



Address: PO Box 710 Sydney Markets NSW 2129; **Phone:** 02 8736 1256
Email: stateoffice@rdansw.org.au **Website:** www.rdansw.org.au

22 July 2020

Per email: talltimbers@rdansw.org.au
Copies to: centres@rdansw.org.au
lifemembers@rdansw.org.au
regions@rdansw.org.au
stateoffice@rdansw.org.au

Centre Secretary,
RDA (NSW) Box Hill (Tall Timbers) Centre

Response to two emails from RDA (NSW) Box Hill (Tall Timbers) Centre

The Board of Riding for the Disabled Association (NSW) acknowledges the emails sent by your Centre to the Board on 26 June 2020 and 20 July 2020. As those emails were addressed to multiple recipients, this response to your emails is also being sent to those recipients.

The response to your Centre's email dated 26 June 2020 is attached as "Schedule 1" to this letter, while the response to your Centre's email dated 20 July 2020 is attached as "Schedule 2".

The Board trusts that these responses fully address your Centre's enquiries and awaits your Centre supplying the information requested in these responses.

Yours sincerely,

(Joseph Orland)

Honorary Director, Company Secretary, Finance Officer.



Address: PO Box 710 Sydney Markets NSW 2129; **Phone:** 02 8736 1256
Email: stateoffice@rdansw.org.au **Website:** www.rdansw.org.au

SCHEDULE 1 to dated 22 July 2020 letter from the Board of RDA (NSW)

<u>Question by Centre</u>	<u>Response by Board</u>
<p>1. Legal Advice Sought in 2017</p> <p>We are aware that legal advice can only be relied upon or referenced when it's issued in writing.</p> <ol style="list-style-type: none"> Can the Board confirm that the legal advice was obtained in writing? Can the Board confirm that the legal advice was provided by an independent party at arms length from the Board and it's Director's? Can the Board confirm that said written legal advice was distributed to all Members? 	<p>The Board acknowledges your question but is concerned that it conveys a level of mistrust of the Board's integrity.</p> <p>The answers to your questions are:</p> <ol style="list-style-type: none"> Yes. Yes. No. The advice is still the subject of discussion with the legal advisors.
<p>2. Legal Advice Sought in 2020</p> <p>We acknowledge the Board is seeking legal advice, however we also note that the motions from the Tall Timbers Centre were distributed to the Board on 13 March 2020.</p> <ol style="list-style-type: none"> At what date did the Board seek legal advice? Please provide all Members with the scope and criteria of the legal advice currently being sought What is the reason that the Board has sought legal advice given that a precedence 	<p>The Board responds to your questions as follows:</p> <ol style="list-style-type: none"> The Board sought legal advice on this occasion when it became necessary to consider the potential implications of the Notices of Motion put by the RDA (NSW) Box Hill (Tall Timbers) Centre. This advice was considered necessary in order to ensure that the process was carried out properly, in accordance with the law and did not cause unintended problems or consequences for RDA (NSW) and its Centres.

Founded: 1972 by Pearl Batchelor OAM. **Joint Patrons:** Her Excellency The Honourable Margaret Beazley AO QC, Governor of NSW and Mr Dennis Wilson
ABN 50 001 823 267 • **CFN** 12295 Charitable Fundraising Act 1991 **All donations \$2 or more are tax deductible**

***"RDA (NSW) is a volunteer organisation that provides horse - related activities to enrich the
lives of people with disabilities"***

<u>Question by Centre</u>	<u>Response by Board</u>
<p>already exists for Centres becoming Incorporated Associations, with the Eurobodalla Centre being an Incorporated Association since 2018?</p> <p>4. What was the difference in the criteria between the advice sought in 2017 and the advice now being sought in 2020?</p> <p>5. Is the solicitor providing the advice in 2020 the same solicitor that provided the advice in 2017?</p> <p>The broader question of the corporate structure of the RDA (NSW) is a separate matter to be considered and undertaken by the Board but should not impede the decision that each Member Centre can make independently as to whether they wish to become an Incorporated Association or not. These are two (2) separate matters and should be treated separately.</p> <p>We reject the Board’s argument that it will be a “more appropriate course action to attend to both issues simultaneously” and that it “will allow for a better, overall faster and more efficient process” and we use the recent example of the processes undertaken by the Board to adopt a new Constitution which was a lengthy & cumbersome process that took 6 years.</p>	<p>2. This has been covered in other responses given by the Board to enquiries from Centres, but to summarise it <u>includes</u> (amongst other things) such things as:</p> <ul style="list-style-type: none"> • Structure of RDA (NSW) to ensure that it satisfies current legal and commercial practice; • Whether incorporation of Centres under the Associations Incorporation Act is consistent with the structure of RDA (NSW); • Advice on what is required to be done in order for Centres to become incorporated; • What is the effect on both RDA (NSW) and all of its Centres as a result of Centres becoming incorporated. <p>3. With respect, the Eurobodalla Centre’s actions cannot be taken as precedence.</p> <p>There was no approval sought of, or given by, the Board for such action.</p> <p>The information that the Board has received is that the person(s) who instigated that action did so unilaterally:</p> <ul style="list-style-type: none"> • The majority of the Centre’s Committee advise that they were not aware that it was done; • The Board required the Centre to reverse its action; • The Board is working with the current Committee to “regularise” the situation. <p>4. The original request for advice was based on the concept of the incorporation of Centres. The current request for advice is more encompassing – refer to response to question 2 above.</p>

<u>Question by Centre</u>	<u>Response by Board</u>
	<p>5. The Board does not understand the reason or significance of this question, and it is trusted that it is not intended to be any reflection on the Centre's views about the advice, but the answer is that the advice is being sought from the same firm of solicitors as normally used by RDA (NSW) for legal advice.</p> <p>The Board acknowledges your comments, but with respect, does not accept it as an appropriate or an efficient process to undertake one process, which could have an effect on RDA (NSW), without also considering what that effect could be to RDA (NSW) and its Centres and, more importantly, undertaking that process without the benefit of legal advice on the issue.</p> <p>The Centre raises an understandable concern by referring to the time that it took to finalise the current Constitution of RDA (NSW), but does not agree that it can, in any way, be used as an indication of how long it will take to finalise the Constitution for Centres, nor as an excuse or justification for opposing the need to obtain legal advice on the issues involved.</p> <p>The Board requests the Centre to explain:</p> <ol style="list-style-type: none"> 1. Why the Centre's Committee considers it unnecessary to deal with both issues of the incorporation of Centres and the possible restructure of RDA (NSW) at the same time and as part of the same process. 2. Why the Centre's Committee considers that it is not necessary for RDA (NSW) to receive legal advice on an issue that requires what amounts to a restructure for Centres where there are numerous legal issues that must be attended to, in particular because of the

<u>Question by Centre</u>	<u>Response by Board</u>
	<p>structure of RDA (NSW) and its Centres.</p> <p>3. Why the Centre’s Committee appears to consider that legal advice should not be obtained on the basis that it could take longer to do what it wants to do (incorporate) and is therefore prepared to risk a potential adverse result for RDA (NSW) and its Centres?</p> <p>In addition, could the Centre advise if its Committee obtained independent legal advice on the matters at issue and, if so, the Board should be supplied a copy of such advice.</p>
<p>3.Voting on Motions during AGM</p> <p>We reject the position of the Board that the Motions can be deferred to an EGM pending legal advice, because the Motion raised by Tall Timbers are in accordance with the Constitution and the Corporations Act.</p> <p>There is no legislative basis to defer those Motions.</p>	<p>Whether the Motions were raised in accordance with the terms of the Corporations Act and the Constitution is, with respect, only relevant as to whether they were validly lodged.</p> <p>It is submitted that it is irrelevant that there is no legislative basis for deferring those Motions where there is a reasonable requirement for such deferral.</p> <p>Surely the Centre is not suggesting that, because there may not be any provision in the Corporations Act or any other applicable Law or Regulation (which is not admitted) or in the RDA (NSW) Constitution, that common sense should not be applied where it is subsequently found that there could be a better way to approach matters which are the subject of the Notices of Motion in order to ensure that damage is not caused as a result of the passing of those Motions.</p>



Address: PO Box 710 Sydney Markets NSW 2129; **Phone:** 02 8736 1256
Email: stateoffice@rdansw.org.au **Website:** www.rdansw.org.au

**SCHEDULE 2 to dated 22 July 2020 letter from the
Board of RDA (NSW)**

<u>Question by Centre</u>	<u>Response by Board</u>
Auditors report dated 15 th May 2020, which is after original May AGM date. Why?	<p>The COVID-19 pandemic has had wide-reaching implications. It would appear, and be reasonable to expect, that the auditor is not immune from such problems.</p> <p>Given that the Government sought it fit to assist companies by effectively extending the time permitted to hold their AGM, the Board considered it similarly appropriate to extend the same consideration to the auditor and not pressure the auditor for an earlier response.</p>
As this report was prepared during COVID-19 pandemic, please advise of the method used to collate and review sample data, virtually, electronic copies provided by RDA(NSW) or on premises, face to face.	<p>Auditor works from the information and documentation he receives after the 31st of December.</p> <p>Emails and telephone calls occur if he has a question or needs further information, the same as other years.</p> <p>If the Centre is of the opinion that there has been an irregularity in the process, it would be greatly appreciated if the Centre identifies such irregularity.</p>
Finance Officer has stated that Raymond Terrace and Lower Hunter land holdings have been inadvertently overlooked during this audit. Why?	<p>Consistent with the other RDA (NSW) landholdings, the landholding from which the RDA (NSW) RT&LH Centre operates should have always been recorded in the RDA(NSW) books of account from when it was donated to RDA (NSW) and became an</p>

Founded: 1972 by Pearl Batchelor OAM. **Joint Patrons:** Her Excellency The Honourable Margaret Beazley AO QC, Governor of NSW and Mr Dennis Wilson
ABN 50 001 823 267 • **CFN** 12295 Charitable Fundraising Act 1991 **All donations \$2 or more are tax deductible**

"RDA (NSW) is a volunteer organisation that provides horse - related activities to enrich the lives of people with disabilities"

<u>Question by Centre</u>	<u>Response by Board</u>
	<p>asset of RDA (NSW). Accordingly, it needs to be shown and referred to in the accounts of RDA (NSW) as an asset of RDA (NSW). That omission clearly needs to be rectified.</p> <p>The RT&LH land had not been shown on the RDA (NSW) books for many years until the current Finance Officer discovered that the land was not leased to RDA (NSW) but, instead, was owned by RDA (NSW). The reason for the omission over the years is not known.</p> <p>The Finance Officer then took steps to ensure that the land was appropriately brought to account in the RDA (NSW) accounts. However, due to the assistance and advice that had to be given to Centres that were having problems with such things as fires, floods, the COVID-19 pandemic and various operations issues, the Finance Officer had not noticed that the value of the land was not included until after the audit was completed. It was then not appropriate to alter the accounts, but considered that it was sufficient to notify all Centres of the oversight.</p>
<p>Finance Officer has used an example <i>“the combined operating costs of RDA (NSW) and its Centres for one year are in the vicinity of \$2million annually. Even six months without any income can have a seriously adverse effect on the financial status of the Association. This means that organisations, including organisations such as ours, should have reserves to outlast at least one year, and preferably 18 months without income”</i></p> <p>Your report <i>“covers Riding for the Disabled Association(NSW) as an individual entity”</i></p> <p>Given the above statement and theory, in your opinion. Does this financial statement give a true and fair view and free from material misstatement? or should financial statements contain consolidation of all Centres finances to give a true aspect of potential debts of “the company”, given that “the company” is</p>	<p>In order to understand the basis of the statement made, it is necessary to first understand the structure of RDA (NSW).</p> <p>Unlike the structure of RDAs in other States (ie, other than in NSW), the RDA (NSW) Centres are not separate from the “head organisation” – ie RDA (NSW). They are part of the company. Centres are not “affiliated” with RDA (NSW). They are part of RDA (NSW).</p> <p>Under the Corporations Act, the Directors of a company must bear ultimate responsibility for the operations of the Company.</p> <p>The Centres, being part of the company, operate under the authority and delegation of the Board of RDA (NSW). This is why</p>

<u>Question by Centre</u>	<u>Response by Board</u>
<p>recording significant value in assets through land holdings which Centres operate on and the Finance Officer infers “the company” needs to ensure it has sufficient assets to cover combined operating costs of RDA(NSW) .</p>	<p>Centres are required to obtain authority from the Board of RDA (NSW) for expenditure in excess of \$5,000. This authority allows the Centre to operate while it also allows the Board to ensure that the Centre has the wherewithal to cover the cost of any undertaking and does not endanger the whole organisation, such as its finances, assets and its reputation. That is one of the possible ramifications under the Corporations Act.</p> <p>This aspect is one of the many issues on which the Board of RDA (NSW) is seeking legal advice on the issue of whether the current structure of RDA (NSW) and its Centres is still appropriate under current legal and commercial requirements. It is this legal advice that the Centre appears to consider to be unnecessary by questioning the need for the Board of RDA (NSW) obtaining legal advice on the issues involved.</p> <p>While the RDA (NSW) Centres are not separate from RDA (NSW), but are part of it, the Centres are, under the ACNC (and some other provisions, such as for GST), able to report separately from each other and from RDA (NSW). While those Centres which are registered for GST are better suited to lodge their own BAS with the ATO, the Finance Officer reports to the ACNC in respect of RDA (NSW) and each of its Centres. This helps keep the Board aware of the overall financial health of the organisation.</p> <p>However, if a Centre is in financial difficulty, the Board of RDA (NSW) is, <u>under the current structure</u>, legally required to ensure that the legal and financial obligations of the Centre are met, while at the same time ensuring that the structure of RDA (NSW) is not jeopardised by any Centre which is in dire financial difficulty.</p>

<u>Question by Centre</u>	<u>Response by Board</u>
	<p>As a result, ordinarily the Board of RDA (NSW) would be required to support the Centre in whatever way necessary, including using RDA (NSW) funds, to cover the financial liabilities of the particular Centre.</p> <p>It is in this scenario that makes it essential that RDA (NSW) be prepared, <u>under the current structure</u>, to meet its legal and financial obligations and to have sufficient financial reserves to do so without endangering the future of RDA (NSW) and its Centres.</p>
<p>There appears to be a minor discrepancy between the Finance Officers report - Summary of the Net Financial results of the Association and the Auditors report;</p> <p>Net result 2019 \$337 573.09 – Auditors report \$337 733.47 – variance \$160.38</p>	<p>The Finance Officer advises that in preparing his Finance Officer Report, he used the accounts as submitted to the auditor. However he did not take into account an adjusting entry that had also been submitted to the auditor.</p> <p>The Finance Officer apologises for the error and confirms that the auditor’s figures are correct.</p>
<p>Share revaluation 2019 \$576 171.25 – Auditors report \$576 332.11 – variance \$160.86</p>	<p>The Finance Officer advises that this is the result of the previous issue immediately preceding combined with “rounding” where the shares were originally taken into account in fractions of a cent while “whole” cents were used in accounting for them.</p>
<p>Tall Timbers Centre registered riders for this period was 141.</p>	<p>The Finance Officer advises that reliance was made on the available documentation at the time that his Report was prepared.</p>
<p>As Special Purpose Financial Report, please provide the following to all members;</p> <ul style="list-style-type: none"> • Non condensed version of; • 2019 Statement of Cash Flows • 2019 Balance Sheet <p>2019 Profit & Loss Statement and Previous Year Comparison</p>	<p>The Centre is directed to Clause 45 of the RDA (NSW) Constitution.</p>
<p>On what basis / recommendation / formulae was this statement based?</p>	<p>The Finance Officer advises that it is his understanding that good standard practice</p>

<u>Question by Centre</u>	<u>Response by Board</u>
<p><i>“the combined operating costs of RDA (NSW) and its Centres for one year are in the vicinity of \$2million annually. Even six months without any income can have a seriously adverse effect on the financial status of the Association. This means that organisations, including organisations such as ours, should have reserves to outlast at least one year, and preferably 18 months”</i></p>	<p>for any business or household to have something “set aside” by way of funds in the event that those funds are needed.</p> <p>RDA (NSW) has operating expenses such as wages, expenses for travel etc, RTO expenses, insurances and so on. Year on year the shortfall in “trading” receipts is made up via “investment” receipts.</p> <p>As explained in an earlier question, in addition to having sufficient funds to cover its “own” expenditure, RDA (NSW) needs to have sufficient funds to cover any liabilities of Centres should it become legally required to do so.</p> <p>On what basis does the Centre appear to assume that:</p> <ul style="list-style-type: none"> • it is not necessary for an organisation to attempt to provide sufficient resources for that organisation to withstand an extended downturn in the economy but instead be satisfied to go from day-to-day in the hope that nothing goes wrong, • that there is not going to ever be a shutdown of operations for an extended period but if there is and no funds come into that organisation for an extended period the organisation would still be able to meet all of its financial and legal obligations without prior adequate planning?
<p>Who provided professional advice as Honorary Advisors to the board on Strategic Plan and NDIS as stated in the Chairpersons Report.</p>	<p>“Partners for Purpose” is looking at the RDA (NSW) Strategic Plan.</p> <p>A specialist advisor in the NDIS field is consulting with the Board re NDIS issues.</p>