

Downer EDI Ltd

August 2017

Resolution – Amendment to the Constitution

To amend the constitution to insert at the end of clause 5 ‘Powers of the Board’ the following new subclause 5.4 “In the exercise of their powers and duties pursuant to clause 5.1 (a) the Directors shall ensure the business of the company is managed in a manner consistent with the objective of holding global warming to below two degrees Celsius above preindustrial levels”.

Supporting Statement

In the interests of all shareholders, and all Australians, our company requires sound and stable governance, and a preparedness to manage the climate change risks it, and the broader economy and community face.

There is a growing appreciation amongst leaders about the severity, breadth and immediacy of climate change risk, resulting in 160 countries signing on to the Paris Climate Change Agreement¹.

APRA executive board member Geoff Summerhayes has laid down a marker on Directors’ duties: “While climate risks have been broadly recognised, they have often been seen as a future problem or a non-financial problem. [...] This is no longer the case. Some climate risks are distinctly ‘financial’ in nature. Many of these risks are foreseeable, material and actionable now.”²

To this end, we move this special resolution to embed the effective management of climate change risk into the constitution of our company.

Climate change risk

Downer’s 2017 Annual Report identifies that it is reviewing its climate disclosure practises in line with the Taskforce on Climate-related Financial Disclosures (TCFD) recommendations and that it has been voluntarily reporting to the CDP for years.³

However, this report and CDP⁴ submissions to date, re-iterate the current policy^{5,6} position - that being a consideration of only immediate operational impact and “Climate related risks on major projects are typically assessed by the project owner through various government environmental planning and approvals processes”⁷.

¹ http://unfccc.int/paris_agreement/items/9485.php

² <http://www.apra.gov.au/Speeches/Pages/Australias-new-horizon.aspx>

³ <http://www.downergroup.com/Resources/Documents/Investors/Financial-Results--Reports/201617/Full-Year-Results/Annual-Report.pdf>

⁴ CDP Climate Change 2016 Information Request Downer EDI at <https://www.cdp.net/en/reports/archive> (search on Downer in the search facility at the bottom of the page)

⁵ http://www.downergroup.com/Resources/Documents/Investors/Corporate-Governance/Board-Policies/DG-ZH-PO001-Environmental-Sustainability-Policy_locked.pdf

⁶ <http://www.downergroup.com/Resources/Documents/Investors/Corporate-Governance/Board-and-Committees/Zero-Harm-Committee-Charter.pdf>

⁷ <http://www.downergroup.com/Resources/Documents/Investors/Financial-Results--Reports/201617/Full-Year-Results/Annual-Report.pdf>

We the shareholders believe, that by managing the company in a manner consistent with holding global warming to below 2°C, Downer must broaden their consideration beyond operations to all emissions resulting from a project they enable or service. Failure to do so, is a failure to mitigate the following risks identified in the TCFD Final Report⁸:

- Reputation Risk
- Legal Risk

Reputation Risk

The TCFD Final Report states “Climate change has been identified as a potential source of reputational risk tied to changing customer or community perceptions of an organization’s contribution to or detraction from the transition to a lower-carbon economy”.⁹

The reputational risk to Downer involving itself in projects not aligned to keeping below 2°C, even where emissions responsibility is deferred to their client, is currently evident in its intention to enter in to contracts¹⁰ with Adani Mining Pty Ltd (Adani) for the provision of mining services and the construction of mine infrastructure at the Carmichael Coal Mine.

The Adani mine is losing its social licence, with one of the largest environmental campaigns in Australia’s history.^{11,12,13,14,15,16} Public disapproval has only increased with new, critical scientific information about increasing global climate change threats.^{17,18,19}

Downer has already been a target of decentralised direct action, disrupting business²⁰ and bringing attention to Downer’s brand in traditional media.^{21,22,23,24}

This project demonstrates that a reliance on “various government environmental planning and approvals processes”²⁵ is misplaced, as the Federal Government did not assess climate change impacts of the mine. Companies can no longer continue to retain their social licence by absolving themselves of responsibility, and we the shareholders believe that Downer’s reputation is at risk if it does not take on this responsibility and manage the company in a way consistent with keeping global warming below 2°C.

⁸ Recommendations of the Task Force on Climate-related Financial Disclosures, Final Report, June 2017 at <https://www.fsb-tcfcd.org/wp-content/uploads/2017/06/FINAL-TCFD-Report-062817.pdf>

⁹ Ibid.

¹⁰ <http://www.downergroup.com/Investors-and-media/ASX-announcements/2014/Downer-receives-letter-of-award-for-Carmichael-Coal-Mine-contracts.aspx>

¹¹ <http://www.stopadani.com/>

¹² <https://www.getup.org.au/campaigns/great-barrier-reef--3/adani-video-report/help-stop-adani-from-destroying-the-great-barrier-reef>

¹³ http://www.bobbrown.org.au/stop_adani

¹⁴ <http://wanganjagalingou.com.au/our-fight/>

¹⁵ https://www.acf.org.au/stop_adani

¹⁶ <https://350.org.au/stopadani/>

¹⁷ <https://www.nature.com/news/three-years-to-safeguard-our-climate-1.22201>

¹⁸ http://climatenewsnetwork.net/antarctic-warming-threatens-ice-shelf/?utm_source=Climate+News+Network&utm_campaign=410a02c94a-EMAIL_CAMPAIGN_2017_05_22&utm_medium=email&utm_term=0_1198ea8936-410a02c94a-38804213

¹⁹ <https://www.carbonbrief.org/billions-face-deadly-threshold-heat-extremes-2100-study>

²⁰ <http://galileeblockade.net/downer/>

²¹ <https://www.facebook.com/tennewsqueensland/videos/1589543274399040/>

²² <https://www.facebook.com/tennewsqueensland/videos/1590460594307308/>

²³ <http://www.sbs.com.au/news/thefeed/article/2017/07/18/95-year-old-anti-adani-activist>

²⁴ <http://www.couriermail.com.au/questnews/moreton/mine-protesters-at-brendale-facility-call-downer-for-to-ditch-its-deal-over-adani-mine/news-story/6026b41534449da14e7b96568627a58c>

²⁵ <http://www.downergroup.com/Resources/Documents/Investors/Financial-Results--Reports/201617/Full-Year-Results/Annual-Report.pdf>

Legal Risk

The TCFD Final Report states that “Recent years have seen an increase in climate-related litigation claims being brought before the courts....”²⁶ Reasons for such litigation include the failure of organizations to mitigate impacts of climate change, failure to adapt to climate change, and the insufficiency of disclosure around material financial risks. As the value of loss and damage arising from climate change grows, litigation risk is also likely to increase.”²⁷

Further, a 2016 legal opinion outlines the obligations of directors to consider climate risk.²⁸ Geoff Summerhayes also drew attention to this piece by highlighting the link between ‘foreseeable’ and ‘duty’, and that the piece “found that company directors who fail to properly consider and disclose foreseeable climate-related risks to their business could be held personally liable for breaching their statutory duty of due care and diligence under the Corporations Act”.²⁹

Downer’s Environmental Sustainability Policy³⁰ states their goal is to “improve the sustainable use of natural resources” and “take all practical steps to prevent pollution and protect biodiversity and ecosystems”. We believe that such commitments – without director governance managing the company in a manner consistent with holding global warming to below 2°C – make our company vulnerable to litigation.

Summary

While this resolution is not intended to prescribe specific actions, a growing body of material provides guidance on limiting global warming to less than 2°C, and management of climate risk.

Adopting this resolution would provide certainty to investors that Downer will align itself with the globally agreed goal of holding global warming below 2°C, embedding climate change risk management into its operations and the projects it will enable and/or service, thereby positioning our company favourably in to the future.

²⁶ Peter Seley, “Emerging Trends in Climate Change Litigation,” Law 360, March 7, 2016

²⁷ Recommendations of the Task Force on Climate-related Financial Disclosures, Final Report, June 2017 at <https://www.fsb-tcf.org/wp-content/uploads/2017/06/FINAL-TCFD-Report-062817.pdf>

²⁸ <https://cpd.org.au/wp-content/uploads/2016/10/Legal-Opinion-on-Climate-Change-and-Directors-Duties.pdf>

²⁹ <http://www.apra.gov.au/Speeches/Pages/Australias-new-horizon.aspx>

³⁰ http://www.downergroup.com/Resources/Documents/Investors/Corporate-Governance/Board-Policies/DG-ZH-PO001-Environmental-Sustainability-Policy_locked.pdf