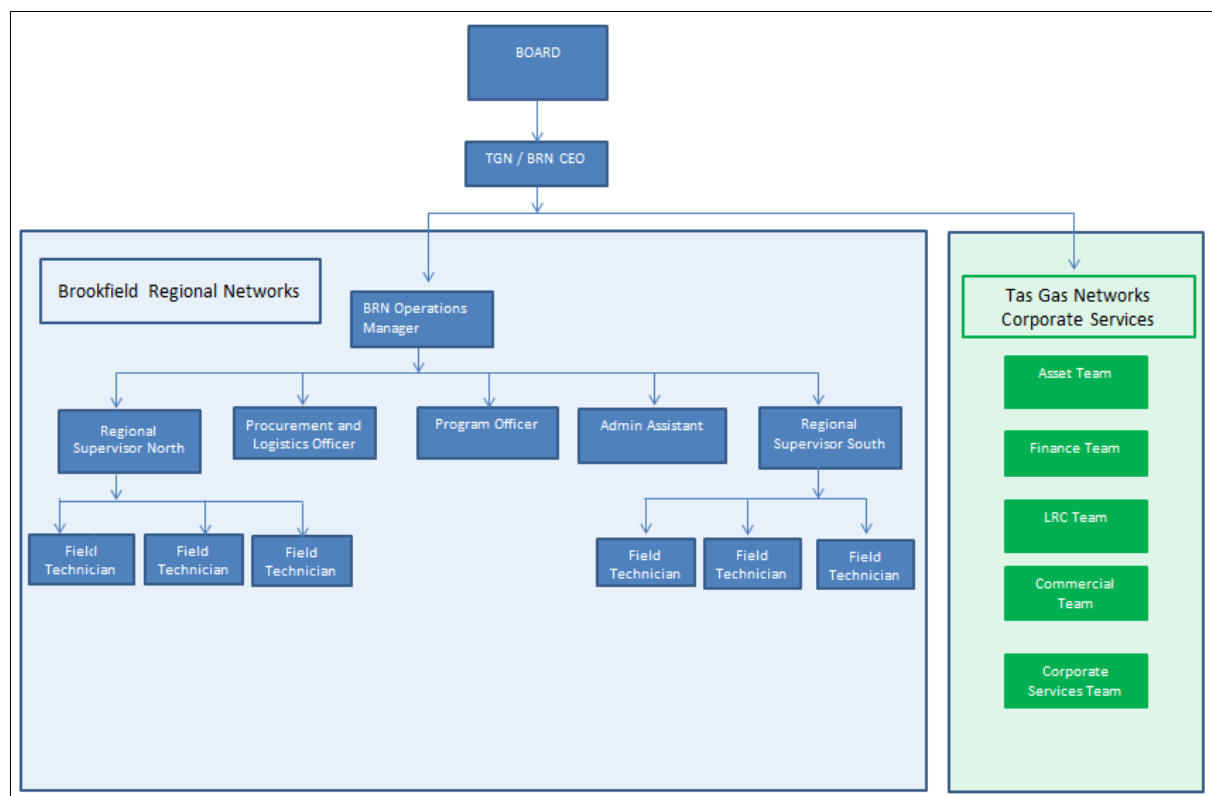
All our employees are required to have suitable qualifications relevant to their position and duties. In addition, all employees receive regular training and maintain continuing education in their area of expertise. BRN has a company code of conduct that sets out acceptable behaviour and interaction with colleagues, customers and other external parties.

- Workforce planning

Human Resource specialists from TGN will assist BRN with workforce planning issues and the recruitment of staff. The major considerations for staffing levels and skills required are:

- job role and tasks required across the network;
- the size of the network and its geographic dispersal;
- mix of skills and numbers of staff needed to undertake the safe operation of the network;
- forecast workload and demand for gas;
- HSE considerations including Formal Safety Assessment and ALARP plans;
- reliability of supply considerations;
- maintenance and operational compliance requirements;
- response times and emergency response requirements;
- absences caused by sick leave annual holidays and training days for our team;
- budget implications; and
- Corporate Services provided by TGN.

The following chart shows the organisational structure of BRN and TGN Corporate Services:



BRN & TGN Corporate Services Organisational Structure

## 3.2 Policies

Brookfield has a range of policies that will be applied to BRN's Victorian operations. These are included as appendices as outlined below:

- Risk management policy (Appendix G).
- Asset Management plan (available on request).
- Compliance Plan (Appendix K)
- Other systems – In addition to the risk management policy noted above, the following policies are available:
  - Health and safety policy
  - Brookfield Code of Conduct 2014/ TGN Code of Conduct Policy
  - Recruitment and Selection Policy
  - Training Policy

BRN will comply with the *Privacy Act 1998*, and in line with the National Information Privacy Principles 2014 ensure that all information is held in accordance with and only for the purpose of providing energy goods and services. A privacy statement is available on the website: <https://www.vic.tasgas.com.au/privacy>.

## 3.3 Key personnel

The key personnel profiles below demonstrate that BRN has the relevant and adequate experience to enable it to comply with all relevant regulatory requirements. No executives have previously been disqualified from management of corporations.

### **Simon Himson – CEO**

Simon Himson has spent the past 15 years in the gas sector commencing with Duke Energy in 2001 with the building and commissioning of the Tasmanian Gas Pipe and then with Alinta Energy, Babcock and Brown Power and over the past 6 years with Brookfield TGN Holdings. All of these roles involved the provision of gas infrastructure from transmission, distribution, generation through to metering. Prior to that Simon has held senior development roles in the Tasmanian Government and the private sector. Simon was a CPA for over 25 years and has a MBA majoring in Marketing.

The CEO will work in consultation with the Board to fulfil its governance function and provide leadership and direction to employees toward the achievement of the company's overall strategic plan and goals. Specific areas of focus across the business will be as follows:

- Ensuring the safety of all staff, contractors and the public.
- Ensuring compliance with all environmental legislation / regulation / codes etc.
- Maintaining satisfactory financial performance and achieving periodic financial targets.
- Developing and delivering on the key objectives and strategies of the business plan.
- Development and pursuit of growth and expansion opportunities within any mandate set by the Board.

- Interfacing with major stakeholders (government, regulators, suppliers, competitors, industry associations etc).
- Developing and implementing business policies, practices and procedures.
- Developing, implementing and maintaining appropriate financial and operational risk management guidelines.
- Managing human resources, including engagement, succession planning, development, attraction and retention, union liaison etc.

### **Mark Yates – Network Operations Manager**

Mark Yates, Network Operations Manager, has been employed within the natural gas industry for over 29 years during which time he has occupied numerous positions including but not limited to: Operations Manager, Field Manager, Residential Business Manager, Project Manager and Construction Manager within Tasmania.

The majority of his career has been spent within Canberra and NSW, and to a lesser extent Victoria. During this time, he had the opportunity to work in many areas within the Gas Infrastructure and Operations business units within AGL, Agility, and Jemena, encompassing the aspects of design, regulatory compliance, construction and project management. He has managed the APT assets from Young to Wilton (a 34-inch transmission pipeline) as well as management of the Gorodok Ethane pipeline from Young to the Southern Highlands in NSW. He has held the critical position of Manager and Controller for Emergency Incidents including: Dubbo over pressurisation of the distribution network; Gas Incident that closed down lanes on the Sydney Harbour Bridge at peak hour; and Canberra bushfire, isolation and remediation of approximately 6,000 consumers / supply points, liaison contact for the SES and associated response agencies. Mark possesses a Diploma in Management and Mechanical Engineering.

### **Steven Bayley – Commercial Manager**

Stephen Bayley, Commercial Manager, has extensive experience in senior management within private enterprise, including more than 10 years in the gas industry. He has experience in finance, general management and an excellent record of success in the development and management of projects. Stephen's qualifications include a B. Com. CSA and CPA.

The Commercial Manager operates at an executive level within BTGNH, reporting to the CEO and participating in the development and implementation of strategies, and priorities for the business.

### **Ted Bell – Legal, Risk & Compliance Manager (LRC)**

Ted Bell has extensive experience in senior management covering project management and corporate services (Human Resources, Industrial Relations, Training and HSEQ). Significant large project experience including; Basslink, Eastlink, Tamar Valley Power Station and the recently completed Brighton By Pass (Joint Venture). Ted's qualifications include certification in Project Management, Field Engineering, Human Resources, and HSEQ.

The LRC Manager operates at an executive level within BTGNH, reporting to the CEO and participating in the development and implementation of strategies, and priorities for the business. This position provides BTGNH and its subsidiary companies including BRN and TGR with support through the development and management of key business systems including but not limited to; Legal matters including litigation, working with internal and external legal counsel, Enterprise Risk

Management, Contract Management, Health Safety and Environmental Management, Compliance Management including legislative and regulatory reporting, Auditing and investigation. The LRC Manager will identify and action business improvements including relevant policies and procedures and has an excellent understanding of relevant legislation, codes and guidelines associated with the Project and is knowledgeable in all relevant legislation, laws, regulations, standards, codes and policies and procedures.

The LRC Manager holds the position of Management Representative for the BTGNH Executive.

#### **Andrew Bambridge – Asset Manager**

Andrew Bambridge has been the Asset Manager since 2006. Andrew has 31 years' experience in gas and water engineering sector with international experience and qualifications. He is a qualified mechanical and gas engineer with experience in gas production, transmission, distribution, LNG liquefaction and vaporisation, chemical engineering, gas service and installation and gas metering. Formerly, he was principal engineer within British Gas and also Superintendent on multi-million dollar contracts. Andrew is qualified in BSc Gas and Mechanical Engineering, HND in Law and HNC in Accounting.

The Asset Manager operates at an executive level within BTGNH, reporting to the CEO and participating in the development and implementation of strategies, and priorities for the business. The Asset Manager will provide effective and efficient technical advice and administrative support in infrastructure planning and asset management to achieve industry best practice in the monitoring and control of BRN's infrastructure assets. He will continually develop and maintain BRN's infrastructure asset management system and implement the asset management strategy along with developing, gaining approval and implementing innovative effective policies and procedures for the continual ongoing accurate update of the asset register data for maintenance, capital works, control of input and reporting of asset information. The Asset Manager will ensure that BRN's asset management system and data base is maintained, auditable and current.

#### **Tanya Welch – Finance Manager**

Tanya Welch has almost 30 years' experience in the finance area in various industry sectors (around 10 years have been with BTGNH), including experience in general management, people supervision and more recently project management and installation of a new finance package. Tanya's qualifications include a B. Bus.

The Finance Manager operates at an executive level within BTGNH, reporting to the CEO and participating in the development and implementation of strategies, and priorities for the business. The Finance Manager will provide regular financial analysis, forecasting and reporting with regards to agreements and customer consumption, as well as providing support as required to team members, particularly with regards to financial analysis and end of month reporting. The Finance Manager will facilitate pricing, offers and contract management of medium to large business/industrial customers.

The role will also entail monitoring and reviewing all invoices received with regards to the supply of natural gas to ensure accuracy. A key duty will be to prepare monthly business performance reports against supply contracts and provide gas forecasts requirements for Gas Purchasing Committee which comprises the Retail Manager and the CEO of BTGNH.

### **Lisa McConnon – Corporate Services Manager**

Lisa possesses extensive experience in people management within private enterprise. Lisa has experience with change management, operations management as well as marketing, media, communications & business development. Lisa has highly developed skills in people management attained on the job and through external training.

The Corporate Services Manager operates at an executive level within BTGNH, reporting to the CEO and participating in the development and implementation of strategies, and priorities for the business. The Corporate Services Manager will provide support to the Operations Manager to plan, organise, direct, control and coordinate the overall administration of BRN. Tasks will include:

- providing high level administrative, strategic planning and operational support, research and advice to the Retail Manager on administrative matters such as staff management, financial planning, facility management and information services;
- assisting the Operations Manager to develop and manage BRN's administrative, financial, physical and staff resources;
- developing and implementing administrative, financial and operational procedural statements and guidelines for use by staff in the organisation; and
- providing information and support for the preparation of BRN's financial reports and budgets.

## **3.4 Other regulatory requirements**

Compliance is an integral part of BRN's business operating approach. The Board takes an active role to ensure that BRN remains compliant. Compliance breaches are reported to the Board, which then has a formal role in confirming that agreed response strategies are implemented to remedy and prevent further breaches.

BRN has a dedicated internal regulatory and legal resource to ensure compliance with all relevant laws, regulations, codes and guidelines. We will ensure that we comply with our licence obligations, as well as all laws and regulations under the *Gas Industry Act 2001* as well as the National Gas Law and National Gas Rules, and all associated rules and procedures pertaining to gas distribution, in particular the *Distribution Systems Code* and Market Rules. Our employees are all fully trained on all relevant laws pertaining to our business activities and ethical business conduct.

BRN has established a highly experienced regulatory team responsible for regulatory compliance and implementing a culture of compliance throughout BRN. The Legal, Risk and Compliance Manager is responsible for implementing a coordinated approach to compliance across the business. BRN's regulatory compliance program is integrated within our risk management policy.

### **3.4.1 Safety Case**

BRN has developed a gas Safety Case and was granted provisional approval by the Director of Energy Safe Victoria on the 8<sup>th</sup> April 2016. A copy of the letter received from ESV confirming the approval is attached at [Appendix L](#) and a copy of the Safety Case can be provided if required.



### **3.4.2 Australian Energy Regulator**

BRN has held discussions with AEMO about the need to register as a market participant and the associated high costs. AEMO have communicated to us that they are not impacted by BRN not being registered.

It is noted that, of relevance to Victoria, AER regulates gas wholesale market participants and gas networks. BRN will not be participating in the wholesale gas market.

The National Gas Law and Rules set out the regulatory framework for gas pipelines. Economic regulation provisions apply only to 'covered' pipelines. BRN's proposed network is not covered within the meaning of the National Gas Law. The regulatory framework anticipates the potential for market conditions to evolve, and includes a mechanism for reviewing whether a particular pipeline needs economic regulation, and the extent of that regulation.

### **3.4.3 Australian Energy Market Operator**

The scope of operations covered by AEMO is discussed in Section 1.6.1 of this application.

### **3.4.4 Energy and Water Ombudsman of Victoria**

BRN has initiated discussions with the EWOV regarding membership of the EWOV scheme.

## Section 4: Information on financial viability

### 4.1 Financial viability

BRN can meet and address the financial criteria required of a distributor of gas in Victoria. BRN is financially viable as a business entity. BRN has sufficient financial resources to sustain its Victorian operations.

More detailed information in support of this statement is included in Appendix D.

BRN does not have a current credit rating.

Appendix F is a letter of financial commitment from Enwave.

Appendix P includes an Enwave Balance Sheet for 6 months ending 30<sup>th</sup> June 2016 together with Special Purpose Reports for 31<sup>st</sup> December 2014 and 31<sup>st</sup> December 2015. The 2014 accounts are audited whilst the 2015 are in draft form at this stage (Appendix P).

All these appendices are commercial in confidence.

### 4.2 Business Case

Appendix E (commercial in confidence) set out the business case for BRN's Victorian operations over the next 5 years.

# Appendices:

Appendix A – Details of Registration

Appendix B – Constitution

Appendix C – Geographic area of proposed distribution network

Appendix D – Financial Model (Confidential)

Appendix E – Business Case (Confidential)

Appendix F – Letter of commitment from Enwave Australia Pty Ltd (Confidential)

Appendix G – Risk management policy (Confidential)

Appendix H – BRN/BRE Connection Agreement (Confidential)

Appendix I – Long Form Use of System Agreement (Confidential)

Appendix J - BRN Ring Fencing Policy (Confidential)

Appendix K – Compliance Plan (Confidential)

Appendix L – Letter from ESV granting provisional approval of the Gas Safety Case (Confidential)

Appendix M - Customer Transfer and Reconciliation Code – (Confidential)

Appendix N – Hansen Market Connectivity Framework Proposal (Confidential)

Appendix O – Email from AEMO regarding Exemption (Confidential)

Appendix P – Financial Statements from Enwave Australia Pty Ltd (Confidential)



# Certificate of Registration on Change of Name

This is to certify that

**BROOKFIELD INFRASTRUCTURE SHELF NO 1 PTY LTD**

**Australian Company Number 163 231 696**

did on the twenty-seventh day of August 2014 change its name to

**BROOKFIELD REGIONAL NETWORKS (VICTORIA) PTY LIMITED**

**Australian Company Number 163 231 696**

The company is a proprietary company.

The company is limited by shares.

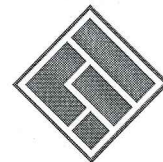
The company is registered under the Corporations Act 2001 and is taken to be registered in Victoria and the date of commencement of registration is the tenth day of April, 2013.

Issued by the  
Australian Securities and Investments Commission  
on this twenty-seventh day of August 2014.

Greg Medcraft  
Chairman

CERTIFICATE





# Certificate of Registration on Change of Name

This is to certify that

**BROOKFIELD MAPS HOLDINGS PTY LTD**

**Australian Company Number 163 231 696**

did on the second day of June 2014 change its name to

**BROOKFIELD INFRASTRUCTURE SHELF NO 1 PTY LTD**

**Australian Company Number 163 231 696**

The company is a proprietary company.

The company is limited by shares.

The company is registered under the Corporations Act 2001 and is taken to be registered in Victoria and the date of commencement of registration is the tenth day of April, 2013.

Issued by the  
Australian Securities and Investments Commission  
on this second day of June 2014.

A handwritten signature in black ink, appearing to read 'G. Medcraft'.

Greg Medcraft  
Chairman

CERTIFICATE

# Certificate of Registration of a Company

This is to certify that

**BROOKFIELD MAPS HOLDINGS PTY LTD**

**Australian Company Number 163 231 696**

is a registered company under the Corporations Act 2001 and  
is taken to be registered in Victoria.

The company **is limited by shares.**

The company is a **proprietary** company.

The day of commencement of registration is  
**the tenth day of April 2013.**



CERTIFICATE

Issued by the  
Australian Securities and Investments Commission  
on this tenth day of April, 2013.

A handwritten signature in black ink, appearing to read 'G. Medcraft', written in a cursive, flowing style.

Greg Medcraft  
Chairman

**Brookfield MAPS Holdings  
Pty Ltd**

**ACN 163 231 696**

Proprietary Company  
Limited by Shares

Prepared for

Brookfield Infrastructure Group  
(Australia) Pty Ltd





**Brookfield MAPS Holdings  
Pty Ltd**

**ACN 163 231 696**

Proprietary Company  
Limited by Shares

Prepared by:

**hunt&hunt**

Gateway  
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Corporations Act  
A Company Limited by Shares  
**Constitution**  
**of**  
**Brookfield MAPS Holdings Pty Ltd**

---

**1. Interpretation**

**1.1.** In this Constitution:

**“Company”** means the company named above governed by the terms of this constitution.

**“Directors”** means in the case of there being a single director, that director, and in the case of there being 2 or more directors, those directors.

**“Law”** means the *Corporations Act 2001* (C'th).

**“Members”** means in the case of there being a single member, that member, and in the case of there being 2 or more members, those members.

**“Related Body Corporate”** has the meaning given to it by Section 50 of the Law.

**“Representative”** means a person appointed as a representative of a body corporate pursuant to Section 250D of the Law.

**“Seal”** means the common seal of the Company (if any).

**“Secretary”** means any person appointed to perform the duties of a secretary of the Company.

- 1.2.** Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Law, the same meaning as in that provision of the Law.

**2. Preliminary**

**2.1. Company legal capacity and powers**

Subject to the Law, the Company has the legal capacity and powers of an individual, and also all the powers of a body corporate, including the power to:

- (a) issue and cancel shares in the Company, including bonus shares, preference shares and partly paid shares;
- (b) issue debentures of the Company;
- (c) grant options over unissued shares in the Company;
- (d) distribute any of the property of the Company among the Members, in kind or otherwise;

- (e) give security by charging uncalled capital;
- (f) grant a floating charge over the property of the Company;
- (g) arrange for the Company to be registered or recognised as a body corporate in any place outside its jurisdiction of registration; and
- (h) do anything that it is authorised to do by any other law (including the law of a foreign country).

## **2.2. Relevant provisions**

Each of the provisions of the sections or sub-sections of the Law which would but for this Clause apply to the Company as a replaceable rule within the meaning of the Law are displaced and do not apply to the Company.

## **2.3. Type of company**

The Company is a proprietary company.

## **2.4. Shareholders**

- (a) The number of Members for the time being of the Company (exclusive of any person who is an employee of the Company or of any subsidiary of the Company and any shareholder who was an employee of the Company or of any subsidiary of the Company, when that person became a shareholder) is not to exceed fifty, but where two or more persons hold one or more shares in the company jointly, they will for the purposes of this Clause be treated as a single Member.
- (b) The Company must not engage in any activity that would require the lodgement with the Australian Securities and Investment Commission of a prospectus under Chapter 6D of the Law (except for an offer of shares to existing shareholders of the Company or employees of the Company or a subsidiary of the Company).

## **3. Classes of shares**

Shares issued must be in a class described in the Third Schedule or any other class permitted by this Constitution.

## **4. Issue of shares and variation of rights**

### **4.1. Issue of shares**

Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Law, shares in the Company may be issued by the Directors and any such share may be issued with such preferred, deferred or other special rights or such restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the Directors, subject to any resolution, determine.

### **4.2. Issue of preference shares**

Subject to the Law, the Company may issue preference shares which are, or at the option of the Company are, liable to be redeemed and such power may be exercised by the Directors.

#### **4.3. Share capital structure**

- (a) If at any time the share capital is divided into different classes of shares, the rights attached to any class unless otherwise provided by the terms of issue of the shares of that class may be varied or cancelled with the consent in writing of the holders of the issued shares who are entitled to at least 75% of the votes that may be cast in respect of shares of that class, or by a special resolution passed at a separate meeting of the holders of the shares of that class.
- (b) The provisions of this Constitution relating to meetings of the Company's Members apply so far as they are capable of application to every such separate meeting of the Member(s) of a class of shares except that:
  - (1) where there is more than one member of a class, a quorum is constituted by two persons, each being a Member or a proxy or Representative of a Member, who between them hold or represent one-third of the issued shares of the class; or
  - (2) where there is one member of a class, a quorum is constituted by that Member or a proxy or Representative of that Member; and
  - (3) any holder of shares of the class, present in person or by proxy or by Representative, may demand a poll.
- (c) The rights attached to an existing class of preference shares will be taken to be varied by the issue of new preference shares that rank equally with those existing preference shares unless the new issue is authorised by:
  - (1) the terms of issue of the existing preference shares; or
  - (2) the Company's constitution (if any) as in force when the existing preference shares were issued.

#### **4.4. Brokerage or commission payments**

- (a) The Company may pay brokerage or commission to a person in respect of that person or another person agreeing to take up shares in the Company.
- (b) Payments by way of brokerage or commission may be satisfied by the payment of cash by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

#### **4.5. Share recognition**

- (a) Except as required by law, the Company will not recognise a person holding a share upon any trust.
- (b) Except as otherwise provided by this Constitution or by law, the Company is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or any other right in respect of a share except an absolute right of ownership in the registered holder.

#### **4.6. Share certificate**

- (a) A person whose name is entered as a Member in the register of Members is entitled without payment to receive a certificate in respect of the share issued in accordance with the Law under the Seal or in such other manner permitted under the Law as the Directors determine but, in respect of a share or shares held jointly by several persons, the Company is not bound to issue more than one certificate.

- (b) Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.

## **5. Lien**

### **5.1. Lien on shares**

- (a) The Company has a first and paramount lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share.
- (b) The Company has a first and paramount lien on all shares (other than fully paid shares) registered in the name of a sole holder for all money presently payable by him or his estate to the Company.
- (c) The Directors may at any time exempt a share wholly or in part from the provisions of this Clause.
- (d) The company's lien (if any) on a share extends to all dividends payable in respect of the share.

### **5.2. Sale of shares**

- (a) Subject to Clause 5.2(b) the Company may sell, in such manner as the Directors think fit, any shares on which the Company has a lien.
- (b) A share on which the Company has a lien will not be sold unless:
  - (1) a sum in respect of which the lien exists is presently payable; and
  - (2) the Company has, not less than 14 days before the date of the sale, given to the registered holder for the time being of the share or the person entitled to the share by reason of the death or bankruptcy of the registered holder a notice in writing setting out, and demanding payment of, such part of the amount in respect of which the lien exists as is presently payable.

### **5.3. Transfer of shares**

- (a) For the purpose of giving effect to a sale mentioned in Clause 5.2, the Directors may authorise a person to transfer the shares sold to the purchaser of the shares.
- (b) The Company must register the purchaser as the holder of the shares comprised in any such transfer and he is not bound to see to the application of the purchase money.
- (c) The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.

### **5.4. Proceeds of sale**

The proceeds of a sale mentioned in Clause 5.2 will be applied by the Company in payment first of the expenses of the sale, then of such part of the amount in respect of which the lien exists as is presently payable, and the residue (if any) will (subject to any like lien for sums not presently payable, that existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.



## **6. Calls on shares**

### **6.1. Calls on shares**

- (a) The Directors may make calls upon the Members in respect of any money unpaid on the shares of the Members and not by the terms of issue of those shares made payable at fixed times.
- (b) Each Member must, upon receiving at least 14 days' notice specifying the time or times and place of payment, pay to the Company at the time or times and place so specified the amount called on his shares.
- (c) The Directors may revoke or postpone a call.

### **6.2. Call authorisation**

A call will be deemed to have been made at the time when the resolution of the Directors authorising the call was passed and may be required to be paid by instalments.

### **6.3. Calls on joint shareholders**

The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

### **6.4. Interest on calls**

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due must pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at such rate as the Directors determine, but the Directors may waive payment of that interest wholly or in part.

### **6.5. Payment of calls**

Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date will for the purposes of this Constitution be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and, in case of non-payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

### **6.6. Directors' discretion on calls**

The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

### **6.7. Payment on shares**

- (a) The Directors may accept from a Member the whole or a part of the amount unpaid on a share although no part of that amount has been called up.
- (b) The Directors may authorise payment by the Company of interest upon the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the prescribed rate, as is agreed upon between the Directors and the Member paying the sum.

- (c) For the purpose of Clause 6.7(b), the prescribed rate of interest is:
  - (1) if the Company has, by resolution, fixed a rate - the rate so fixed; and
  - (2) in any other case - 8% per annum.

## **7. Transfer of shares**

### **7.1. Transfer of shares**

- (a) Subject to this Constitution, a Member may transfer all or any of his shares by instrument in writing in any usual or common form or in any other form that the Directors approve.
- (b) An instrument of transfer referred to in Clause 7.1(a) must be executed by or on behalf of both the transferor and the transferee.
- (c) A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of Members in respect of the shares.

### **7.2. Registrations on transfers**

The instrument of transfer must be left for registration at the registered office of the Company, accompanied by the certificate of the shares to which it relates and such other information as the Directors properly require to show the right of the transferor to make the transfer and thereupon the Company may register the transferee as a Member.

### **7.3. Directors' discretion on transfers**

- (a) The Directors may, at their discretion refuse to register any transfer of shares without assigning any reason.
- (b) No transfer of shares will be registered if upon its registration the number of Members of the Company would exceed the maximum number prescribed by Clause 2.4(a).

### **7.4. Registration deferrals/ suspensions**

The registration of transfers may be suspended at such times and for such periods as the Directors from time to time determine not exceeding in the whole 30 days in any one calendar year.

## **8. Transmission of shares**

### **8.1. Title to shares on death of member**

In the case of the death of a Member:

- (a) the survivor where the deceased was a joint holder; and
- (b) the legal personal representative where the deceased was a sole holder

will be the only persons recognised by the Company as having any title to the deceased Member's interest in the shares. This Clause does not release the estate of a deceased joint holder from any liability in respect of a share that had been jointly held by him with other persons.

## **8.2. Transferee**

- (a) Subject to the Bankruptcy Act 1966, a person becoming entitled to a share in consequence of the death or bankruptcy of a Member may, upon such information being produced as is properly required by the Directors, elect either to be registered himself as a holder of the share or to have some other person nominated by him registered as the transferee of the share.
- (b) If the person becoming entitled elects to be registered himself, he must deliver or send to the Company a notice in writing signed by himself stating that he so elects.
- (c) If he elects to have another person registered, he must execute a transfer of the share to that other person.
- (d) If a Member dies or becomes bankrupt, the limitations, restrictions and provisions of this Constitution relating to the right to transfer, and the registration of transfer of shares are applicable to any such notice or transfer. These are applicable as if the death or bankruptcy of the Member had not occurred and the notice or transfer was a transfer signed by that Member.

## **8.3. Death of a registered holder**

- (a) Where the registered holder of a share dies or becomes bankrupt, his personal representative or the trustee of his estate, as the case may be, is, upon the production of such information as is properly required by the Directors, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the Company's Members, or to voting or otherwise), as the registered holder would have been entitled to if he had not died or become bankrupt.
- (b) Where 2 or more persons are jointly entitled to any share in consequence of the death of the registered holder, they will, for the purpose of this Constitution, be deemed to be joint holders of the share.

## **9. Forfeiture of shares**

### **9.1. Notice of payment**

- (a) The Directors may serve a notice on a Member requiring payment of any calls or instalments not paid by the due date.
- (b) The notice will name a further day at least 14 days ahead. Payment must be made by that further day. If it is not, the shares will be forfeited.

### **9.2. Notice of forfeiture**

- (a) If the requirements of a notice served under Clause 9.1 are not complied with, the shares referred to in the notice will be forfeited by a Directors resolution.
- (b) Such a forfeiture will include all unpaid dividends declared in respect of the forfeited shares.

### **9.3. Director's discretion on forfeitures of shares**

A forfeited share may be sold, reissued or otherwise disposed of on such terms and in such manner as the Directors think fit, and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the Directors think fit.

#### **9.4. Members liabilities**

After share forfeiture, the previous Member remains liable to pay all outstanding liability. The Company may charge interest at 8% per annum from the date of forfeiture.

#### **9.5. Statement of forfeiture**

A statement in writing declaring that the person making the statement is a director or a secretary of the Company, and that a share in the Company has been duly forfeited on a date stated in the statement, is prima facie evidence of the facts stated, in the statements as against all persons claiming to be entitled to the share.

#### **9.6. Consideration of forfeiture**

- (a) The Company may receive the consideration (if any) given for a forfeited share on any sale, reissue or disposition of the share and execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (b) Upon the execution of the transfer, the transferee will be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.
- (c) The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale, reissue or disposal of the share.

#### **9.7. Non-payment**

The provisions of this Constitution as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

### **10. Alteration of capital**

#### **10.1. Resolution to convert or cancel shares**

The company may by ordinary resolution passed at a general meeting:

- (a) convert all or any of its shares into larger or smaller numbers of shares; or
- (b) cancel shares that have been forfeited under the terms on which the shares are on issue.

#### **10.2. Subsequent offer of shares**

- (a) The Directors can offer shares of a particular class, however, before doing so, they must offer them to existing shareholders of that class. The Company may authorise an issue by ordinary resolution passed at a general meeting.
- (b) Subject to Clause 10.2(e), the number of shares to be offered to each Member must be in proportion to the number of shares of that class that they already hold.
- (c) The offer must be made by notice specifying the number of shares offered and the period of time within which the offer, if not accepted, will be deemed to be declined.

- (d) After the expiration of that time or on being notified by the person to whom the offer is made that he declines to accept the shares offered, the Directors may issue those shares in such a manner as they think most beneficial to the Company.
- (e) Where, by reason of the proportion that shares proposed to be issued bear to shares already held, some of the first-mentioned shares cannot be offered in accordance with Clause 10.2(b), the Directors may issue the shares that cannot be so offered in such manner as they think most beneficial to the Company.

### **10.3. Capital reduction and buyback of shares**

Subject to the Law, the Company may:

- (a) Reduce its share capital in any manner;
- (b) Buy back its own shares.

### **10.4. Pre-emptive rights to issue of shares and options**

- (a) Despite anything to the contrary contained in this Constitution except for clause 10.4(d), before issuing shares or options in respect of shares, the Directors must offer the shares or options to be issued to the existing holders of the shares of that same class and if there are no existing shares of that class on issue, to all members. As far as practicable, the number of shares or options to be offered to each existing holder of shares in the class of shares to be issued must be in proportion to the number of shares of that class which they then hold as a proportion of the total number of shares in that class on issue and, if there are no such holders, to each member in proportion to the number of shares held by the member as a proportion of the total number of shares on issue by the Company.
- (b) To make the offer under clause 10.4(a), the Directors must give the members entitled to receive the offer a statement setting out the terms of the offer, including:
  - (1) the number of shares or options offered; and
  - (2) the period during which the offer will remain open.
- (c) The Directors may issue any shares or options not taken up under the offer made as they see fit.
- (d) The members may by resolution in general meeting or written consent of all the members authorise the Directors to make a particular issue of shares or options without complying with clause 10.4(a).

## **11. General meetings**

### **11.1. Director may convene meeting of members**

Any Director may whenever he thinks fit convene a meeting of the Company's Members.

### **11.2. Directors' convention**

A general meeting will be convened by the Directors on the request of the Members in accordance with section 249D of the Law.

### **11.3. Members' convention**

A general meeting may be convened by the Members in accordance with sections 249E and 249F of the Law.

### **11.4. Form of meetings/ structure of meetings**

The Company may hold a meeting of its Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

### **11.5. Notification period**

Subject to the provisions of the Law relating to agreements for shorter notice, at least 21 days notice must be given of a meeting of the Company's Members.

### **11.6. Notice of meetings**

- (a) Notice of every meeting of the Company's Members will be given in the manner authorised by Clause 23 to:
  - (1) every Member and to every Director;
  - (2) every person entitled to a share in consequence of the death or bankruptcy of a Member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting; and
  - (3) the auditor for the time being of the Company.
- (b) No other person is entitled to receive notices of meetings of the Company's Members.

### **11.7. Details of meetings/ records of meetings**

A notice of a meeting of the Company's Members will:

- (a) Specify the place, the date and the time of meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this;
- (b) State the general nature of the business to be transacted at the meeting; and
- (c) Contain such other information as is required by section 249L of the Law.

## **12. Proceedings at general meetings**

### **12.1. Quorum and proxy**

- (a) No business can be transacted at any meeting of the Company's Members unless a quorum of Members is present at the time when the meeting proceeds to business.
- (b) Two persons each being a Member or a proxy or a Representative of a Member will be a quorum for a meeting of the Company's Members. If the Company has only one Member, that Member may pass a resolution by the Member recording it and signing the record.

## **12.2. Quorum of meeting**

If a quorum is not present within half an hour from the time appointed for the meeting:

- (a) Where the meeting was convened upon the request of Members - the meeting will be dissolved; or
- (b) In any other case:
  - (1) the meeting stands adjourned to such day, and at such time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week at the same time and place; and
  - (2) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for such adjourned meeting, then the meeting is dissolved.

## **12.3. Chairperson**

- (a) The Directors may elect an individual to chair a meeting of the Company's Members.
- (b) Where a meeting of the Company's Members is held and:
  - (1) a chairperson has not been elected as provided by Clause 12.3(a); or
  - (2) the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting;

the Members present must elect one of their number to be chairperson of the meeting (or part of it).

## **12.4. Adjournment**

- (a) The chairperson must adjourn a meeting of the Company's Members from time to time and from place to place if the Members present with a majority of votes that may be cast at that meeting agree or direct the chairperson to do so. No business can be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (b) When a meeting of the Company's Members is adjourned for 30 days or more, notice of the adjourned meeting will be given as in the case of an original meeting.
- (c) Except as provided by Clause 12.4(a), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## **12.5. Voting**

- (a) At any meeting of the Company's Members a resolution put to the vote of the meeting will be decided on a show of hands unless a poll is (before a vote is taken or before or immediately after the declaration of the result of the show of hands) demanded:
  - (1) by the chairperson;
  - (2) by at least 2 Members entitled to vote in the resolution; or
  - (3) by a Member or Members with at least 5% of the votes that may be cast on the resolution on a poll.

- (b) Unless a poll is so demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost. 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 or proportion of the votes recorded in favour of or against the resolution.
- (c) The demand for a poll may be withdrawn.

#### **12.6. Polling**

- (a) If a poll is duly demanded, it must be taken in such manner and (subject to Clause 12.6(b)) at once after either an interval or adjournment or otherwise as the chairperson directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chairperson or on a question of adjournment will be taken immediately.

#### **12.7. Casting vote**

In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting of the Company's Members at which the show of hands takes place or at which the poll is demanded, has a casting vote in addition to any vote he may have in his capacity as a Member.

#### **12.8. Class of shares restrictions/ limitations**

Subject to any rights or restrictions for the time being attached to any class or classes of shares:

- (a) at meetings of the Company's Members or classes of Members each Member entitled to vote may vote in person or by proxy or by a Representative or by attorney; and
- (b) on a show of hands every person present who is a Member or a proxy or an attorney or a Representative of a Member has one vote, and on a poll every person present in person or by proxy or attorney or by a Representative has one vote for each share he holds.

#### **12.9. Joint shareholder voting rights**

If the share is held jointly and more than one Member votes in respect of that share, only the vote of the Member whose name appears first in the register of Members counts.

#### **12.10. Incapacity to vote**

If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, his committee or trustee or such other person as properly has the management of his estate may exercise any rights of the Member in relation to a meeting of the Company's Members as if the committee, trustee or other person were the Member.

#### **12.11. Unpaid shares**

A Member is not entitled to vote at a meeting of the Company's Members unless all calls and other sums presently payable by him in respect of shares in the Company have been paid.



#### 12.12. Objections

- (a) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (b) Any such objection will be referred to the chairperson of the meeting of the Company's Members, whose decision is final.
- (c) A vote not disallowed pursuant to such an objection is valid for all purposes.

#### 12.13. Appointing proxies or attorneys

- (a) A Member who is entitled to attend and vote at a meeting of the Company Members or at a meeting of any class of Members of the Company is entitled to appoint not more than 2 other persons (whether Members or not) as the Member's proxy or proxies or attorneys, as the case may be, to attend and vote instead of the Member at the meeting.
- (b) A proxy or attorney may be appointed for all meetings, or for any number of meetings or for a particular purpose. The appointment may specify the proportion or number of votes that the proxy may exercise.
- (c) Where a Member appoints 2 proxies or attorneys, the appointment is of no effect unless each proxy or attorney, as the case may be, is appointed to represent a specified proportion or number of the Member's voting rights.
- (d) Any instrument of proxy in which the name of the appointee is not filled in will be deemed to be given in favour of the chairperson.

#### 12.14. Instruments appointing a proxy

- (a) An instrument appointing a proxy will be in writing under the hand of the appointor or his attorney duly authorised in writing or, if the appointor is a body corporate, either under seal or in accordance with the Law or under the hand of an officer or attorney duly authorised.
- (b) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote in the resolution except as specified in the instrument.
- (c) An instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll.
- (d) An instrument appointing a proxy will be in the following form or in a form that is similar to the following form as the circumstances allow:

**[Name of company]**

I/we \_\_\_\_\_, of \_\_\_\_\_,  
being a member/members of the above named company, hereby  
appoint \_\_\_\_\_ of \_\_\_\_\_ or,  
in his absence, \_\_\_\_\_ of \_\_\_\_\_ as my/our  
proxy to vote for me/us on my/our behalf at the \_\_\_\_\_ general meeting of  
the company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
and at any adjournment of that meeting.  
Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

+This form is to be used in favour of/against\* the resolution.

\*Strike out whichever is not desired.

+To be inserted if desired.

### **12.15. Validity of instrument**

An instrument appointing a proxy will not be treated as valid unless:

- (a) the instrument, and the power of attorney or other authority (if any) under which the instrument is signed; or
- (b) a notarially certified copy of that power or authority, is or are deposited, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
- (c) in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, at the registered office of the Company or at such other place in Australia as is specified for that purpose in the notice convening the meeting.

### **12.16. Revocation of instrument**

A vote given in accordance with the terms of an instrument of proxy or of a power of attorney in relation to the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, or the transfer of the share in respect of which the instrument or power is given is valid notwithstanding the previous death or unsoundness of mind of the principal. This is however, providing that there is no intimation in writing of the death or unsoundness of mind and revocation or transfer has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

### **12.17. Signing of resolution**

- (a) If all Members entitled to vote on a resolution have signed a document containing a statement that they are in favour of that resolution of the Members in terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Company's Members held on the day on which the document was signed and at a the time at which the document was last signed by a Member or, if the Members signed the document on different days, on the day on which, at the time at which, the document was last signed by a Member.
- (b) For the purposes of Clause 12.17(a) two or more separate documents containing statements in identical terms each of which is signed by one or more Members will together be deemed to constitute one document containing a statement in those terms signed by those Members on the respective days on which they signed the separate documents.

## **13. Appointment, removal and remuneration of directors**

### **13.1. First directors, number of directors and no share qualification**

- (a) By resolution, the names of the first Directors will be determined in writing by the persons specified in the application for the Company's registration under the Law as persons who consent to become Members of the Company or a majority of them.
- (b) The Company may by resolution increase or reduce the number of Directors, however the maximum number of Directors shall not be more than 10.
- (c) It is not be necessary for any Director to hold any share qualification.

### **13.2. Appointing additional persons**

The Directors may at any time appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors does not at any time exceed the number determined in accordance with this Constitution.

### **13.3. Appointing replacement person**

The Company may by resolution remove any director, and may by resolution appoint another person in his stead.

### **13.4. Term of appointment**

A director appointed under any of Clauses 13, 13.2, 13.3 will hold office until he dies, or until his office becomes vacant by virtue of the Law or this Constitution.

### **13.5. Remuneration of directors**

- (a) The Directors will be paid such remuneration as is from time to time determined by the Company in general meeting.
- (b) The remuneration will be deemed to accrue from day to day.
- (c) The Directors may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or otherwise in connection with the business of the Company.
- (d) If any Director is called upon to perform extra services or to make any special exertion in going or residing abroad or otherwise for any of the purposes of the Company, subject to the Law the Company may pay additional remuneration or provide benefits to that Director as the Directors determine.

### **13.6. Office of director**

In addition to the circumstances in which the office of a director becomes vacant by virtue of the Law the office of a Director becomes vacant if the Director:

- (a) 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;
- (b) resigns office by notice in writing to the Company; or
- (c) is absent without the consent of the Directors from meetings of the Directors held during a period of six months.

## **14. Powers and duties of directors**

### **14.1. Directors' powers**

- (a) Subject to the Law and to any other provision of this Constitution, the business of the Company will be managed by the Directors, who may pay all expenses incurred in promoting and forming the Company, and may exercise all such powers of the Company as are not, by the Law or by this Constitution, required to be exercised by the Company in general meeting.

- (b) Without limiting the generality of Clause 14(a), the Directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.
- (c) If the Company is a wholly owned subsidiary of a holding company, the Directors may act in the best interests of that holding company.

#### **14.2. Appointing power of attorney**

- (a) The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- (b) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.

#### **14.3. Signature of bills**

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts of money paid to the Company, will be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, where there is one Director, by that Director, and where there are two or more Directors by any 2 Directors or in such other manner as the Directors determine.

### **15. Proceeding of directors**

#### **15.1. Proceedings of directors**

- (a) The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) A meeting of Directors may be convened where there are 2 or more Directors:
  - (1) by a director at any time; or
  - (2) by a secretary on the requisition of a director.

Notice of every Director's meeting shall be given to each director and alternate director who is within Australia.

- (c) Without limiting the discretion of the Directors to regulate their meetings under Clause 15.1(a), a meeting of Directors for the purposes of this Clause may be a standing one. A Director may only withdraw his consent within a reasonable time before the meeting of Directors.
- (d) Notwithstanding that the Directors are not present together in one place at the time a meeting of Directors held using technology, a resolution passed by such a meeting will be deemed to have been passed at a meeting of the Directors held on the day on which and at the time at which it was held.

- (e) The provisions of this Constitution relating to proceedings of Directors apply to a meeting of Directors held using technology to the extent that they are capable of applying, and with the necessary changes.
- (f) A Director present at the commencement of a meeting of Directors held using technology will be conclusively presumed to have been present and, subject to other provisions of this Constitution, to have formed part of the quorum throughout the meeting.
- (g) Any minutes of a meeting of Directors held using technology purporting to be signed by the chairperson of that conference or by the chairperson of the next succeeding meeting of Directors will be sufficient evidence of the observance of all necessary formalities regarding the convening and conduct of the meeting.
- (h) When by the operation of Clause (d), a resolution is deemed to have been passed at a meeting of the Directors, that meeting will be deemed to have been held at such place as is determined by the chairperson of the relevant meeting, provided that at least one of the Directors who took part in the meeting was at such place for the duration of the meeting.

#### **15.2. Quorum of directors**

At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is where there are 2 or more Directors, such number as is determined by the Directors and, unless so determined is 2.

#### **15.3. Contracted directors in quorum**

A Director or Alternate Director interested in a contract or arrangement within the meaning of Clause 15.6 will be counted in a quorum notwithstanding his interest.

#### **15.4. Sole director resolution**

Where there is one Director, that Director may pass a resolution of Directors by recording the resolution and signing the record.

#### **15.5. Resolution by two or more directors**

- (a) Subject to this Constitution, questions arising at a meeting of 2 or more Directors must be decided by a majority of votes of Directors present and voting and any such decision will for all purposes be deemed a decision of the Directors.
- (b) In case of an equality of votes, the chairperson of the meeting has a casting vote in addition to any vote he may have in his capacity as a Director.

#### **15.6. Directors contract or arrangement**

- (a) No Director will be disqualified by his office from holding any other office or place of profit under the Company or from contracting with the Company, either as vendor, purchaser or otherwise, nor will any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director is interested be avoided, nor will any Director be liable to account to the Company for any profit arising from such office or place of profit or realised by any such contract or arrangement by reason only of such Director holding that office or of the fiduciary relationship thereby established, but where there are 2 or more Directors of the Company the nature of a director's interest must be disclosed by him in any manner required by the Law.

- (b) A Director may as a director vote in respect of any contract arrangement in which he is interested in the manner described in Clause 15.6(a). A Director may affix the Seal or be appointed to sign on behalf of the Company a document evidencing a contract or arrangement in which the Director is interested will not in any way affect the validity of the document.

#### **15.7. Appointment of an alternative director**

- (a) A Director may, with the approval of the other Directors, appoint a person (whether a Member of the Company or not) to be an alternate director in his place during such period as he thinks fit.
- (b) An alternate director is entitled to notice of meetings of the Directors and, if the appointor is not present at such a meeting, is entitled to attend and vote in his stead. If the alternate director is already a Director of the Company he will be entitled to vote on his own behalf as well as on behalf of the Director appointing him, but for the purpose of determining whether a quorum is present, he will be counted only once.
- (c) An alternate director may exercise any powers that the appointor may exercise and the exercise of any such power by the alternate director will be deemed to be the exercise of the power by the appointor.
- (d) An alternate director is not required to have any share qualifications.
- (e) The appointment of an alternate director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the alternate director has not expired, and terminates in any event if the appointor vacates office as a Director.
- (f) An appointment or the termination of an appointment, of an alternate director will be effected by a notice in writing signed by the Director who makes or made the appointment and served on the Company.

#### **15.8. Appointing directors**

- (a) If a vacancy occurs in the office of a Director or offices of Directors, any remaining Directors may act. If the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum or of convening a general meeting of the Company.
- (b) If a sole director dies, becomes mentally ill or is declared bankrupt etc and the director is also the sole Member of the company, any personal representative, trustee or trustee in bankruptcy of the former director who is duly appointed to administer the former director's estate or property may appoint a person (including himself) as a director of the Company.

#### **15.9. Chairperson nomination**

- (a) The Directors will elect one of their number as a chairperson of their meetings and may determine the period for which he is to hold office.
- (b) Where such a meeting is held and:
  - (1) a chairperson has not been elected as provided by Clause 15.9(a), or

- (2) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting;

the Directors present must elect one of their number to be a chairperson of the meeting (or part of it).

#### **15.10. Delegated powers**

Where there are 2 or more Directors:

- (a) The Directors may delegate any of their powers to a committee of Directors, a Director, an employee of the Company or any other person.
- (b) A delegate under Clause 15.10(a) must exercise the powers delegated in accordance with any directions of the Directors and the exercise of any of those powers is as effective as if the Directors had exercised them.
- (c) The members of a committee delegated powers under Clause 15.10(a) may elect one of their number as chairperson of their meetings.
- (d) Where such a meeting is held and:
  - (1) a chairperson has not been elected as provided by Clause 15.10(c); or
  - (2) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting, the members present may elect one of their number to be chairperson of the meeting (or part of it).
- (e) A committee may meet and adjourn as it thinks proper.
- (f) Questions arising at a meeting of a committee will be determined by a majority of votes, of the committee members present and voting.
- (g) In the case of an equality of votes, the chairman, has a casting vote in addition to any vote he may have in his capacity as a committee member.

#### **15.11. Passing a resolution**

- (a) If all the Directors entitled to vote on a resolution have signed a document containing a statement that they are in favour of, that resolution of the Directors in terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Directors. The meeting should be held on the day on which the document was signed and at the time at which the document was last signed by a director. If the Directors signed the document on different days, the resolution will be deemed to have been passed on the day on which, and at the time at which, the document was last signed by a director.
- (b) For the purposes of Clause 15.11(a), two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.

- (c) When the Company is acting in its role as trustee of a self managed superannuation fund ("Fund"), the directors will form a quorum and pass resolutions in accordance with the rules of the Fund deed as if each director were an individual trustee of the Fund, or as otherwise provided by the Fund deed.

#### **15.12. Defect in appointment**

All acts done by any meeting of the Directors or of a committee of directors or by any person acting as a director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a director or a member of the committee, or to act as, a director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a director or to be a member of the committee.

### **16. Managing director**

#### **16.1. Appointment of managing director**

- (a) The Directors may from time to time appoint one or more of their number to the office of managing director for such period and on such terms as they think fit, and subject to the terms of any agreement entered into in a particular case, may revoke any such appointment.
- (b) The appointment of any such managing director will automatically terminate if he ceases from any cause to be a Director.

#### **16.2. Remuneration of managing directors**

A managing director will, subject to the terms of any agreement entered into in a particular case, receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Directors determine.

#### **16.3. Power of managing directors**

- (a) The Directors may, upon such terms and conditions and with such restrictions as they think fit, confer upon a managing director any of the powers exercisable by them.
- (b) Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Directors.
- (c) The Directors may at any time withdraw or vary any of the powers so conferred on a managing director.

#### **16.4. Appointment of governing director**

- (a) The Company may from time to time by ordinary resolution passed at a general meeting appoint one of the company's directors to the office of governing director.
- (b) For as long as a governing director holds office, all powers, authorities and discretions vested in the Directors by the Law or this Constitution will be vested in the governing director alone.



- (c) For so long as a governing director holds office, all other Directors for the time being of the Company (including any managing director appointed under Clause 16) will:
  - (1) exercise only such powers as the governing director may confer on them; and
  - (2) be subject to the control of the governing director.
- (d) For so long as a governing director is a Director, he will be the chairperson of the Directors and the chairperson of every meeting of the Members of the Company.

## **17. Associate directors**

- (a) The Directors may from time to time appoint any person to be an associate director and may from time to time terminate any such appointment. A person so appointed is not required to hold any shares to qualify him for the appointment.
- (b) The Directors may from time to time determine the powers, duties and remuneration of any person so appointed.
- (c) Except by the invitation and with the consent of the Directors, an associate director does not have any right to attend or vote at any meeting of Directors.

## **18. Secretary**

A secretary of the Company, if appointed, holds office on such terms and conditions, as to remuneration and otherwise, as the Directors determine.

## **19. Execution of documents**

### **19.1. Safe custody of seal**

If the Company has a Seal, the Directors must provide for the safety custody of the Seal.

### **19.2. Use of seal**

The Seal must be used only by the authority of the Directors, or of a committee of the directors authorised by the Directors to authorise the use of the seal.

### **19.3. Execution of documents using a seal**

The Company may execute a document using a Seal if the Seal is affixed to the document and the affixing of the Seal is witnessed by:

- (a) 2 Directors;
- (b) a Director and a Secretary;
- (c) a Director and another person appointed by the Directors for this purpose;
- (d) if the Company has a sole Director who is also the sole Secretary, that Director; or
- (e) if the Company has a sole Director and no Secretary, that Director.

#### **19.4. Execution of documents without a seal**

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

- (a) 2 Directors;
- (b) a Director and a Secretary;
- (c) a Director and another person appointed by the Directors for this purpose;
- (d) if the Company has a sole Director who is also the sole Secretary, that Director; or
- (e) if the Company has a sole Director and no Secretary, that Director.

### **20. Inspection of records, minutes and register of members**

#### **20.1. Inspection of records**

- (a) The Company will keep such accounting and other records of the business of the Company as it is required to keep by the Law.
- (b) The Company will send such documents to such persons as are required by Section 314 and 316 of the Law.
- (c) The Directors may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members other than Directors, and a Member other than a Director does not have the right to inspect any document of the Company except as provided by law, as provided in this Constitution or as authorised by the Directors or by the Company in general meeting.

#### **20.2. Minutes**

- (a) The Directors will cause minutes of:
  - (1) all proceedings and resolutions of meetings of the Company's Members;
  - (2) all proceedings and resolutions of meetings of the Directors, including meetings of committees of Directors;
  - (3) all resolutions passed by Members without a meeting;
  - (4) all resolutions passed by the Directors without a meeting; and
  - (5) where there is one Director, all declarations made by the Director,to be duly entered in books kept for that purpose in accordance with the Law.
- (b) Books containing the minutes of proceedings of meetings of the Company's Members and resolutions passed by Members without a meeting in accordance with Clause 12.17 will be open for inspection by any Member without charge.

### **20.3. Members access to registers**

The Register of Members, the Register of Options and the Register of Debenture Holders will be open for inspection by any Member, a registered option holder or a registered debenture holder without charge.

## **21. Dividends and reserves**

### **21.1. Dividends**

- (a) The Directors (without the sanction of a general meeting), or a general meeting on the recommendation of the Directors, may declare a dividend whether interim or final to be paid to the Members according to the Member's rights and interests at the time of entitlement to such dividend, only in the following circumstances:
  - (1) where the Company's assets exceed its liabilities immediately before the dividend is declared and the excess is sufficient for the payment of the dividend; and
  - (2) where the payment of the dividend is fair and reasonable to the Company's Members as a whole; and
  - (3) where the payment of the dividend does not materially prejudice the Company's ability to pay its creditors;
- (b) a general meeting will not declare a larger dividend than is recommended by the Directors;
- (c) the Directors may in their discretion declare and pay or recommend such dividends as in their opinion the position of the Company justifies. The Directors may fix the time for payment of a dividend and if no time is so fixed the dividend will be payable upon its declaration; and
- (d) where at any time there is more than one class of share on issue, then subject to clause 21.1(a) being complied with and to the rights applicable to the shares concerned, dividends whether interim or otherwise may be declared and paid at different rates for different classes of shares. The dividends may be declared and paid on the shares of any one or more class or classes of shares to the exclusion of the shares of any other class or classes of shares provided that the shares comprising a particular class of shares will as between those shares participate in any such dividends declared equally.

### **21.2. Interest payable**

Interest is not payable by the Company in respect of any dividend.

### **21.3. Reserves**

- (a) The Directors may, before declaring or recommending any dividend, set aside out of the profits of the Company such sums as they think proper as reserves, to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied.
- (b) Pending any such application, the reserves may, at the discretion of the Directors, be used in the business of the Company or be invested in such investments as the Directors think fit.

- (c) The Directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

#### **21.4. Paying Dividends**

- (a) Subject to clause 21.1(a) being complied with and to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends will be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid.
- (b) An amount paid or credited as paid on a share in advance of a call will not be taken for the purposes of this Clause to be paid or credited as paid on the share.

#### **21.5. Deductions on dividends payable**

The Directors may deduct from any dividend payable to a Member all sums of money (if any) presently payable by him to the Company on account of calls or otherwise in relation to shares in the Company.

#### **21.6. Resolution of distribution of dividends**

- (a) The Directors or any general meeting declaring a dividend may, by resolution, direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation, and the Directors will give effect to such a resolution.
- (b) Where a difficulty arises in regard to such a distribution, the Directors may settle the matter as they consider expedient and fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any Members on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the Directors consider expedient.

#### **21.7. Method of payment of dividends**

- (a) Any dividend, interest or other money payable in cash in respect of shares may be paid in any manner as determined by the Directors including:
  - (1) directly crediting the account nominated by the Member from time to time; or
  - (2) by cheque sent through the post directed to:
    - (A) the address of the holder as shown in the register of Members, or in the case of joint holders, to the address shown in the register of Members as the address of the joint holder first named in that register; or
    - (B) to such other address as the holder or joint holders in writing directs or direct; or
  - (3) Any one of 2 or more joint holders may give effectual receipts for any dividends, interest or other money payable in respect of the shares held by them as joint holders.

## **22. Capitalisation of profits**

### **22.1. Capitalisation of profits**

The Directors may resolve to retain profits, which may be applied as follows:

- (a) in paying up any amounts unpaid on shares held by Members;
- (b) in paying up in full unissued shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

### **22.2. Directors to give effect to resolutions**

The Directors must do all things necessary to give effect to the resolution and, in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

- (a) issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions; and
- (b) authorise any person to make, on behalf of all the Members entitled to any further shares or debentures upon the capitalisation, an agreement with the Company providing for the issue to them, credited as fully paid up, of any such further shares or debentures or for the payment up by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares. The application of their respective proportions of the sum resolved to be capitalised is required. Any agreement made under an authority referred to in paragraph (b) is effective and binding on all the Members concerned.

## **23. Notices**

### **23.1. Giving of notices**

A notice may be given by the Company to any Member either:

- (a) by serving it on him personally;
- (b) by sending it by post to him at the address shown in the register of Members or the address supplied by the Member for the purposes of serving notices on the Member; or
- (c) by sending it by facsimile transmission to a facsimile number nominated by the Member for the purpose of serving notices on the Member.

### **23.2. Service by post**

Where a notice is sent by post, service of the notice will be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice and to have been effected in the case of a notice of a meeting, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.

### **23.3. Service by facsimile**

Where a notice is sent by facsimile, service of the notice will be deemed to be served on receipt by the Company of a transmission report confirming successful transmission.

### **23.4. Notice to joint holders of a share**

A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the register of Members in respect of the share.

### **23.5. Notice on death or bankruptcy of a member**

A notice may be given by the Company to a person entitled to a share in consequence of the death or bankruptcy of a Member by serving it on him personally or by sending it to him by post addressed to him by name, or by the title of representative of the deceased or assignee of the bankrupt, or by any like description, at the address (if any) within Australia supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred.

## **24. Winding up**

### **24.1. Division of company property**

If the Company is wound up, the liquidator may, with the sanction of a special resolution, divide among the Members in kind the whole or any part of the property of the Company and may for that purpose set such value as he considers fair upon any property to be so divided and may determine how the division is to be carried out as between the Members or different classes of Members, subject to the rights of holders of shares issued with special rights on winding up of the Company.

### **24.2. Power to vest property in trust for members**

The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such property in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member is compelled to accept any shares or other securities in respect of which there is any liability.

## **25. Indemnity**

### **25.1. Indemnity against a liability**

To the extent permitted by law, the Company:

- (a) indemnifies every person who is, or has been, a Director or Secretary; and
- (b) may, by deed, indemnify or agree to indemnify a person who is, or has been an Officer of a Group Company, against a liability incurred by that person, in his or her capacity as such a Director, Secretary or Officer, to another person provided that liability is not:
  - (1) an Excluded Liability; or
  - (2) a liability for legal costs and expenses.

## **25.2. Indemnity against legal costs and expenses**

To the extent permitted by law, the Company:

- (a) indemnifies every person who is, or has been, a Director or Secretary; and
- (b) may, by deed, indemnify or agree to indemnify a person who is, or has been, an Officer of a Group Company, against legal costs and expenses (other than Excluded Legal Costs) incurred by that person in defending Proceedings for a liability incurred by that person in his or her capacity as such a Director, Secretary or Officer.

## **25.3. Payment for legal cost and expenses**

To the extent permitted by law, the Company may make a payment (either by way of advance, loan or otherwise) to a Director or Secretary for the legal costs and expenses incurred by him or her in defending Proceedings for a liability incurred in his or her capacity as a Director or Secretary provided that:

- (a) the legal costs and expenses are not Excluded Legal Costs at the time the payment is made; and
- (b) the Director or Secretary is obliged to repay the legal costs and expenses to the extent that they become Excluded Legal Costs.

## **25.4. Payment of insurance premiums**

To the extent permitted by law, the Company may pay, or agree to pay, a premium for a contract insuring a person who is, or has been, an Officer of a Group Company against a liability:

- (a) incurred by that person in his capacity as an Officer of a Group Company or in the course of acting in connection with the affairs of a Group Company or otherwise arising out of holding office as an Officer of a Group Company, provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to a Group Company or a contravention of sections 182 or 183 of the Law; and
- (b) for legal costs and expenses incurred by that person in defending or resisting Proceedings, whatever their outcome.

## **25.5. Definitions**

In this Clause:

- (a) the term "Excluded Legal Costs" means legal costs which the Company is prohibited from indemnifying a person against under section 199A(3) of the Law;
- (b) the term "Excluded Liability" means a liability which the Company is prohibited from indemnifying a person against under section 199A(2) of the Law;
- (c) the term "Group Company" means the Company or a subsidiary of the Company;
- (d) the term "Officer" has the meaning in section 9 of the Law; and

- (e) the term "Proceedings" means any proceedings, whether civil or criminal, in which it is alleged that the person has done or omitted to do some act, matter or thing in his capacity as an Officer of a Group Company or in the course of acting in connection with the affairs of a Group Company or otherwise arising out of the person holding office as an Officer of a Group Company, including proceedings alleging that he or she was guilty of negligence, default of trust or breach of duty in relation to a Group Company.

## **26. Loans made to shareholders**

### **26.1. Resolutions required**

In order for a loan from the Company to any Member to be resolved, a resolution in the form of the First Schedule is required.

### **26.2. Terms of loan**

Unless otherwise agreed, every loan made by the Company from time to time, in any period, will be on the terms set out in the Second Schedule.

### **26.3. Second schedule**

Subject to Clause 26.2, each Member will, pursuant to section 140(1) of the Law, be deemed to have accepted that all loans made from time to time will be made by the Company on the terms set out in the Second Schedule.



# First Schedule

## MINUTE BOOK

### Minutes of Meeting of Director(s)

Brookfield MAPS Holdings Pty Ltd  
ACN 163 231 696

**Held at:** .....

**Date:** ...../...../.....

**Time:** .....

**Present:** .....

.....

.....

**Chairperson:** .....  
was appointed Chairperson of the meeting.

**Quorum:** The Chairperson noted that a quorum was present at the meeting of Directors entitled to pass the proposed resolutions.

**Document tabled:** A loan agreement between the Company and:  
.....  
on the terms set out in the attached Schedule. (**Loan Agreement**)

**Resolution:** **IT WAS RESOLVED** to execute the Loan Agreement in accordance with the Company's Constitution.

**Meeting closed:** There being no further business, the meeting was declared closed.  
Signed as a true and correct record.  
.....  
**Chairperson**

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# Second Schedule

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## **Loan facility agreement**

Loan facility agreement made at ..... on .....

### **Parties:**

#### **Between**

**Brookfield MAPS Holdings Pty Ltd** ('the Lender')  
**ACN 163 231 696**

#### **And**

The member or members as determined by a resolution in the form shown in the First Schedule. ('the Borrower')

### **Recitals:**

The Lender has agreed to provide a loan facility to the Borrower in accordance with this Agreement.

*{This page is intentionally left blank}*

**Agreed terms as follows:**

## **1. Definitions and interpretation**

### **1.1. Definitions**

In this Agreement, unless the context or subject matter otherwise require:

**“Act”** means the *Income Tax Assessment Act* 1936 and 1997, as amended, consolidated, re-written or re-enacted from time to time, and includes any regulations made pursuant to that Act.

**“Advance”** means any advance or loan made to the Borrower by the Lender after the date of this Agreement.

**“Agreement”** means this loan facility agreement (including the recitals).

**“Authorised Representative”** means:

- (a) in respect of a party which is a corporation:
  - (1) a company secretary or director or any officer of the corporation whose title or office includes the words "manager" or "director"; or
  - (2) a person acting with the title or in the office of manager or director; and
- (b) in respect of each party, a solicitor of that party or a person nominated by Notice to the other party as an authorised representative.

**“Claim”** means, in relation to a person, a claim, demand, remedy, suit, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.

**“Controller”** has the meaning given in section 9 of the *Corporations Act*.

**“Due Date”** in relation to an Advance, is defined in clause 2.1.

**“Insolvency Provision”** means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions) and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

**“Interest Rate”**, in relation to a year, is defined in clause 3.

**“Jurisdiction”** means the state/territory of incorporation of the company.

**“Notice”** means a written notice, consent, approval, direction, order or other communication.

**“Obligation”** means any legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability.

**“Outstanding Balance”** means, on any day, the aggregate of all money owing or payable actually or contingently by the Borrower to the Lender under this Agreement on that day.

**“Principal Sum”** means the total of all Advances made by the Lender to the Borrower;

**“Term”**, in relation to an Advance, is defined in clause 2.1.

**“Year”** means the Lender’s year of income as defined in the Act.

## **1.2. Interpretation**

In the interpretation of this Agreement, unless the context or subject matter otherwise require:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;
- (d) references to months are references to calendar months;
- (e) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement; and
- (f) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

## **2. Repayment of advances**

### **2.1. Term and due date**

- (a) The Term for each Advance under this Agreement will be the maximum term, as defined in section 109N(3)(b) of the Act or any regulations made thereunder, for an Advance of that kind.
- (b) The parties acknowledge that unless and until section 109N(3)(b) is amended, or any regulations are made thereunder, the maximum term is 7 years for any Advance.
- (c) The Term for each Advance will be deemed to have commenced on the date the Advance was made, and the Due Date for each Advance will be one business day before the date on which the Term expires.

### **2.2. Repayment**

Each Advance must be repaid in full, with interest, by its Due Date.

## **3. Interest and yearly repayments**

### **3.1. Interest rate**

- (a) The Interest Rate must be determined afresh at the beginning of each Year, but thereafter remains constant throughout the Year.
- (b) The Interest Rate for a Year will be the benchmark interest rate, as defined in section 109N(2) of the Act or any regulations made thereunder.
- (c) The parties acknowledge that unless and until section 109N(2) of the Act is amended, or any regulations are made thereunder, the benchmark interest Rate is the Indicator Lending Rates - Bank variable housing loans interest Rate last published by the Reserve Bank of Australia before the start of the Year.

### **3.2. Interest free period**

An Advance will be free of interest until the end of the Year in which it is made.

### **3.3. Accrual of interest**

Interest will be calculated daily by applying the Interest Rate to the Outstanding Balance (less any Advances made during the current Year). Interest will become payable on the last day of each Year.

### **3.4. Yearly repayments**

- (a) The Borrower must make one repayment in respect of the entire Outstanding Balance on or before the last day of each Year. The amount of this repayment will be the minimum amount necessary to prevent the Outstanding Balance being treated as a dividend by reason of section 109E of the Act.
- (b) The parties acknowledge that unless and until section 109E of the Act is amended, or any regulations are made thereunder, the amount referred to in paragraph 3.4(a) above is the minimum yearly repayment worked out in accordance with section 109E(6) of the Act.

## **4. Defaults**

### **4.1. Events of default**

At the option of the Lender, the Outstanding Balance will become immediately due and payable by the Borrower to the Lender notwithstanding any previous delay or waiver by the Lender, if:

- (a) the Borrower does not pay any money payable under this Agreement as and when it falls due;
- (b) the Borrower is in breach of any provision of this Agreement;
- (c) the Borrower is unable to pay its debts or certifies that it is unable to pay its debts as and when they fall due;
- (d) a receiver, manager, receiver and manager, trustee, administrator, Controller or similar officer is appointed in respect of the Borrower;
- (e) a liquidator or provisional liquidator is appointed in respect of any corporate Borrower;
- (f) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
  - (1) appointing a person referred to in clause 4.1(d) or 4.1(e);
  - (2) winding up a corporate Borrower; or
  - (3) proposing or implementing a scheme of arrangement in respect of a corporate Borrower;
- (g) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of the Borrower who is an individual or their estate under any Insolvency Provision;

- (h) a moratorium of any debts of the Borrower or an official assignment or a composition or an arrangement (formal or informal) with the Borrower's creditors or any similar proceeding or arrangement by which the assets of the Borrower are subject conditionally or unconditionally to the control of the Borrower's creditors is ordered, declared or agreed to or is applied for and the application is not withdrawn or dismissed within 7 days;
- (i) the Borrower becomes, or admits in writing that it is, or is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts;
- (j) any distress, execution or sequestration or other process is levied or enforced upon or any order is made against the property and assets of the Borrower and is not paid out, removed or discharged within 7 days.
- (k) the Borrower dies;
- (l) the Borrower creates a purpose to assign or create any charge, pledge or lien over the property the subject of any security of any part thereof without the prior consent of the Lender.

#### **4.2. Default charge**

Where the Borrower does not pay an amount payable under this Agreement when it is due, the Borrower will pay to the Lender interest on that overdue amount calculated at the Interest Rate on daily balances from the day the amount fell due and was unpaid to the day it is paid.

#### **4.3. Remedy default**

The Lender may, if it thinks fit, remedy any default of the Borrower and the Borrower agrees to repay on demand any sum expended to paid to make good such default and such sum will bear interest at the Interest Rate.

### **5. Representations and warranties**

The Borrower represents and warrants to the Lender that:

- 5.1. Power** - it has full legal capacity and power to enter into, exercise its rights and perform its obligations under this Agreement.
- 5.2. Authorisation** - all conditions and things required by applicable law to be fulfilled or done in order:
  - (a) to enable it lawfully to enter into, and exercise its rights and perform its obligations under, this Agreement;
  - (b) to ensure that its obligations under this Agreement rank and will continue to rank at all times in accordance with paragraph 5.4 below; and
  - (c) to make this Agreement admissible in evidence in the courts in this Jurisdiction;
 have been fulfilled or done.
- 5.3. Obligations Binding** - this Agreement constitutes its valid and legally binding obligations, enforceable against it in accordance with their respective terms except to the extent limited by equitable principles and laws affecting creditors' rights generally.
- 5.4. Ranking of Obligations** - its payment obligations under this Agreement rank and will continue to rank at all times at least equally with all its other present and future unsecured payment obligations (including, without limitation, contingent obligations), other than those which are mandatorily preferred by law.



- 5.5. No Litigation** - no litigation, arbitration or administrative proceedings are taking place, pending or, to the knowledge of the Borrower, threatened against it or any of its property which, if adversely determined, could have, either separately or in aggregate, a material adverse effect on it.

## **6. Borrower's undertakings**

The Borrower will:

- 6.1. Information** - provide the Lender upon request and, in any event, within five business days of request, with any information relating to the financial condition, business, assets and affairs of itself, as the Lender may reasonably request;
- 6.2. Records** - keep proper financial records and permit the Lender or its representatives to examine and take copies of those financial records and all other documents relating to its finances at all times;
- 6.3. Comply with Applicable Law** - comply with all applicable law including, without limitation, by paying when due all taxes to which it or its assets are assessed or liable except to the extent that these are being diligently contested in good faith and by appropriate procedures and the Borrower has made adequate reserves for them;
- 6.4. Authorisations** - obtain, maintain and comply with any conditions attaching to any authorisations which it requires to carry out the transactions contemplated by, and to ensure the validity, enforceability and admissibility in evidence of, this Agreement; and
- 6.5. Notice of Litigation** - give the Lender prompt notice of any litigation, arbitration or administrative proceedings affecting it or any of its property which, if adversely determined, could have, either separately or in the aggregate, an adverse effect on it.

## **7. Costs**

The Borrower will pay to the Lender all stamp duty payable on or in respect of this Agreement, all legal and other costs, charges and expenses incurred or paid by the Lender relating to the negotiation, preparation, execution and enforcement of this Agreement.

## **8. Assignments**

### **8.1. Assignment and consent**

No party will be entitled to assign its rights or obligations under this Agreement without the prior written consent of the other parties, which consent may be given or withheld, or given on conditions, in the absolute discretion of the other parties

### **8.2. Continuation of liabilities**

After an assignment:

- (a) the assignor remains principally liable jointly and severally with the assignee for the performance and observance of all obligations assigned to the assignee; and
- (b) the assignor will procure the assignee to enter into a deed in which the assignee covenants to be bound by this Agreement, including (without limitation) this clause.

## **9. Notices**

### **9.1. Form of notices**

Notices given under this Agreement must be:

- (a) in writing; and
- (b) signed by the party giving the Notice or by that party's Authorised Representative.

### **9.2. Method and address for giving notices**

Notices must be either:

- (a) delivered by hand;
- (b) posted by pre paid security or certified mail; or
- (c) transmitted by facsimile.

## **10. Jurisdiction**

This Agreement is governed by and construed in accordance with the laws of the Jurisdiction, and each party irrevocably submits to the non exclusive jurisdiction of the courts of the Jurisdiction for the purpose of any such action, suit or proceeding.

## **11. General provisions**

### **11.1. Variations**

No variation of this Agreement nor consent to a departure by a party from a provision, will be of effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any such variation or consent will be effective only to the extent to or for which it may be made or given.

### **11.2. Waiver**

The non exercise of or delay in exercising a right of a party will not operate as a waiver of that right, nor does a single exercise of a right preclude another exercise of it or the exercise of other rights. A right may only be waived by Notice, signed by the party (or its Authorised Representative) to be bound by the waiver.

### **11.3. Liability of parties**

If a party consists of more than one person:

- (a) an obligation of those parties is a joint obligation of all of them and a several obligation of each of them;
- (b) a right given to those parties is a right given jointly and severally to each of them, and if exercised by one of them, is deemed to be exercised jointly; and
- (c) a representation, warranty or undertaking made by those parties is made by each of them.

### **11.4. Warranty of authority**

Each person signing this Agreement on behalf of another person warrants that so far as he or she is aware he or she has the authority to do so.

# Third Schedule

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## **1. Class of shares**

**1.1.** Notwithstanding any rights or restrictions conferred on holders as described in this Schedule, all rights and restrictions attaching to any shares in respect of dividends are subject to the provisions of clause 21(a) being complied.

**1.2.** Subject to Clause 4 and the power therein to issue shares of classes determined by the directors, the Company may also issue Subscriber shares and the shares of the classes referred to below in this clause. The Subscriber shares (if any) will be redeemable preference shares and the rights, privileges and conditions attaching to Subscriber shares are as follows:

- (a) They will only be issued upon registration of the Company and will only be issued to persons specified in the application for the Company's registration under the Law as persons who consent to become Members of the Company;
- (b) Subject to the provisions of Section 254J of the Law, the next issue of shares of any class or classes after the issue of the Subscriber shares and payment up in full thereof will be deemed to have been issued for the purposes of redeeming the Subscriber shares provided that the proceeds of shares so issued is at least equal to the consideration paid for the Subscriber shares on issue. Upon the issue of such shares, each of the Subscriber shares will ipso facto be redeemed for the consideration paid for it, and the issued capital of the Company will then stand at an amount equal to the shares which comprised the next issue of shares;
- (c) They will carry no right to participate in any distribution of surplus assets or profits;
- (d) They will rank as to repayment of capital on winding-up of the Company before any other class of shares then on issue;
- (e) They will carry no right to dividends;
- (f) They will carry the right at meetings of the Company's Members to exercise one vote for each Subscriber share held; and
- (g) Upon the redemption of the Subscriber shares in the manner provided in this Constitution, the Company will cease to be authorised to issue shares of this class.

## **1.3. Ordinary, "A" & "B" class shares**

The rights, privileges and conditions attaching to Ordinary, "A" and "B" shares are as follows:

- (a) They will confer to the holders thereof the right to receive notice of and to attend any meeting of the Company's Members and to exercise one vote for every share held.
- (b) They will confer to the holders thereof the right to participate in any dividends declared and payable by the Company on the class of share held.

- (c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares and to participate in any distribution of surplus assets or profits of the Company.

#### **1.4. "C" class shares**

The rights, privileges and conditions attaching to "C" shares are as follows:

- (a) They will not confer on the holders thereof any right to dividends or any right to vote at any meeting of the Company's Members but the holders thereof will be entitled to notice of and to attend any meeting of the Company's Members.
- (b) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares and to participate in any distribution of surplus assets or profits of the Company ranking equally with Ordinary shares.

#### **1.5. "D" class shares**

The rights, privileges and conditions attaching to "D" shares are as follows:

- (a) They will confer to the holders thereof the right to receive notice of and to attend any meeting of the Company's Members and to exercise one vote for every share held.
- (b) They will not confer on the holders thereof any right to dividends.
- (c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares ranking equally with Ordinary shares but not to participate in any distribution of surplus assets or profits of the Company.

#### **1.6. "E" & "F" class shares**

The rights, privileges and conditions attaching to "E" and "F" shares are as follows:

- (a) They will not confer on the holders thereof any right to vote at any meeting of the Company's Members but the holders thereof will be entitled to notice of and to attend any meeting of the Company's Members.
- (b) They will confer to the holders thereof the right to participate in any dividends declared and payable by the Company on the class of share held.
- (c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares ranking equally with Ordinary shares but not to participate in any distribution of surplus assets or profits of the company.

#### **1.7. "G" class shares**

The rights, privileges and conditions attaching to "G" shares are as follows:

- (a) They will not confer on the holders thereof any right to vote at any meeting of the Company's Members but the holders thereof will be entitled to notice of and to attend any meeting of the Company's Members.
- (b) They will confer to the holders thereof the right to participate in any dividends declared and payable by the Company on the class of share held.

- (c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares and to participate in any distribution of surplus assets or profits of the Company ranking equally with Ordinary shares.

#### **1.8. "H" redeemable preference class shares**

The rights, privileges and conditions attaching to the "H" redeemable preference shares are as follows:

- (a) They will entitle the holders thereof to receive notice of and to attend any meeting of the Company's Members but will not confer any right to vote at such meetings except in one or more of the following circumstances:
  - (1) on a proposal to reduce the share capital of the Company;
  - (2) on a proposal that affects rights attached to the "H" redeemable preference shares;
  - (3) on a proposal for the disposal of the whole property, business and undertaking of the Company; and or
  - (4) during the winding up of the Company.
- (b) They will confer to the holders thereof the right to receive from the profits of the Company a non-cumulative preferential dividend at the rate of 5% per annum on the capital for the time being paid up thereon in priority to the payment of any dividend on any other share in the Company.
- (c) Upon a reduction of capital or winding up of the Company they will as regards return of paid up capital rank in priority to all other shares in the Company, but they will not confer any right to participate in any distribution of surplus assets or profits of the Company.
- (d) Subject to Sections 254J and 254K of the Law they will, at the option of the Company, be liable to be redeemed at the consideration paid for the "H" redeemable preference share on or before 30 June 2050, by giving written notice to the holders at their respective registered addresses and each such notice will be accompanied by the Company's cheque for the amount payable to the holder to whom such notice is sent. The redemption will take place on the seventh day after the date of posting such notice, and any "H" redeemable preference shares not so redeemed on 30 June 2050 will not thereafter be capable of being redeemed.

#### **1.9. "I" redeemable preference class shares**

The rights, privileges and conditions attaching to the "I" redeemable preference shares are as follows:

- (a) They will entitle the holders thereof to receive notice of and to attend any meeting of the Company's Members but will not confer any right to vote at such meetings except in one or more of the following circumstances:
  - (1) on a proposal to reduce the share capital of the Company;
  - (2) on a proposal that affects rights attached to the "I" redeemable preference shares;

- (3) on a proposal for the disposal of the whole property, business and undertaking of the Company; and or
  - (4) during the winding up of the Company.
- (b) They will confer to the holders thereof the right to participate in any dividend declared and payable by the Company on the class of share held.
- (c) Upon a reduction of capital or a winding up of the Company they will as rank regards return of paid up capital after any issued "H" redeemable preference shares but in priority to all other shares in the Company, but they will not confer any right to participate in any distribution of surplus assets or profits of the Company.
- (d) Subject to Sections 254J and 254K of the Law they will, at the option of the Company, be liable to be redeemed at the consideration paid for the "I" redeemable preference share on or before 1 May 2060, by giving written notice to the holders at their respective registered addresses and each such notice must be accompanied by the Company's cheque for the amount payable to the holder to whom such notice is sent. The redemption will take place on the seventh day after the date of posting such notice, and any "I" redeemable preference shares not so redeemed on 1 May 2060 will not thereafter be capable of being redeemed.

#### **1.10. "J" class shares**

The rights, privileges and conditions attaching to "J" shares are as follows:

- (a) They will not confer on the holders thereof any right to vote at any meeting of the Company's Members but will be entitled to notice of and to attend any meeting of the Company's Members.
- (b) They will confer to the holders thereof the right to participate in any dividends declared and payable by the Company on the class of share held.
- (c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares ranking equally with Ordinary shares but not to participate in any distribution of surplus assets or profits of the Company.
- (d) In the event of the death, bankruptcy, mental incapacity or serious or prolonged ill health of a sole Director who is also the only Member entitled to vote at a meeting of the Company's Members which results in that person being unable to carry out the duties of a Director, the holders of "J" shares will have the right to appoint a new Director by the passing of an ordinary resolution of the holders of "J" shares.

#### **1.11. "K" class dividend access share**

The rights, privileges and conditions attaching to the "K" Class dividend access shares are as follows:

- (a) They will not confer to the holders any right to vote at any meeting of the Company's Members but the holders thereof will be entitled to notice of and to attend any meeting of the Company's Members.
- (b) They will confer to the holders thereof the right to participate in any dividend declared and payable by the Company on the class of share held.

- (c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares ranking equally with Ordinary shares but not to participate in any distribution of surplus assets or profits of the company.
- (d) Subject to Sections 254J and 254K of the Law they will, at the option of the Company, be liable to be redeemed at the consideration paid for the "K" dividend access share on or before 1 May 2060, by giving written notice to the holders at their respective registered addresses and each such notice must be accompanied by the Company's cheque for the amount payable to the holder to whom such notice is sent. The redemption will take place on the seventh day after the date of posting such notice, and any "K" dividend access share not so redeemed on 1 May 2060 will not thereafter be capable of being redeemed.

**1.12. "L" class dividend access share**

The rights, privileges and conditions attaching to the "L" Class dividend access shares are as follows:

- (a) They will not confer to the holders any right to vote at any meeting of the Company's Members but the holders thereof will be entitled to notice of and to attend any meeting of the Company's Members.
- (b) They will confer to the holders thereof the right to participate in any dividend declared and payable by the Company on the class of share held.
- (c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares ranking equally with Ordinary shares but not to participate in any distribution of surplus assets or profits of the company.
- (d) Subject to Sections 254J and 254K of the Law they will, at the option of the Company, be liable to be redeemed at the consideration paid for the "L" dividend access share on or before 1 May 2060, by giving written notice to the holders at their respective registered addresses and each such notice must be accompanied by the Company's cheque for the amount payable to the holder to whom such notice is sent. The redemption will take place on the seventh day after the date of posting such notice, and any "L" dividend access share not so redeemed on 1 May 2060 will not thereafter be capable of being redeemed.

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## Execution

---

I/We, the persons whose full name is set out below and who consents to becoming a member of the Company agree to the form of the Constitution for the Company set out above.

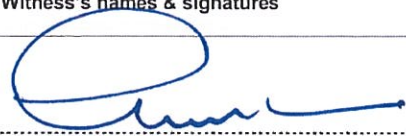
Member's signatures

---

  
.....  
Brookfield MAPS Holdings L.P. ()

Witness's names & signatures

---

  
.....  
Signature  
CLIVE R. DAKIN

Please Print Name of Witness

13 / 4 / 2013

Date



## APPENDIX C - GEOGRAPHIC AREA OF PROPOSED DISTRIBUTION ACTIVITY

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## 1. DESCRIPTION

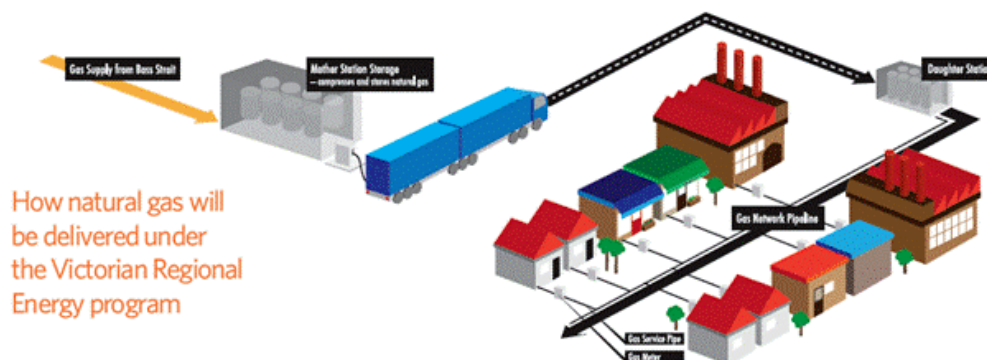
Brookfield Regional Networks (BRN) has been selected by Regional Development Victoria (RDV) to distribute natural gas to 11 regional Victorian towns, namely: Terang, Kerang, Swan Hill, Robinvale, Nathalia, Lakes Entrance, Orbost, Maldon, Heathcote, Marong and Invermay.

Brookfield Regional Networks will supply natural gas to these regional towns that do not have access to traditionally supplied natural gas via pipeline and gas distribution networks.

The project involves the compression of natural gas at three strategically located sites (Mother Stations) and its transportation by B double semi-trailers to the 11 regional and rural towns (Daughter Stations) across Victoria. It is then reticulated through the towns in a traditional gas pipe network.

Utilising the reticulation pipeline provided by Brookfield Regional Networks, TGR will sell natural gas to customers in these regional towns.

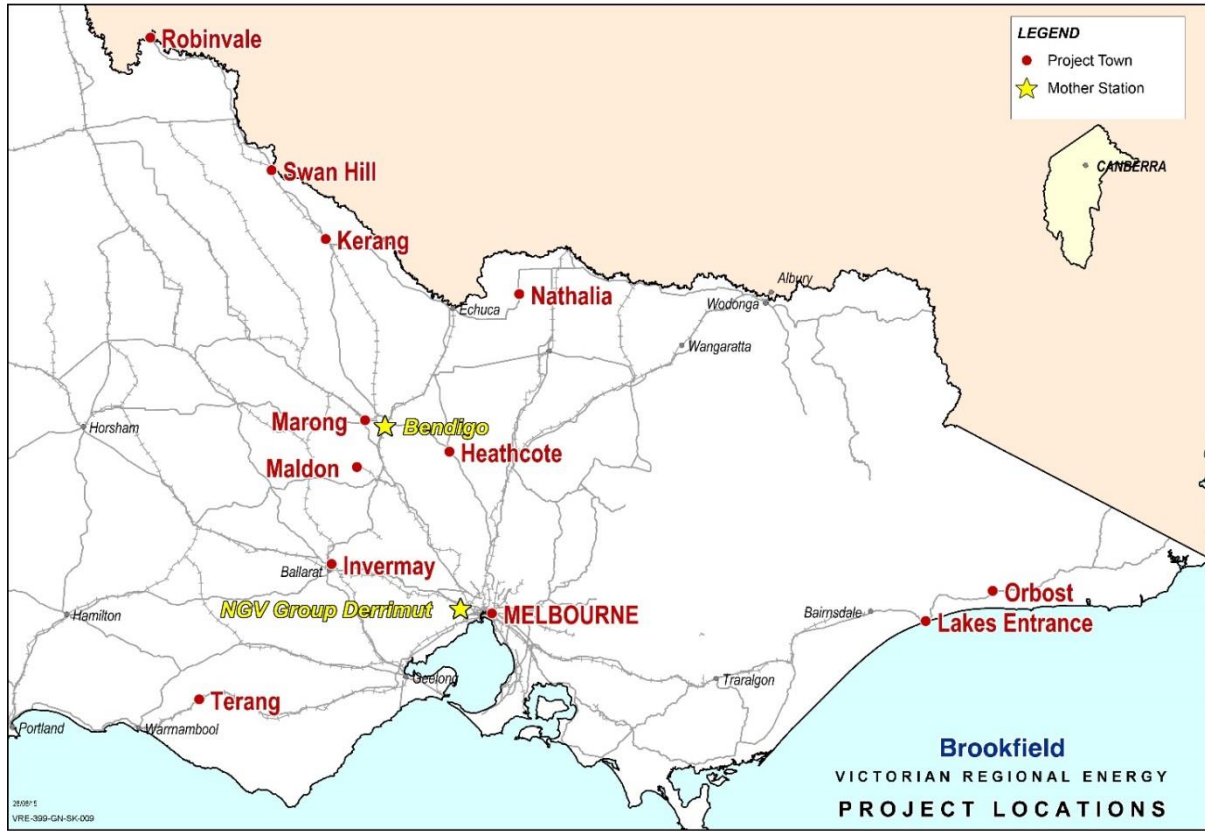
Figure 1 shows a schematic diagram of the proposed distribution “pipeline” with gas being transported from the Mother Station via a prime mover to the daughter station and thence to the individual customer via the reticulation network within the township.



*Figure 1 - VRE Delivery Model*

## 2. LOCATION MAP

Figure 2 shows the location of each of the 11 regional towns. BRN will roll out services to each of these towns as construction and commissioning of each daughter station and distribution network is completed.



*Figure 2 - Project Map*

### 3. EXAMPLE RETICULATION LAYOUT

Figure 3 shows a typical proposed reticulation layout from the daughter station where the CNG is stored to the individual streets within the township. BRN will distribute natural gas to customers who reside on streets where the pipelines are laid.

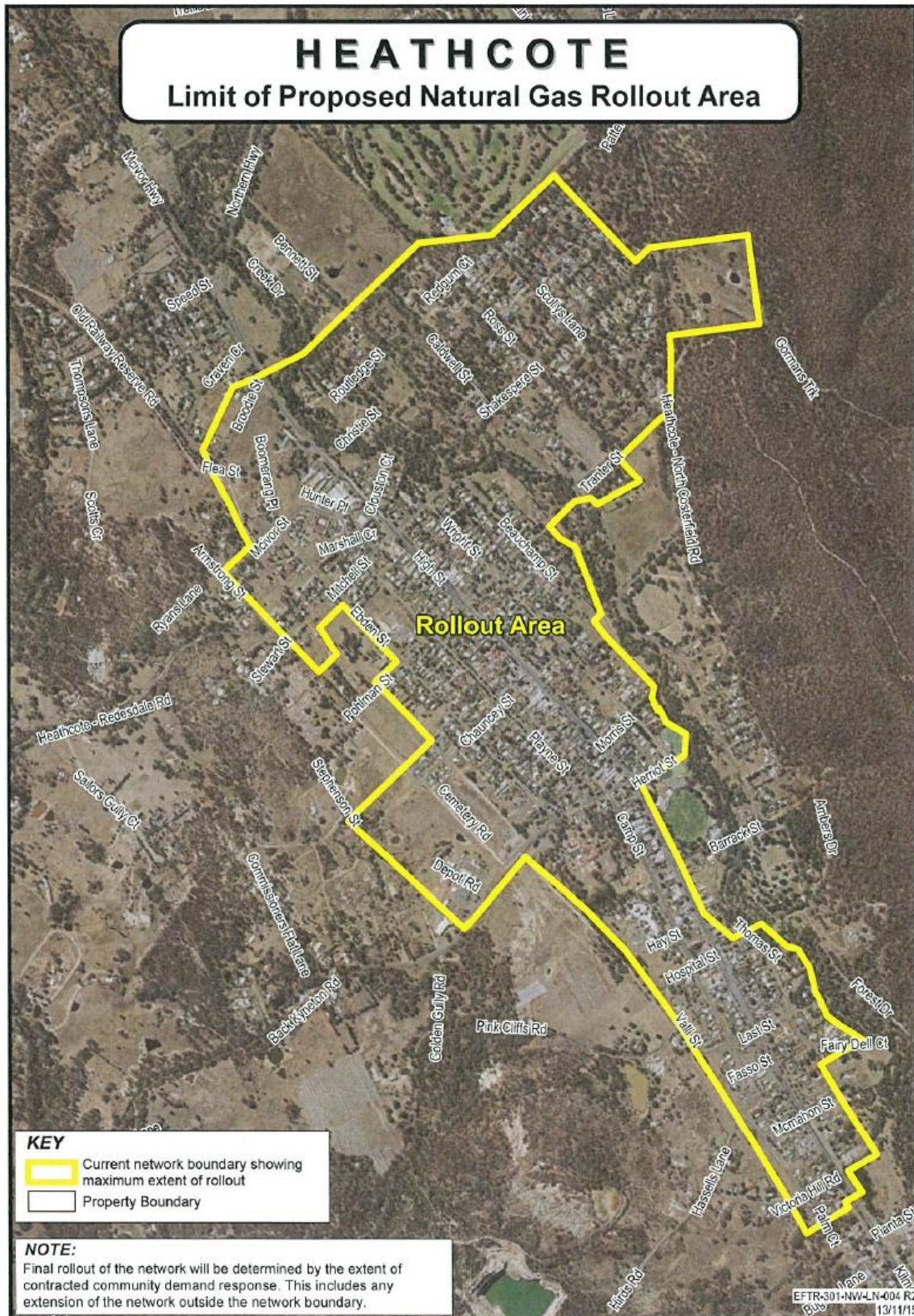


Figure 3 - Example of a Reticulation Layout



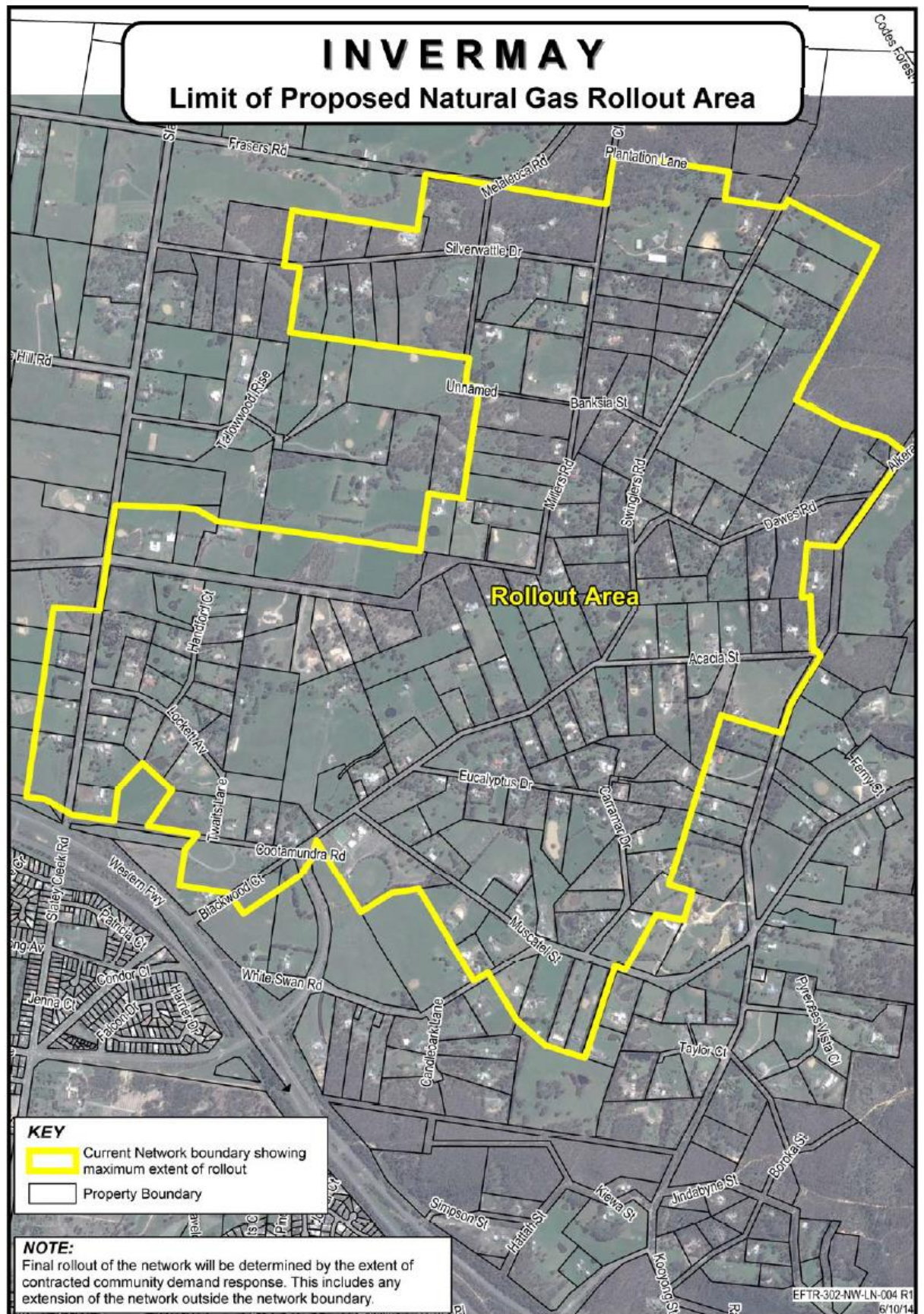
## PROPOSED NATURAL GAS PIPELINE ROLLOUT AREAS

### 3.1. Heathcote



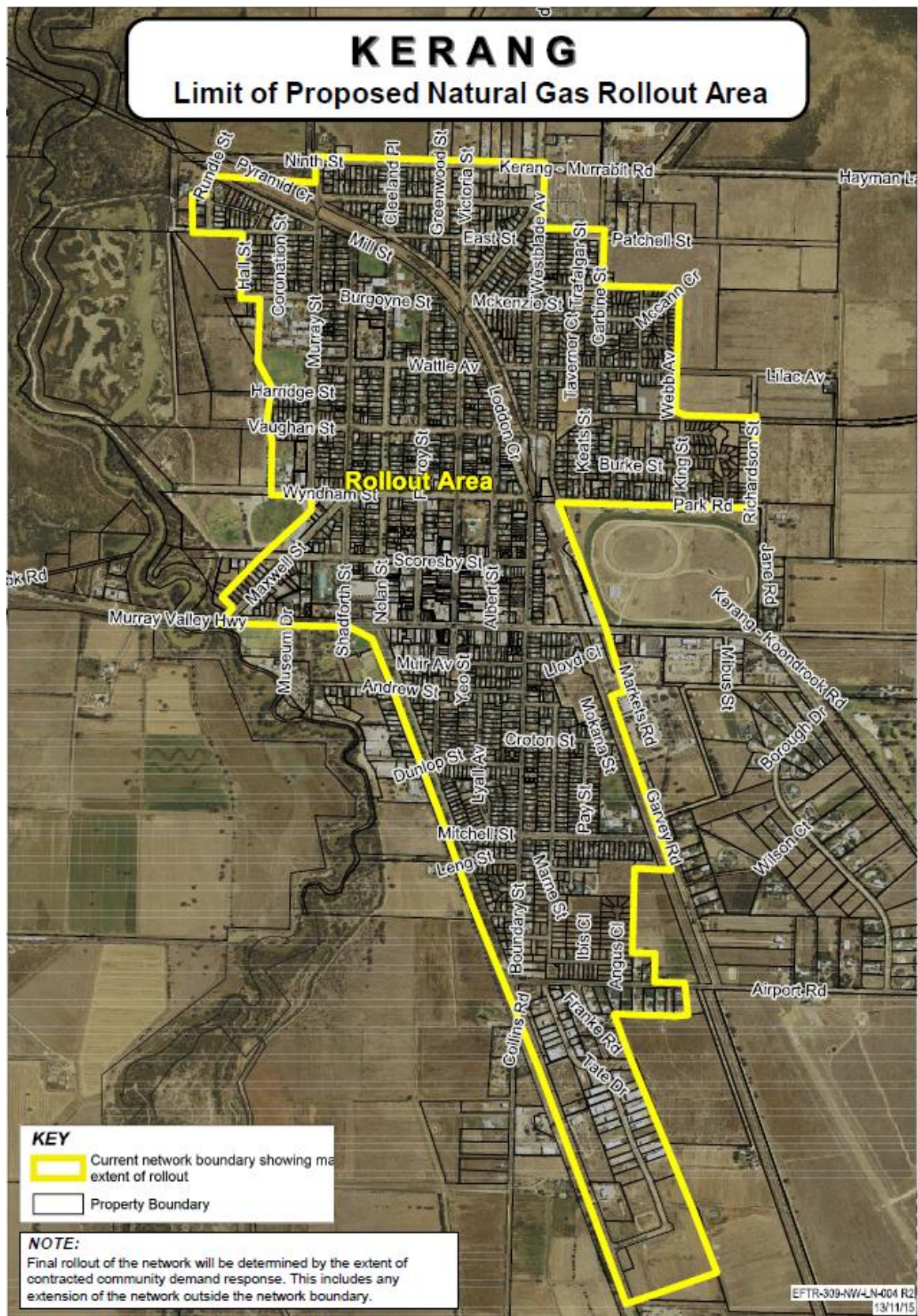


### 3.2. Invermay



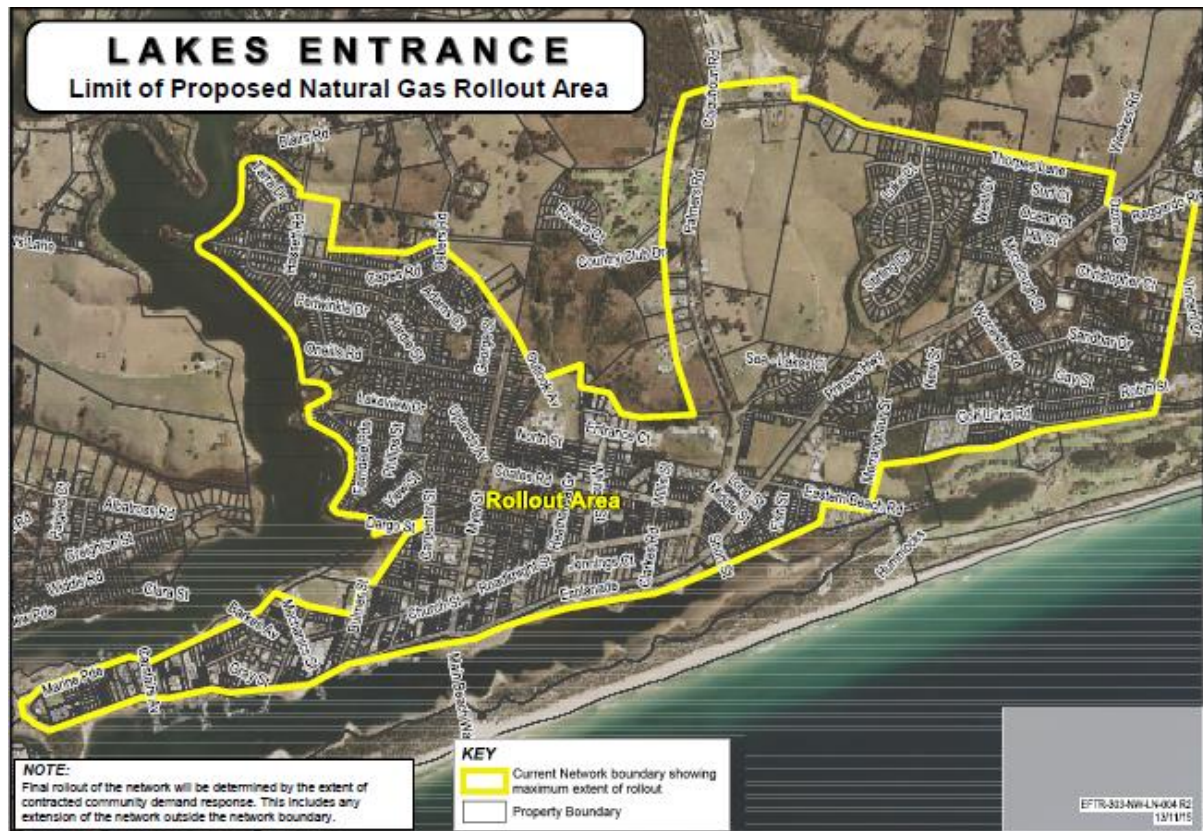


### 3.3. Kerang



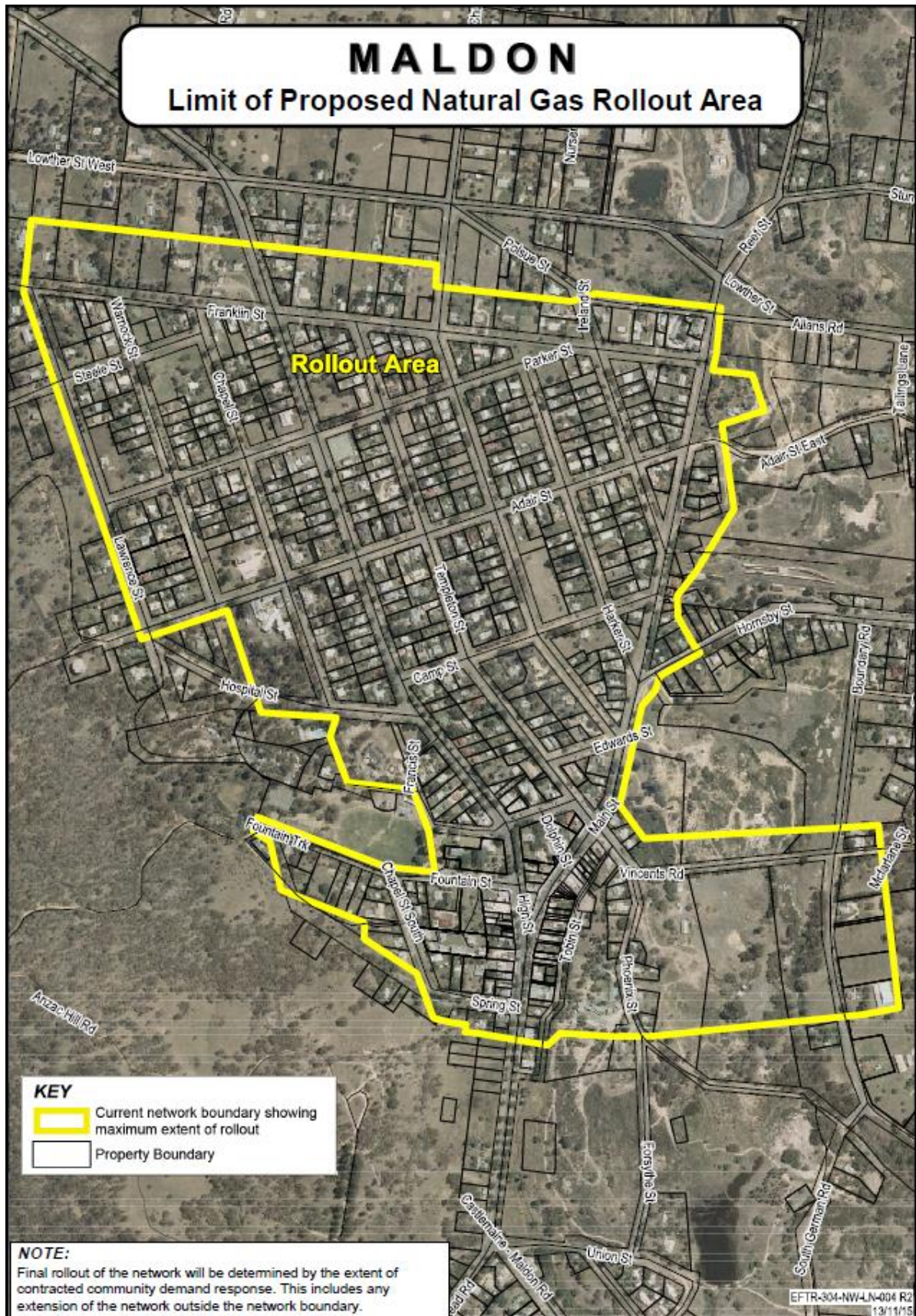


### 3.4. Lakes Entrance



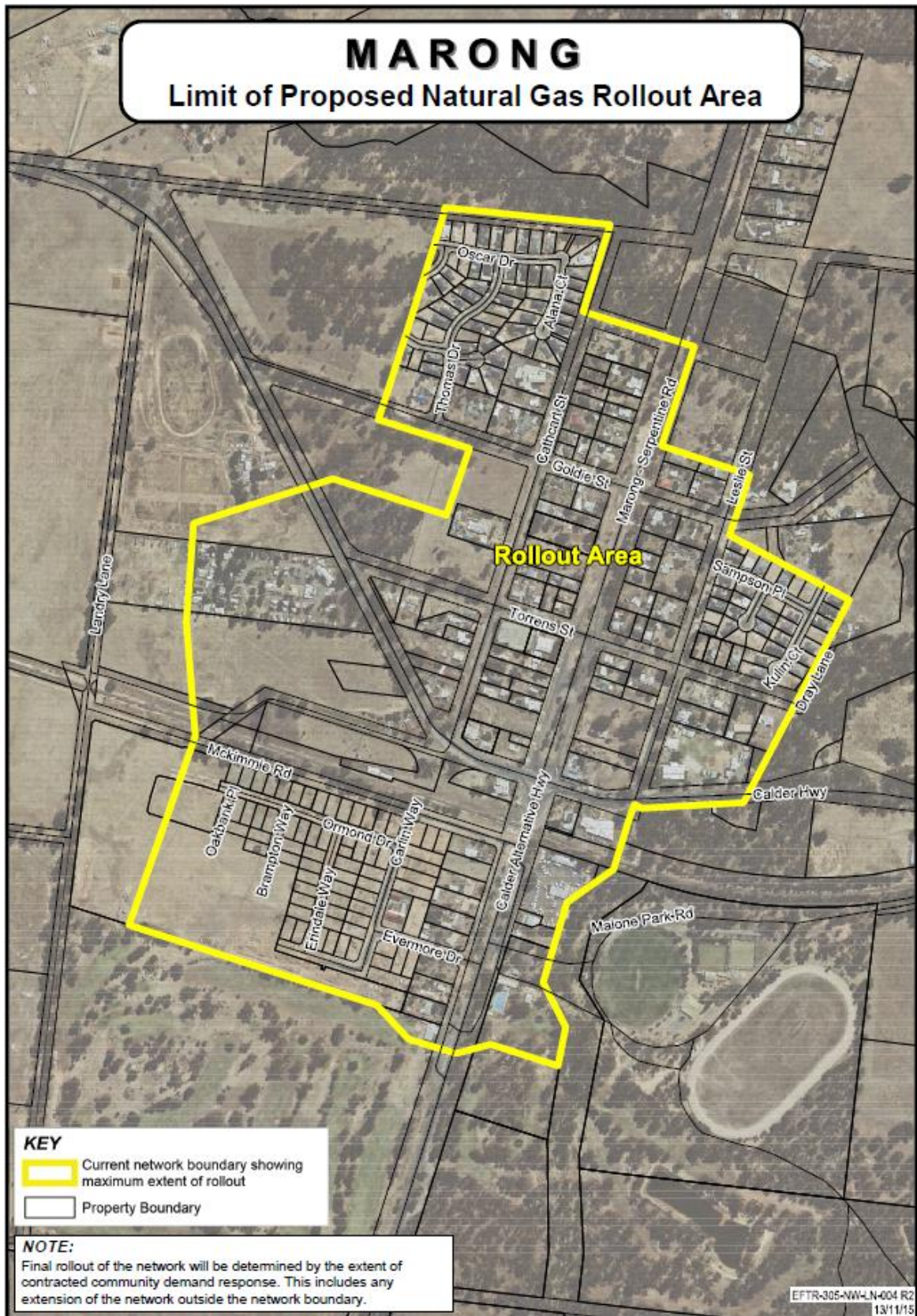


### 3.5. Maldon



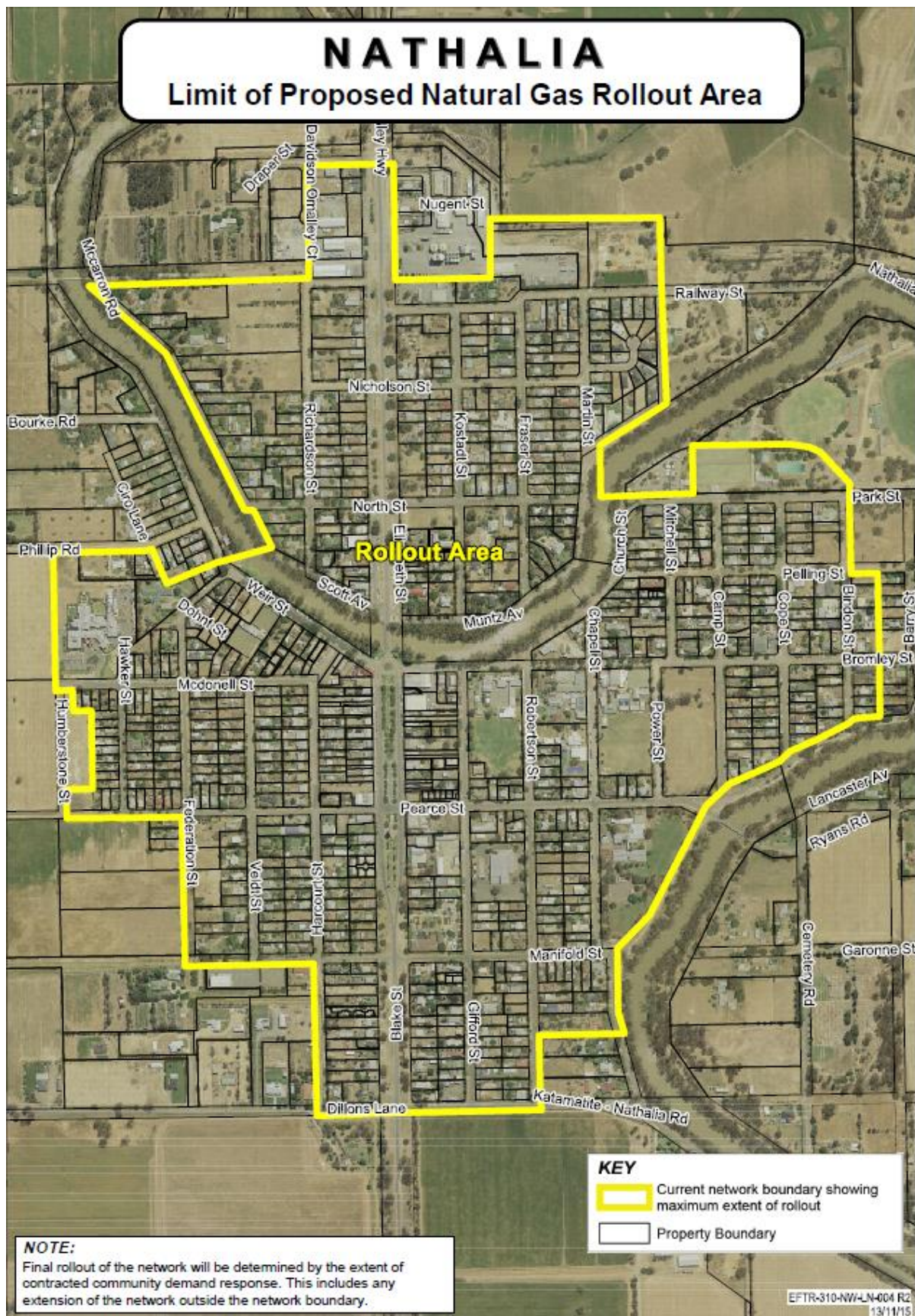


### 3.6. Marong



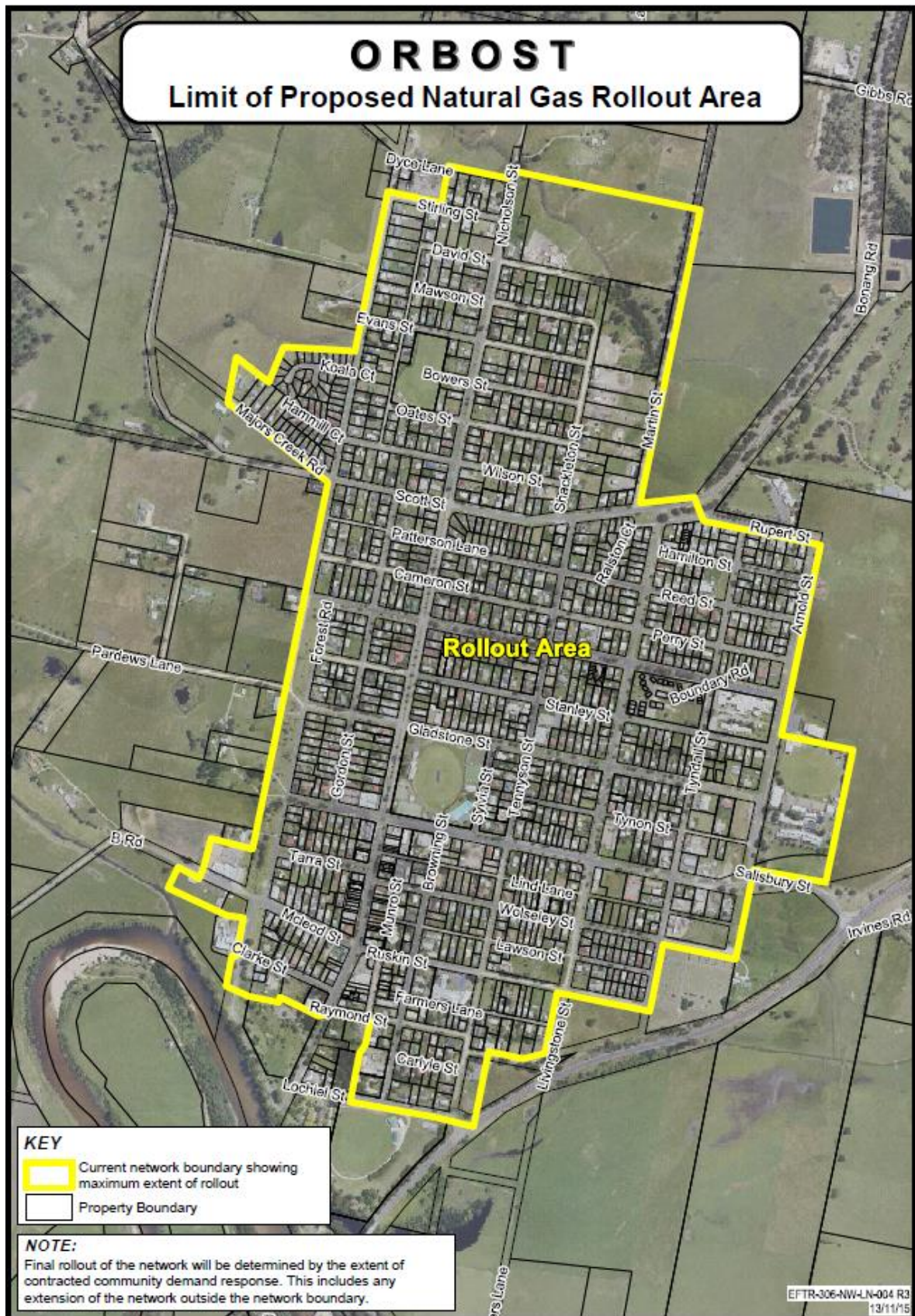


### 3.7. Nathalia





### 3.8. Orbost





# ROBINVALE

## Limit of Proposed Natural Gas Rollout Area

**Rollout Area**

**KEY**

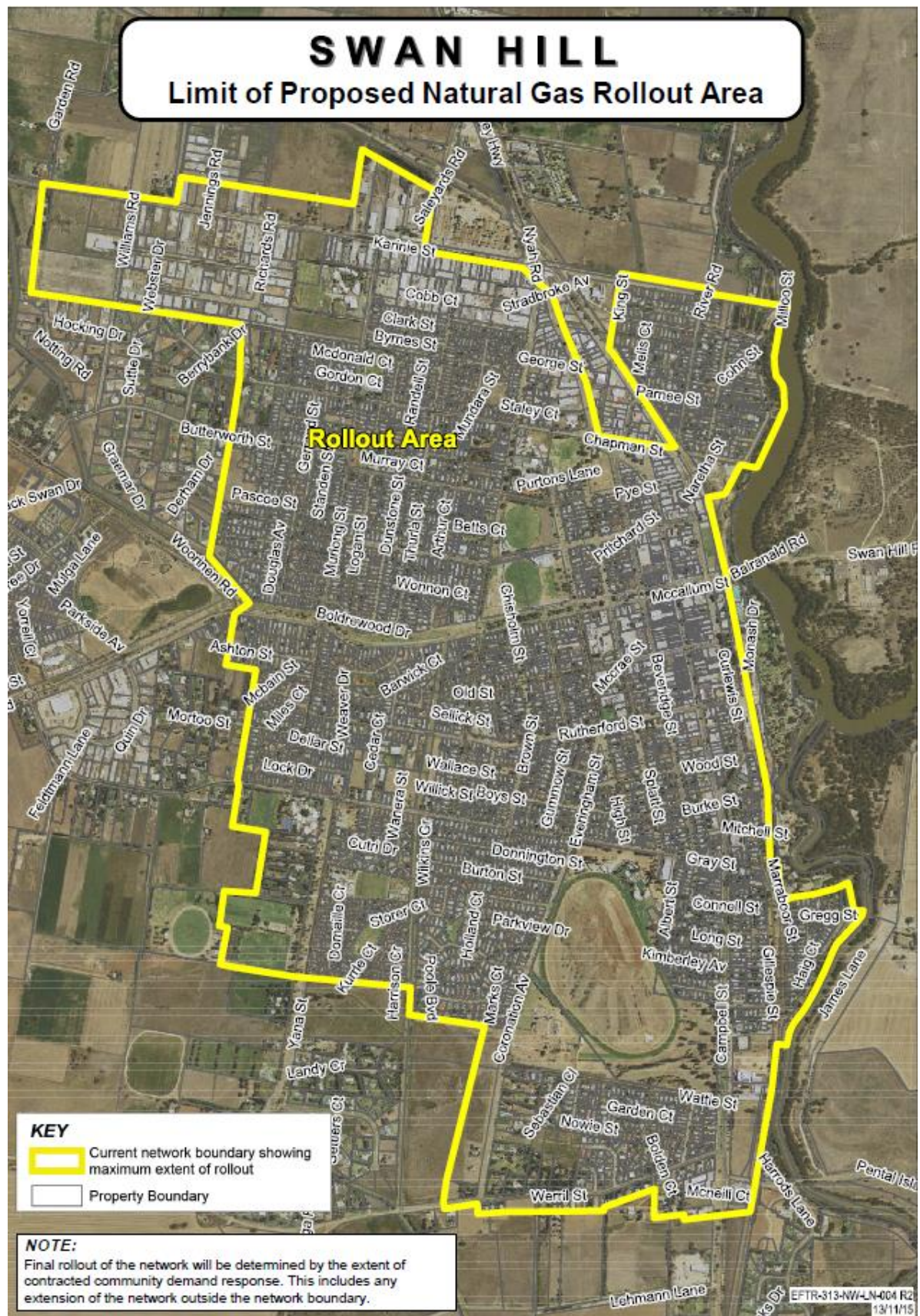
- Current network boundary showing maximum extent of rollout
- Property Boundary

**NOTE:**  
Final rollout of the network will be determined by the extent of contracted community demand response. This includes any extension of the network outside the network boundary.

EFTR-312-NW-LN-004 R2  
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### 3.10. Swan Hill





### 3.11. Terang

