



## Briefing Note – 10 February

**RE: Proposal for alternative governance structure for Healthy Waterways Ltd**

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### 1. Background

The current structure of Healthy Waterways (HWL) has been in operation for three (3) years. There have been concerns expressed both by the Board and by key Investor Network Participants with the current structure, in particular:

- (a) the role and operation of the Network Committee; and
- (b) the lack of flexibility in the composition of, and appointment to, the Board.

#### Network Committee

The Network Committee currently has 19 members. This group is now too large to discharge, efficiently and effectively, the purposes of the Committee as originally envisaged under the Network Rules. Further, concerns have been expressed as to the level of seniority of some representatives attending Network Committee meetings.

It has also become clear that communication lines between Committee representatives and senior executives and boards within their own organisations may not be as open as required to facilitate decision making by the Network Committee on financial and strategic issues.

When initially incorporated in the HWL structure, the Network Committee was entitled to provide high-level strategic advice to the Board. However, this has not occurred in practice and there is confusion as to the purpose of Network Committee meetings.

#### Healthy Waterways Board

The current structure of the Board is five (5) directors appointed by the Network Committee. All directors must satisfy the definition of 'independent' under the Constitution, namely:

*"a person who:*

- (a) is appointed by the Network Committee under clause 13.1(c);*
- (b) is not an employee of a Network Participant or the Company (for the purposes of this definition, an employee does not include an elected representative or a non-executive director of a board associated with a Network Participant); and*
- (c) has met the requirements for appointment under the Corporations Act 2001 (Cth)."*

Under the current Constitution, the Board has no power to fill a casual vacancy or to appoint additional directors to fill identified skills gaps.

#### CEOs Roundtable – November 2013

At the CEOs roundtable held in November 2013, an initial draft proposal for revisions to the HWL governance structure were presented and discussed. Attendees were supportive of HWL presenting a more radical revised structure. Attendees also agreed that negotiating for funding on an annual basis was not a sustainable model.

There was general agreement at the meeting for HWL to present to the Network members a new funding model and governance structure that will provide HWL with stable core funding and support to achieve its objectives.



The purpose of this briefing note is to outline an alternative governance structure for HWL and a suggested timeline for implementation of the new structure on the assumption that it receives Network member support. The paper also includes a recommended approach to the development of the new funding model.

## **2. Development of Original Model**

In developing a revised governance structure, consideration was given to the reasons that dictated the development of the company/network model in the first place.

International WaterCentre was approached in 2009 to take on responsibility for the South East Queensland Healthy Waterways Partnership as Brisbane City Council had indicated that it no longer wished to auspice the body.

As part of the advice sought on the preferred structure, it was decided to incorporate Healthy Waterways Limited as a wholly-owned subsidiary of IWC Pty Ltd and establish the Network as a separate contractual arrangement with the Network Committee vested via this contract with a number of the rights that would have flowed if the Network members were members of the Healthy Waterways company.

Subsequently, the tax advisors suggested that HWL seek DGR status via the Register of Environmental Organisations. This then necessitated increasing the company membership of HWL to meet the requirements for DGR endorsement via this mechanism. Currently HWL has six members, including three (3) of our key stakeholders – Department of Environment and Heritage Protection, Brisbane City Council and Unitywater.

## **3. Proposed Revised Governance Model**

### **3.1 Company membership structure**

Reflecting on the feedback provided at the CEOs roundtable, it is now time to simplify the HWL governance structure. This can be done by collapsing the Healthy Waterways Network into the company, ie membership of the Healthy Waterways Network is via joining as a company member rather than by signing a Network Agreement.

It is proposed that the membership of the company be split into the following classes:

- (1) Class A – Investing Network Participants: Members in this class have full voting rights at general meetings of HWL in return for payment of an annual membership fee
- (2) Class B – General Network Participants (including Contributing Network Participants): Members in this class have no voting rights at general meetings of HWL but are entitled to attend company meetings and receive annual reports. Members in this class pay a nominal fee. This could remain as a tiered fee to accommodate 'capacity to pay' issues for small community/volunteer organisations.

By moving all Investing Network Participants into company membership, the Investing Network Participants receive the important rights that are currently vested in the Network Committee, namely the right to elect and remove directors and approve changes to the Constitution. There is also the opportunity to move to a 'one member, one vote' model rather than the current weighted voting model.

The key element of this will be the determination of the membership fee for Investing Network Participants. See further discussion later in this paper.

### **3.2 New Board structure**

The HWL Board would be increased to seven (7) directors.



Five (5) directors would be elected by the Class A company members (ie Investing Network Participants). At least three (3) of the directors elected by the members must be independent of the members. This allows members to elect up to two (2) directors drawn from within their organisations.

The Board would have the right to appoint two (2) directors to address any identified skills gaps that may occur through the member-election process. At least one of these appointees must be independent.

As a result of this process, there will be at least four (4) independent directors. The chairperson will be elected by the Board from within the cohort of independent directors [no change to the current process].

All directors would have a 3 year term and elections would be held in conjunction with the AGM. Transitional arrangements will ensure that a rotation system is established to avoid all director terms expiring at the same AGM.

As part of the revision of the board structure to include non-independent directors, the definition of 'independent' used in the Constitution has also been revised to revert to the more usual definition used for corporate boards:

*"a person who:*

- (a) does not have any financial or pecuniary interest in the Company and is not a director, officer or employee (or their equivalent) of a Member; and*
- (b) has met the requirements for appointment under the Corporations Act 2001 (Cth)."*

### 3.3 Board Committees

It is not proposed to include any express statements as to the establishment of a new version of the 'Network Committee' or other groups (such as SEPs) in the Constitution. The Constitution already has a general clause permitting the Board to establish committees.

By not specifying any particular committee that the Board may establish, this provides the ultimate flexibility to establish a committee structure that best suits the needs of HWL at any given time.

### 3.4 Network Rules

Under the alternative structure, a number of elements currently contained in the Network Rules become redundant. It is proposed that the Network Rules be incorporated as an appendix to the Constitution. They will be binding on all company members.

## 4. Proposed Revised Funding Model

Due to the complexity of HWL current funding model and the year on year issues with securing funding it was agreed (and supported) at the CEOs Roundtable that a new funding model be developed. Given, at this stage, the majority (90%) of core HWL funding comes from our current members; contributions are unlikely to change for these members if the existing programs remain. There are several options to be considered which is likely to take the best part of 2014. Options to be considered include: reducing core, a project funding approach, new members, alternate revenue streams, reducing the program, different splits to membership contribution etc.

Accordingly the HWL Board is suggesting that, as a first step, the amendments to the Constitution and Network Rules be approved and implemented. As the next step, the CEOs whose organisations are now members of the Company will consider the funding rationale and approach to ensure HWL has commitment at the highest level.



Given the 14/15 budget is developed and ready for approval, the HWL Board is recommending the current funding model remain for 14/15 and a new approach adopted for the 15/16 FY onwards.

## 5. Next Steps

Once HWL has the support of the Major Investing members to these proposed Amendments, the following will need to occur:

- Healthy Waterways will provide a brief of the proposed Amendments to Network Members at the next Network Meeting, 25 February 2014
- Network Representatives will need instruction/support from within their Organisations to support these Amendments and to commence the process of company membership within their own organisations
- Healthy Waterways to call a Special General Meeting of the Network. Network members vote to adopt the rules and Constitution (75% majority required)
- Healthy Waterways to call a Special General Meeting Company. Company members to vote to endorse and adopt the amended constitution to endorse the amendments (75% majority required)
- It should be noted current members of the company automatically assume company membership under the new constitution while other need to join.
- 2 New Directors can then be appointed by HWL Board
- Company membership is formalised
- Company members to approve the 2014/15 budget

A proposed timeline follows:

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## PROPOSED TIMELINE

The proposed timetable for achieving amendments to the constitution and undertaking a director election process at the 2014 AGM is set out below:

Date	Activity
<b>28 January 2014</b>	<ul style="list-style-type: none"> <li>• Board approves proposed amendments to Constitution (and Network Rules) and membership fee structure</li> <li>• Briefing package sent to CEOs group</li> </ul>
<b>First week - February 2014</b>	<ul style="list-style-type: none"> <li>• Meeting of CEOs group to discuss briefing paper and seek support</li> <li>• One-on-one meetings held to facilitate internal sign-off on amendments</li> <li>• Request Investing Network Participants commence internal processes for joining as HWL company member</li> </ul>
<b>Mid-March 2014</b>	<ul style="list-style-type: none"> <li>• Approval of constitutional amendments by special majority of Network Committee</li> </ul>
<b>Mid-April 2014</b>	<ul style="list-style-type: none"> <li>• HWL Special General Meeting (via teleconference) to approve constitutional amendments</li> </ul>
<b>April-May 2014</b>	<ul style="list-style-type: none"> <li>• HWL appoints 2 additional Board Members</li> </ul>
<b>April – September 2014</b>	<ul style="list-style-type: none"> <li>• Investing Network Participants join as HWL company members</li> <li>• HWL Board considers different funding models and approaches to securing revenue.</li> <li>• Funding option be considered and discussed with Company members (senior executive level)</li> </ul>
<b>September 2014</b>	<ul style="list-style-type: none"> <li>• Call for nominations for four (4) elected Board positions [Note: Cr Madden's position not up for election at the end of 2014]</li> </ul>
<b>October 2014</b>	<ul style="list-style-type: none"> <li>• AGM Notice issued</li> </ul>
<b>November 2014</b>	<ul style="list-style-type: none"> <li>• AGM and director elections held</li> <li>• Funding model approved by the Board</li> </ul>