

COUNCIL 9. 2. 2012

19. VBASE LIMITED

General Manager responsible:	General Manager Corporate Services, DDI 941-8528
Officer responsible:	Corporate Finance Manager
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PURPOSE OF REPORT

1. To deal with several matters with regard to Vbase Ltd.

EXECUTIVE SUMMARY

2. Since June 2011 the Council has assumed responsibility for the operation of Vbase Ltd, a Council controlled organisation.
3. Arising from that are a number of administrative matters for which resolutions of the Council are required.
4. These include deferring the repayment of an advance to Vbase and amendments to the company's constitution.
5. Details are set out in this report.

FINANCIAL IMPLICATIONS

6. The Council advanced funds to Vbase over a number of years. At 30 June 2011 these comprised:
 - (a) a current liability of \$4.5 million repayable in full on 30 June 2012;
 - (b) a non-current liability of \$29.723 million scheduled to be repaid in annual amounts commencing in April 2024, with repayment in full completed by 20 April 2030.
7. It is proposed that the Council resolves to waive the obligation to repay the sum of \$4.5 million due on 30 June 2012.
8. At the time the funds were advanced, it was expected that the proposed extension of the convention centre would proceed. A decision on the rebuild of the convention centre will be made by the Council during the 2012/13 Annual Plan deliberations in the context of the Central City Plan. In addition the company's financial position is such that repayment on the due date would cause some difficulty.
9. An audit requirement is that the chairperson of the Council's Audit and Risk Management Subcommittee provides a letter of comfort to the directors of Vbase advising that repayment will be deferred to 20 April 2030 or earlier, upon sale of the asset in respect of which the advance was made.

LEGAL CONSIDERATIONS

10. Since June 2011 Council staff have carried out a review of the Vbase business and prepared a facilities management agreement that will be signed shortly.
11. This work also included a review of the company's constitution. As a result it is proposed that a number of changes be made to reflect the new environment that Vbase is now operating in.
12. The changes are:
 - (a) clause 14.1

"the number of directors shall be determined by the major holder from time to time."

The words "until otherwise so determined, the minimum number of directors (other than alternates) shall be five" have been deleted.

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The "major holder" is the Council as the owner of all the shares in Vbase;

- (b) clause 14.2.3

This clause (set out below) has been deleted;

"Notwithstanding any provision to the contrary herein contained at least two of the directors shall not be members or employees of the local authority who is a share holder. If a person who is a director becomes a member or employee of a local authority who is a shareholder in breach of this provision such person shall forthwith resign as a director of the company."

The removal of this clause flows from the deletion of 14.2.3.

- (c) clause 14.4.3

This clause (set out below) has been deleted:

"If that director is appointed in breach of provisions of clause 14.2.3 so that more than the maximum allowable number of directors are members or employees of a local authority. Unless the major holder directs to the contrary the last appointed director who breaches this provision shall retire from office."

- (d) clause 14.8

This is a new clause (set out below):

"If the company is a wholly owned subsidiary, a director may (when exercising powers or performing duties as a director) act in a manner which he or she believes is in the best interests of the company's holding company even though it might not be in the best interests of the company."

A "holding company" is a body corporate. The Council is a body corporate established under the Local Government Act 2002 and therefore is included in the definition of "holding company".

- (e) clause 18.5.1 has been amended as set out below. The words in bold are those added to the clause.

"An obligation which, if entered into by a natural person would, by law, be required to be by deed, maybe entered into on behalf of the company in writing signed under the name of the company by:

- (i) two or more directors; or
- (ii) one or more attorneys appointed by the company in accordance with clause 18.1; or
- (iii) **one or more persons or class of persons** expressly authorised by the board for that purpose in respect of all transactions or particular transactions **provided that where one person is signing that person's signature is witnessed;**

- (f) clause 18.6

This is a new clause (as set out below):

"The board has responsibility for the management of the company and its business but the following matters shall require the approval of the shareholder:

- 18.6.1 application of insurance proceeds in the rebuild or repair of the company's assets:

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- 18.6.2 entry into any arrangement, contract or transaction outside the ordinary course of the company's business or otherwise than on arm's length terms;
- 18.6.3 entry into any arrangement, contract or transaction for the purchase of materials, works and/or services for an amount exceeding \$500,000 where such materials, works and/or services are not budgeted for in the company's annual budget; and
- 18.6.4 the giving of notice of termination of any arrangements, contracts or transactions which are material to the company's business, or materially vary in any such arrangements, contracts or transactions".

- 13. A resolution to amend the Vbase constitution requires the support of at least 75 per cent of Councillors.

CONSULTATION FULFILMENT

- 14. There is no requirement to consult in respect of the matters referred to in this report.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Defers the requirement that Vbase Ltd repays an advance of \$4.5 million to the Council to 20 April 2030 or earlier upon sale of the asset in respect of which the advance was made.
- (b) Authorises the chairperson of the audit and risk management subcommittee to provide a letter of comfort to the board of Vbase Ltd.
- (c) Revokes the constitution of Vbase Ltd current at the date of this resolution and adopts a new constitution amended as set out in the staff report considered by the Council at this meeting.