



**waterfall way CLT**

homes for locals

# **Constitution of Waterfall Way CLT Ltd**

Australian Company Number (ACN) 683 051 103  
Australian Business Number (ABN) 58 683 051 103

A company limited by guarantee

OFFICIAL

## Table of contents

### **Preamble .....4**

### **Preliminary .....5**

1. Name of the company ..... 5
2. Type of company ..... 5
3. Limited liability of members ..... 5
4. Reading this constitution with the Corporations Act ..... 6
5. Definitions ..... 6

### **Charitable purposes and powers ....6**

6. Objects ..... 6
7. Powers ..... 7
8. Not-for-profit ..... 7
9. Amending the constitution ..... 8
10. Applicable Not-for-Profit Laws ..... 8

### **Members .....8**

11. Membership and register of members 8
12. Who can be a General Member ..... 9
13. Who can be a Resident Member ..... 9
14. How to apply to become a member ..... 9
15. Directors decide whether to approve membership ..... 9
16. When a person becomes a member ..10
17. When a person stops being a member .....10
18. Membership fees .....10

### **Dispute resolution and disciplinary procedures .....11**

19. Dispute resolution ..... 11
20. Disciplining members ..... 12

### **General meetings of members .... 13**

21. General meetings called by directors 13
22. General meetings called by members 13
23. Annual general meeting ..... 14
24. Notice of general meetings ..... 14
25. Quorum at general meetings ..... 15
26. Auditor's right to attend meetings ..... 16
27. Representatives of members ..... 16
28. How meetings of members may be held ..... 16
29. Chairperson for general meetings ..... 16
30. Role of the chairperson ..... 17
31. Adjournment of meetings ..... 17

### **Members' resolutions and statements ..... 17**

32. Members' resolutions and statements ..... 17
33. Company must give notice of proposed resolution ..... 18
34. Circular resolutions of members ..... 18
35. How many votes a member has ..... 19
36. Decision making at general meetings 19
37. Challenge to person's right to vote .... 19
38. Method of voting ..... 19
39. Demand for a poll ..... 20
40. Conduct of a poll ..... 20
41. Declaring the result of a vote on show of hands ..... 20
42. When and how a vote in writing must be held ..... 20
43. Appointment of proxy ..... 21

44. Voting by proxy .....	22	65. Passing directors' resolutions .....	32
<b>Directors .....</b>	<b>22</b>	66. Circular resolutions of directors.....	32
45. Composition of Board.....	22	<b>Secretary .....</b>	<b>32</b>
46. Election and appointment of directors .....	23	67. Appointment and role of secretary....	32
47. Election of Chairperson and Office Bearers .....	24	<b>Minutes and records .....</b>	<b>33</b>
48. Term of office .....	24	68. Minutes and records .....	33
49. When a director stops being a director .....	25	69. Financial and related records.....	33
50. Suspension of directors .....	25	<b>By-laws.....</b>	<b>33</b>
<b>Powers of directors .....</b>	<b>26</b>	70. By-laws .....	33
51. Powers of directors .....	26	<b>Notice.....</b>	<b>34</b>
52. Limitations on powers of the directors .....	27	71. What is notice .....	34
53. Stewardship of Land .....	28	72. Notice to the company.....	34
54. Restriction on encumbrances by Resident Members .....	28	73. Notice to members .....	34
55. Delegation of directors' powers.....	28	74. When notice is taken to be given.....	34
56. Payments to directors .....	28	<b>Financial year .....</b>	<b>35</b>
57. Execution of documents.....	29	75. Company's financial year .....	35
<b>Duties of directors.....</b>	<b>29</b>	<b>Indemnity, insurance and access .</b>	<b>35</b>
58. Duties of directors.....	29	76. Indemnity .....	35
59. Conflicts of interest .....	29	77. Insurance .....	35
<b>Directors' meetings .....</b>	<b>30</b>	78. Directors' access to documents .....	35
60. When the directors meet .....	30	<b>Winding up.....</b>	<b>35</b>
61. Calling directors' meetings.....	31	79. Surplus assets not to be distributed to members .....	35
62. Chairperson for directors' meetings ..	31	80. Distribution of surplus assets.....	36
63. Quorum at directors' meetings .....	31	<b>Definitions and interpretation .....</b>	<b>37</b>
64. Using technology to hold directors' meetings.....	31	81. Definitions .....	37
		82. Interpretation.....	38

## **Preamble**

The members of Waterfall Way CLT Ltd established this company in response to the profound impact of the national housing crisis on the Bellingham Shire and surrounding areas. Our rural towns and villages face unprecedented challenges as the supply of affordable housing for people on local incomes has disappeared. We know that housing is a fundamental human right, and without a secure place to live, people can't fully participate in society and enjoy healthy and happy lives.

Local residents keep our communities functioning and businesses open. Yet many people, including key workers, young families, and others on local wages or with limited resources, are frequently living in precarious situations or leaving the region. Many find themselves priced out of the housing market, unable to live in the communities they serve and call home. These groups of people are rapidly joining the ranks of low-income vulnerable households across the Shire who are usually in extreme housing stress and are often facing homelessness as well as social isolation.

Until now, people facing housing affordability challenges across our region have usually been able to move to lower cost areas on the outskirts of our Shire and surrounds. However, the gap between local wages and rents or house prices is so great that this simply isn't an option. Local workers are living in precarious situations including after-housing poverty. Stories of nurses living in their cars and local businesses and service organisations being unable to recruit staff because of the housing crisis abound across the region.

The members of the Waterfall Way CLT are taking action, in collaboration with Bellingham Shire Council and other key partners, to seek local solutions. We are proud to build upon our region's history of innovative housing solutions by recognising the urgent need for community-driven initiatives to ensure that everyone has a place to call home. We can't just wait for government policies and action to trickle down to us.

For this reason, we have established the Waterfall Way CLT Ltd, with a footprint across the Bellingham Shire and surrounding areas.

Community Land Trusts, referred to as CLTs, remove the cost of land from housing to provide affordable homes forever, for people priced out of their local communities. CLTs are not-for-profit entities with resident and broader community involvement. They are stewards of land, offering shared ownership or long-term leasehold for locals, with re-sale limits to keep homes affordable in perpetuity. CLTs take the land off the commercial market forever and residents buy in for the cost of the dwelling or pay a contribution for long term leasehold. CLTs also provide affordable rentals and temporary accommodation.

CLTs rely on access to low or no-cost land through donations, bequests, long-term leases, and partnerships. They also undertake other activities that fund the company's purpose and

benefit the local community, such as agriculture, renewable energy and other social enterprise initiatives.

The Waterfall Way CLT has been established to develop secure, affordable, and environmentally responsible housing for locals who can't obtain a modest standard of living, through their own resources, ranging from very low income earners to people on moderate and even middle incomes who are currently living in after-housing poverty.

Our homes will remain affordable for generations to come. It is our intention that over time we will positively contribute to our region's transition to sustainable and environmentally responsible ways of living as we adjust to the ongoing impacts of climate change.

The members of the Waterfall Way CLT acknowledge the sovereignty of the Gumbaynggirr people, the Traditional Custodians of the Bellingen Shire and surrounding areas, and we recognize that their sovereignty has never been ceded. For these reasons, we commit to continue to strengthen our relationships and work collaboratively with Gumbaynggirr people, in ways that recognise their self-determination aspirations.

We know that since colonisation, most First Nations peoples have been unable to access safe and secure homes, despite being the custodians of this continent for tens of thousands of years. We seek ways to work together on housing solutions with and for Gumbaynggirr people and First Nations people from other clans and nations in housing need.

We are dedicated to building a sustainable and inclusive community through the Waterfall Way CLT that is informed by the International Cooperative Principles of Voluntary Membership, Democratic Control, Economic Participation, Autonomy, Education, Cooperation, and Community Concern. We seek to work closely with other cooperative and mutual organizations committed to the same principles.

Together, we embark on this journey to ensure that our local towns and villages, and the people living in them, thrive and prosper.

## **Preliminary**

### **1. Name of the company**

The name of the company is Waterfall Way CLT Ltd (the company).

### **2. Type of company**

The company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

### **3. Limited liability of members**

The liability of members is limited to an amount not exceeding \$50 (the guarantee) which each member must contribute to the property of the company if the company is wound up while the member is a member, or within 12 months after they stop being a member. This guarantee is required to pay for the:

- (a) debts and liabilities of the company incurred before the member stopped being a member; or
- (b) costs associated with the winding up.

#### **4. Reading this constitution with the Corporations Act**

- 4.1 The replaceable rules set out in the Corporations Act are displaced by the constitution and do not apply to the company.
- 4.2 Subject to clause 4.1 and except to the extent the inconsistency arises in respect of a Corporations Act provision that does not apply to the Company while it is a registered charity, while the company is a registered charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.
- 4.3 Subject to clause 4.1, if the company is not a registered charity (even if it remains a charity under section 5 of the Charities Act), the Corporations Act overrides any clause in this constitution which is inconsistent with the ACNC Act.
- 4.4 A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning in this constitution.

#### **5. Definitions**

In this constitution, words and phrases have the meaning set out in clauses 81 and 82.

### **Charitable purposes and powers**

#### **6. Objects**

- (a) The charitable purpose and objects for which the company is established, as a public benevolent institution, are to provide benevolent relief to people living in the Bellingen Shire and surrounding areas who are suffering from poverty or hardship and who are unable to obtain a modest standard of living in the Australian community with their own resources (**Persons in Benevolent Need**) by, but not limited to:
  - (i) acquiring and holding land to provide affordable housing into perpetuity to Persons in Benevolent Need by removing the land from the commercial market forever;
  - (ii) developing affordable, secure housing for Persons in Benevolent Need;
  - (iii) developing temporary or emergency accommodation to provide safe housing for Persons in Benevolent Need, particularly persons who are homeless, at risk of homelessness or are experiencing other forms of hardship requiring emergency accommodation assistance; and
  - (iv) undertaking other community benefit activities ancillary to or necessary for the fulfilment of the company's purpose.
- (b) **Limited Appreciation**

In the case of shared ownership arrangements with a Resident Member, the company adopts the concept of "limited appreciation", which is the limitation of financial return to the Resident Member in the event of an increase in

values of property on the open market in the area, thereby ensuring its ongoing affordability into perpetuity to future Resident Members. The limitation of financial return is outlined in the Resale Formula.

- (i) **Resale Formula**  
The resale formula determines the resale amount when a Resident Member sells their share of their home.
- (ii) The resale formula is calculated using a resale index, which is the average of the Consumer Price Index (All Groups) and the NSW Full Time Ordinary Earnings (Private Sector) Index.
- (iii) An average of both indexes means that the interests of both the seller and the purchaser are taken into account and the resale amount remains affordable into the future.
- (iv) The resale index is applied to the Initial Contribution as follows: the resale amount equals the Initial Contribution multiplied annually on a compounding basis by the resale index, over the period of time from the commencement date in the Resident Member's Deed.
- (v) The total resale amount will be the indexed Initial Contribution plus the amount agreed in writing between the company and the Resident Member for any Major Improvements, at the time the Major Improvements were approved by the company.
- (vi) In the unlikely event of negative indexes, the minimum resale amount will be the Initial Contribution, or the re-sale amount paid, plus the agreed sum of Major Improvements.
- (vii) The company will have first option to purchase a Resident Member's property and/or facilitate the sale to an eligible person, being a Person in Benevolent Need approved by the company, in a timely manner, as outlined in the Resident Member's Deed of Agreement.

## **7. Powers**

Subject to clause 8, the company has the following powers, which may only be used to carry out its purpose(s) set out in clause 6:

- (a) the powers of an individual; and
- (b) all the powers of a company limited by guarantee under the Corporations Act.

## **8. Not-for-profit**

- 8.1 The company must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.3 and 79.
- 8.2 The income and assets of the company shall be applied solely to further its purpose(s) in clause 6.
- 8.3 Clause 8.1 does not stop the company from doing the following things, provided they are done in good faith:

- (a) paying a member for goods or services they have provided or expenses they have properly incurred for on behalf of the company at fair and reasonable rates or rates more favourable to the company; or
- (b) making a payment or providing a benefit to a member in carrying out the company's objects.

## **9. Amending the constitution**

- 9.1 Subject to clause 9.3, the members may amend this constitution by passing a special resolution.
- 9.2 Any amendment to this constitution will take effect from the date of the special resolution, or from any later date specified in the resolution passing the amendment.
- 9.3 The members must not pass a special resolution that amends this constitution if passing it causes the company to no longer be a charity.

## **10. Applicable Not-for-Profit Laws**

The company will at all times comply with the Applicable Not-For-Profit Laws.

# **Members**

## **11. Membership and register of members**

- 11.1 The members of the company are:

- (a) initial members; and
- (b) any other person that the directors allow to be a member, in accordance with this constitution.

- 11.2 The company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:

- (a) for each current member:
  - (i) name;
  - (ii) address;
  - (iii) any alternative address nominated by the member for the service of notices;
  - (iv) date the member was entered on to the register; and
  - (v) class of membership to which the person belongs.
- (b) for each person who stopped being a member in the last 7 years:
  - (i) name;
  - (ii) address;
  - (iii) any alternative address nominated by the member for the service of notices; and
  - (iv) dates the membership started and ended.

- 11.3 The company must give current members access to the register of members.



11.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

11.5 There are two types of members:

- (a) General Members; and
- (b) Resident Members.

**12. Who can be a General Member**

12.1 A person who lives in or has demonstrable ties to the Bellingham Shire or surrounding area and supports the purposes of the company is eligible to apply to be a General Member of the company under clause 14.

12.2 In this clause, 'person' means an individual or incorporated body.

12.3 All initial members that become members on incorporation of the company will be categorised as General Members.

**13. Who can be a Resident Member**

13.1 A Person in Benevolent Need who executes a co-ownership deed or lease with the company is eligible to become a Resident Member of the company under clause 14.

13.2 Incorporated bodies cannot be a Resident Member.

**14. How to apply to become a member**

14.1 A person (as defined in clause 12.2) may apply to become a General Member of the company by writing to the secretary by completing the membership application form, stating that they:

- (a) want to become a General Member;
- (b) support the purpose(s) of the company; and
- (c) agree to comply with the company's constitution, including paying the guarantee under clause 3 if required.

14.2 A Person in Benevolent Need becomes a Resident Member upon:

- (i) executing a co-ownership deed or lease with the company;
- (ii) agreeing in writing to comply with the company's constitution, including paying the guarantee under clause 3 if required; and
- (iii) when the name of the Resident Member has been entered into the register of members.

14.3 A General Member may become a Resident Member upon executing a co-ownership deed or lease with the company, at which point the class of membership to which they belong will change from General Member to Resident Member, which will be reflected in the register of members.

**15. Directors decide whether to approve membership**

15.1 The directors must consider an application for membership of a General Member within a reasonable time after the secretary receives the application.

- 15.2 In considering an application for General Membership, the directors may ask the applicant to give more evidence of eligibility or suitability for membership. If the directors make such a request, their determination of the application for membership is deferred until the evidence is given.
- 15.3 If the directors approve an application, the secretary must as soon as possible:
- (a) subject to receipt from the applicant of any required joining fees under clause 18, enter the new member on the register of members; and
  - (b) write to the applicant to tell them that their application was approved, and the date that their membership started.
- 15.4 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected. The directors are not required to give reasons.
- 15.5 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 14.1(a), 14.1(b) or 14.1(c). In that case, by applying to be a member, the applicant agrees to those three matters.

**16. When a person becomes a member**

- 16.1 Other than initial members, an applicant will become a member when they are entered on the register of members.
- 16.2 The rights and privileges of every member are personal to each member and are not transferable by the member's own act or by operation of law.

**17. When a person stops being a member**

A person immediately stops being a member if:

- (a) they die;
- (b) the company is wound up or otherwise dissolved or deregistered (for an incorporated member);
- (c) they resign, by giving written notice to the secretary;
- (d) they are expelled under clause 20, only after all appeals in clause 20 have been exhausted;
- (e) they have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member; or
- (f) in the case of a Resident Member, their co-ownership deed or lease with the company terminates or expires (at which point, the Resident Member may request to become a General Member of the company, which the company in its absolute discretion may accept or reject).

**18. Membership fees**

- 18.1 The Board may in its absolute discretion set a joining fee and/or annual membership fee (if any) to be paid for membership of the company.
- 18.2 For the avoidance of doubt, the fees determined under clause 18.1 may be different for different classes of membership.

18.3 A:

- (a) member must pay the applicable annual membership fee (if any) for that member's category of membership; and
  - (b) membership applicant must pay the joining fee (if any),
- in the manner and at the time determined by the Board.

## **Dispute resolution and disciplinary procedures**

### **19. Dispute resolution**

- 19.1 The dispute resolution procedure in this clause applies to disputes under this constitution between a member or director and:
- (a) one or more members;
  - (b) one or more directors; or
  - (c) the company.
- 19.2 Dispute resolution and disciplinary procedures related to occupancy, co-ownership and/or leases are outlined in the Deed of Agreement.
- 19.3 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 20 until the disciplinary procedure is completed.
- 19.4 Those involved in the dispute must try to resolve it between themselves within 14 days.
- 19.5 In the event that a dispute is not resolved within 14 days, the parties are to engage in mediation with a view to resolving their differences before having recourse to arbitration or litigation.
- 19.6 The mediation process may be initiated by either party sending a written 'Notice of Mediation' to the other party outlining their view of the central issue(s) in dispute, those involved in the dispute and their suggestions for a resolution of the dispute.
- 19.7 The parties shall jointly appoint a mutually agreed upon mediator. If the parties are unable to agree on a mediator within 7 days, the mediator shall be appointed by the directors, with any party to the dispute being at liberty to approach the directors to nominate a mediator.
- 19.8 The costs of the mediation, including the fees and expenses of the mediator, shall be shared equally between the parties unless otherwise agreed in writing.
- 19.9 If the dispute is not resolved within 30 days from the commencement of the mediation or such longer period as agreed upon the parties in writing, the dispute shall be referred to arbitration for resolution.
- 19.10 The arbitration shall be conducted by the Australian Dispute Centre ADC in accordance with the ADC Rules for Domestic Arbitration operating at the time the dispute is referred and the terms of those Rules are deemed incorporated into this constitution.

- 19.11 The arbitrator shall be a person who is legally trained and who has experience in the field of law directly related to the dispute who was not the mediator unless all parties consent in writing to such person being appointed. If the parties are unable to agree on an arbitrator within 14 days of the referral of the dispute to arbitration, the arbitrator shall be appointed by the President of the ADC.
- 19.12 The costs of the arbitration, including the fees and expenses of the arbitrator shall be shared equally between the parties unless the arbitrator determines otherwise.
- 19.13 The decision of the arbitrator shall be final and binding on the parties. The parties agree to be bound by the arbitrator's decision and to act accordingly.

**20. Disciplining members**

- 20.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the company if the directors consider that:
- (a) the member has breached this constitution; or
  - (b) the member's behaviour is causing, has caused, or is likely to cause harm to the company.
- 20.2 At least 14 days before the directors' meeting at which a resolution under clause 20.1 will be considered, the secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the member;
  - (b) that this resolution will be considered at a directors' meeting and the date of that meeting;
  - (c) what the member is said to have done or not done;
  - (d) the nature of the resolution that has been proposed; and
  - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 20.3 Before the directors pass any resolution under clause 20.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the directors a written explanation before that directors' meeting; and/or
  - (b) speaking at the meeting.
- 20.4 After considering any explanation under clause 20.3, the directors may:
- (a) take no further action;
  - (b) warn the member;
  - (c) suspend the member's rights as a member for a period of no more than 12 months;
  - (d) expel the member;
  - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause); or

- (f) require the matter to be determined at a general meeting.
- 20.5 For the avoidance of doubt, the directors are required to accept any recommendations made by an independent person pursuant to clause 20.4(e) regarding the outcome of the disciplinary matter.
- 20.6 In addition to the actions the directors may take as specified in clause 20.4, Resident Members may also be subject to disciplinary procedures or other consequences for misbehaviour or noncompliance as set out in the agreement between the Resident Member and company.
- 20.7 The directors cannot fine a member.
- 20.8 The secretary must give written notice to the member of the decision under clause 20.4 as soon as possible.
- 20.9 Disciplinary procedures must be completed as soon as reasonably practical.
- 20.10 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

## **General meetings of members**

### **21. General meetings called by directors**

- 21.1 The directors may call a general meeting.
- 21.2 If members with at least 5% of the votes that may be cast at a general meeting make a written request to the company for a general meeting to be held, the directors must:
  - (a) within 21 days of the members' request, give all members notice of a general meeting; and
  - (b) hold the general meeting within 2 months of the members' request.
- 21.3 The percentage of votes that members have (in clause 21.2) is to be worked out as at midnight before the members request the meeting.
- 21.4 The members who make the request for a general meeting must, in the request made under clause 21.2:
  - (a) state in the request any resolution to be proposed at the meeting;
  - (b) sign the request; and
  - (c) give the request to the company.
- 21.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

### **22. General meetings called by members**

- 22.1 If the directors do not call the meeting within 21 days of being requested under clause 21.2, 50% or more of the members who made the request may call and arrange to hold a general meeting.
- 22.2 To call and hold a meeting under clause 22.1 the members must:

- (a) as far as possible, follow the procedures for general meetings set out in this constitution;
  - (b) call the meeting using the list of members on the company's member register, which the company must provide to the members making the request at no cost; and
  - (c) hold the general meeting within three months after the request was given to the company.
- 22.3 The company must pay the members who request the general meeting any reasonable, direct expenses they incur because the directors did not call and hold the meeting.
- 23. Annual general meeting**
- 23.1 A general meeting, called the annual general meeting, must be held:
  - (a) within 18 months after registration of the company; and
  - (b) after the first annual general meeting, at least once in every calendar year.
- 23.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
  - (a) review of the company's activities;
  - (b) a review of the company's finances;
  - (c) any auditor's report;
  - (d) the election of directors; and
  - (e) the appointment and payment of auditors, if any.
- 23.3 Before or at the annual general meeting, the directors must give information to the members on the company's activities and finances during the period since the last annual general meeting.
- 23.4 The chairperson of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the company.
- 24. Notice of general meetings**
- 24.1 Notice of a general meeting must be given to:
  - (a) each member entitled to vote at the meeting;
  - (b) each director; and
  - (c) the auditor (if any).
- 24.2 Subject to clause 24.4, notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 24.3 Members may elect to receive notice:
  - (a) in person;
  - (b) by post; or

- (c) by electronic means.
- 24.4 Subject to clause 24.5, notice of a meeting may be provided less than 21 days before the meeting if:
  - (a) for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand; or
  - (b) for any other general meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 24.5 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
  - (a) remove a director; or
  - (b) appoint a director in order to replace a director who was removed; or
  - (c) remove an auditor.
- 24.6 Notice of a general meeting must include:
  - (a) the place, date and time for the meeting (and if the meeting is to be held in one or more physical venues and using virtual technology or using virtual technology only, the technology that will be used to facilitate this); and
  - (b) the general nature of the meeting's business; and
  - (c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution; and
  - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
    - (i) the proxy does not need to be a member of the company; and
    - (ii) the proxy form must be delivered to the company at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
    - (iii) the proxy form must be delivered to the company at least 48 hours before the meeting.
- 24.7 If a general meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.
- 25. Quorum at general meetings**
- 25.1 A quorum of members for a meeting is a number equal to half of the members plus one and if that number is not a whole number then the nearest whole number above shall be the quorum.
- 25.2 No business may be conducted at a general meeting if a quorum is not present.
- 25.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
  - (a) if the date is not specified – the same day in the next week;

- (b) if the time is not specified – the same time; and
- (c) if the place is not specified – the same place.

25.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

**26. Auditor's right to attend meetings**

26.1 The auditor (if any) is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

26.2 The company must give the auditor (if any) any communications relating to the general meeting that a member of the company is entitled to receive.

**27. Representatives of members**

27.1 An incorporated member may appoint as a representative:

- (a) one individual to represent the member at meetings and to sign circular resolutions under clause 34.1; and
- (b) the same individual or another individual for the purpose of being appointed or elected as a director.

27.2 The appointment of a representative by a member must:

- (a) be in writing; and
- (b) include the name of the representative; and
- (c) be signed on behalf of the member; and
- (d) be given to the company or, for representation at a meeting, be given to the chairperson before the meeting starts.

27.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.

27.4 The appointment may be standing (ongoing).

**28. How meetings of members may be held**

28.1 The company may hold a general meeting at:

- (a) at one or more physical venues; or
- (b) one or more physical venues and using virtual technology; or
- (c) using only virtual technology.

28.2 The members as a whole must be given a reasonable opportunity to participate in the meeting.

28.3 Anyone using this technology is taken to be present in person at the meeting.

**29. Chairperson for general meetings**

29.1 The elected chairperson is entitled to chair general meetings.

29.2 The members present and entitled to vote at a general meeting may choose a director or member to be the chairperson for that meeting if:



- (a) there is no elected chairperson; or
- (b) the elected chairperson is not present within 30 minutes after the starting time set for the meeting; or
- (c) the elected chairperson is present but says they do not wish to act as chairperson of the meeting.

**30. Role of the chairperson**

- 30.1 The chairperson is responsible for the conduct of the general meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 30.2 The chairperson does not have a casting vote.
- 30.3 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question and that determination is binding on the meeting.

**31. Adjournment of meetings**

- 31.1 If a quorum is present, a general meeting must be adjourned if a majority of members present direct the chairperson to adjourn it.
- 31.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 31.3 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## **Members' resolutions and statements**

**32. Members' resolutions and statements**

- 32.1 Members with at least 5% of the votes that may be cast on a resolution may give:
  - (a) written notice to the company of a resolution they propose to move at a general meeting (members' resolution); and/or
  - (b) a written request to the company that the company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (members' statement).
- 32.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 32.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 32.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 32.5 The percentage of votes that members have (as described in clause 32.1) is to be worked out as at midnight before the request or notice is given to the company.
- 32.6 If the company has been given notice of a members' resolution under clause 32.1(a), the resolution must be considered at the next general meeting that occurs more than two months after the notice is given.

32.7 This clause does not limit any other right that a member has to propose a resolution at a general meeting.

**33. Company must give notice of proposed resolution**

33.1 If the company has been given written notice of a members' resolution or a written request under clause 32.1:

- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the company's cost; or
- (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the company in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a general meeting, the members may pass a resolution that the company will pay these expenses (including, where the expenses have already been paid by the relevant members, by refunding those members an amount equivalent to the expenses incurred).

33.2 The company does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:

- (a) it is more than 600 words long; or
- (b) the directors consider on reasonable grounds that it may be defamatory;
- (c) members who proposed a resolution or made the request under clause 33.1(b) have not paid the company enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members; or
- (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the members.

**34. Circular resolutions of members**

34.1 Subject to clause 34.2, the directors may put a resolution to the members to pass a resolution without a general meeting being held (a circular resolution).

34.2 Circular resolutions cannot be used:

- (a) for a resolution to remove an auditor, appoint a director or remove a director;
- (b) for passing a special resolution; or
- (c) where the Corporations Act or this constitution requires a meeting to be held.

34.3 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 34.4 or clause 34.5.

34.4 Members may sign:

- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording is the same in each copy.
- 34.5 The company may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.
- 34.6 Any circular resolution passed in accordance with this clause satisfies any requirement in the constitution or in the Corporations Act (to the extent permitted by the Corporations Act) that the resolution be passed at a general meeting.

#### **Voting at general meetings**

#### **35. How many votes a member has**

Each member who is entitled to vote has:

- (a) on a show of hands, one vote; and
- (b) on a poll, one vote.

#### **36. Decision making at general meetings**

With the exception of a special resolution, at any meeting of members a resolution put to the vote of the meeting shall be decided by a majority of votes of those members present, with General Members passing the resolution by a majority and Resident Members passing the resolution by a majority.

#### **37. Challenge to person's right to vote**

- 37.1 A member or the chairperson may only challenge a person's right to vote at a general meeting at that meeting.
- 37.2 If a challenge is made under clause 37.1, the chairperson must decide on reasonable grounds whether or not the person may vote. The chairperson's decision is final.

#### **38. Method of voting**

- 38.1 Voting must be decided on a poll if:
  - (a) the notice of the meeting set out an intention to propose the resolution and stated the resolution; or
  - (b) the company has given notice of the resolution under clause 32; or
  - (c) a poll is demanded in accordance with clause 39.
- 38.2 If a poll is not required or has not been demanded, voting may be conducted by:
  - (a) a show of hands; or
  - (b) a vote in writing; or
  - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 38.3 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.

**39. Demand for a poll**

39.1 A demand for a poll may be made by:

- (a) the chairperson of the meeting; or
- (b) at least 5 members entitled to vote on the resolution; or
- (c) at least 5% of members present having the right to vote at the meeting.

39.2 The poll may be demanded:

- (a) before a vote is taken; or
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

**40. Conduct of a poll**

40.1 The demand for a poll may be withdrawn.

40.2 If a poll is duly demanded (and the demand not withdrawn), it must be taken in such manner and at such time as the chairperson of the meeting directs.

40.3 A poll demanded on the election of a chairperson or on any question of adjournment must be taken at the meeting and without an adjournment.

40.4 The result of the poll is the resolution of the meeting at which the poll was demanded.

40.5 The chairperson's determination, if made in good faith, will be final and conclusive.

**41. Declaring the result of a vote on show of hands**

41.1 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote pursuant to clause 38.2. The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

**42. When and how a vote in writing must be held**

42.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:

- (a) at least five members present; or
- (b) members present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
- (c) the chairperson.

42.2 A vote in writing must be taken when and how the chairperson directs, unless clause 42.3 applies.

42.3 A vote in writing must be held immediately if it is demanded under clause 42.1:

- (a) for the election of a chairperson under clause 29.2; or
- (b) to decide whether to adjourn the meeting.

42.4 A demand for a vote in writing may be withdrawn.

**43. Appointment of proxy**

- 43.1 A member may appoint a proxy to attend and vote at a general meeting on their behalf.
- 43.2 A proxy does not need to be a member.
- 43.3 Before finalising the appointment of a proxy, the appointing member must ensure that the proxy is:
  - (a) provided with clear guidance on the company's purposes; and
  - (b) made aware of the expectation that the proxy will act in a manner that furthers the company's purposes.
- 43.4 A proxy appointed to attend and vote for a member has the same rights as the member to:
  - (a) speak at the meeting; and
  - (b) vote in a vote in writing (but only to the extent allowed by the appointment); and
  - (c) join in the demand for a poll under clause 39.1; and
  - (d) join in to demand a vote in writing under clause 42.1.
- 43.5 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
  - (a) the member's name and address;
  - (b) the company's name;
  - (c) the proxy's name or the name of the office held by the proxy; and
  - (d) the meeting(s) at which the appointment may be used.
- 43.6 A proxy appointment may be standing (ongoing).
- 43.7 Proxy forms must be received by the company at the address stated in the notice under clause 24.6(d) or at the company's registered address at least 48 hours before a meeting.
- 43.8 A proxy appointment form may be delivered in person, by post or by electronic means.
- 43.9 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 43.10 Unless the company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
  - (a) dies; or
  - (b) is mentally incapacitated; or
  - (c) revokes the proxy's appointment; or
  - (d) revokes the authority of a representative or agent who appointed the proxy.

43.11 A proxy appointment may specify the way the proxy must vote on a particular resolution.

**44. Voting by proxy**

44.1 A proxy is entitled to vote on a show of hands.

44.2 When a vote in writing is held, a proxy:

- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
- (b) if the way they must vote is specified on the proxy form, must vote that way; and
- (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

## **Directors**

**45. Composition of Board**

- (a) The company must have at least three and no more than nine directors.
- (b) The Board of directors must comprise the following categories of directors, each consisting of three directors, or in the event of there being less than nine directors, one third (rounded to the nearest whole number) of the total Board:
  - (i) "Resident Directors" nominated and appointed by Resident Members;
  - (ii) "General Directors" nominated and appointed by General Members; and
  - (iii) "Nominated Directors" with specific skills needed to support the company's purpose to be appointed by the Resident and General Directors.
- (c) The composition requirements in clause 45(b) will not apply during the first 12 months after the company is established.
- (d) Until such time as the company has nominations from residents who have signed a co-ownership agreement or a lease agreement, nominations for appointment to the Board of directors as Resident Directors will be sought from people who have submitted an Expression of Interest to be a future resident.
- (e) If there are no nominations from this group, the Board may nominate local residents familiar with the interests of potential resident members as interim Resident Directors.
- (f) If upon registration of the company, the required complement of Resident Directors under clause 45(b) is unable to be met in accordance with clause 45, the Board may operate with a lesser number of Resident Directors for a period of up to 3 years.

**46. Election and appointment of directors**

- 46.1 The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the company.
- 46.2 Apart from the initial directors and directors appointed under clause 46.6 and 46.11, the members may elect a director by a resolution passed in a general meeting.
- 46.3 Subject to clause 46.6, the directors may by resolution appoint up to the maximum number of Nominated Directors.
- 46.4 Each of the directors appointed by the members must be appointed by a separate resolution, unless:
- (a) the members present have first passed a resolution that the appointments may be voted on together; and
  - (b) no votes were cast against that resolution.
- 46.5 With the exception of Nominated Directors, a person is eligible for election as a director of the company if they:
- (a) are a member of the company, or a representative of a member of the company (appointed under clause 27); and
  - (b) are nominated by two members (including representatives of members, if applicable) from their membership category specified in clause 45, (unless the person was previously elected as a director at a general meeting and has been a director since that meeting); and
  - (c) give the company their signed consent to act as a director of the company; and
  - (d) are not ineligible to be a director under the Corporations Act or the ACNC Act.
- 46.6 A person is eligible for appointment to the Board as a Nominated Director of the company if they:
- (a) have specific expertise required by the Board and are nominated by two directors, one from each of the General Director and Resident Director categories; and
  - (b) give the company their signed consent to act as a director of the company; and
  - (c) are not ineligible to be a director under the Corporations Act or the ACNC Act.
- 46.7 A person appointed by the directors as a Nominated Director will hold office for the period set by the directors (after which the Nominated Director will cease to hold office), provided the term of office does not exceed three years.
- 46.8 A Nominated Director that ceases to hold office at the end of the initial term of office in accordance with clause 46.7 can be re-appointed by resolution of the directors for a term to be set by the directors (not exceeding three years).
- 46.9 A Nominated Director cannot hold office for a continuous period of more than nine years.
- 46.10 A director must have suitable qualifications, skills and lived or professional experience (as determined by the Board) to discharge the function of director.

46.11 The directors may appoint a person as a director to fill a casual vacancy, if that person:

- (a) gives the company their signed consent to act as a director of the company; and
- (b) meets the requirements of the Board member category that is vacant; and
- (c) is not ineligible to be a director under the Corporations Act or the ACNC Act.

46.12 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of the directors to three (or higher if required for a quorum) or calling a general meeting, but for no other purpose.

46.13 Any directors appointed to fill a casual vacancy may hold office only until the next following annual general meeting of the company and shall then be eligible for election.

#### **47. Election of Chairperson and Office Bearers**

47.1 At the first board meeting following the AGM, directors must elect office bearers for the following roles:

- (a) Chairperson; and
- (b) Treasurer.

47.2 The positions of Chairperson and Treasurer cannot be served concurrently by the same person.

47.3 The terms of the Chairperson and Treasurer will expire annually immediately prior to elections under clause 47.1 or upon a majority vote by the Board to remove the office bearer.

47.4 A director may serve as a Chairperson or Treasurer for a maximum of 3 consecutive terms.

47.5 The Board may, at their discretion, agree to elect a director for an additional term as a Chairperson or Treasurer.

#### **48. Term of office**

48.1 The retirement requirements in this clause 48 do not apply to Nominated Directors, who hold office for the periods determined pursuant to clauses 46.7 to 46.9.

48.2 At each annual general meeting:

- (a) any director appointed by the directors to fill a casual vacancy or as an additional director (other than a Nominated Director) must retire, and
- (b) at least one-third of the remaining directors must retire, across the Resident Director and General Director categories.

48.3 The directors who must retire at each annual general meeting under clause 48.2(b) will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.



- 48.4 Other than a director appointed under clause 46.6 or 46.11, a director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- 48.5 Each director must retire at least once every three years.
- 48.6 A director who retires under clause 48.1 may nominate for election or re-election, subject to clause 48.7.
- 48.7 A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a special resolution.
- 48.8 An Initial Resident Director appointed pursuant to clause 45(d) or 45(e):
- (a) is appointed for a maximum term of 12 months; and
  - (b) subject to clause 48.7 may be reappointed for further terms of up to 12 months if a Resident Member is not available to fill the vacancy.

**49. When a director stops being a director**

- 49.1 A director stops being a director if they:
- (a) give written notice of resignation as a director to the company; or
  - (b) die; or
  - (c) are committed of an indictable offence; or
  - (d) in the opinion of the directors, are incapable of managing their affairs due to mental or physical incapacity, or become, in the opinion of the directors, incapable of performing his or her duties; or
  - (e) become of unsound mind or a person whose estate is liable to be dealt with in any way under a law relating to mental health; or
  - (f) are removed as a director by a resolution of the members; or
  - (g) except in the case of a Nominated Director, stop being a member of the company; or
  - (h) are a representative of a member, and that member stops being a member, or
  - (i) are a representative of a member, and the member notifies the company that the representative is no longer a representative; or
  - (j) are directly or indirectly interested in any contract or proposed contract with the company and fail to declare the nature of the interest as required by the Corporations Act; or
  - (k) are absent for 3 consecutive directors' meetings without approval from the directors; or
  - (l) become ineligible to be a director of the company under the Corporations Act or the ACNC Act.

**50. Suspension of directors**

- (a) If the conduct, position or circumstance of any director is such that continuance in office appears to the majority of the directors to be prejudicial

to the interests of the company, a majority of directors at a meeting of the directors specifically called for that purpose may suspend that director.

- (b) Within 14 days of an suspension under clause 50(a), the directors must call a general meeting, at which the members entitled to vote under this constitution may either confirm the suspension and remove the director from office in accordance with clause 49.1(f), or annul the suspension and reinstate the director.

## **Powers of directors**

### **51. Powers of directors**

- 51.1 The directors are responsible for managing and directing the activities of the company to achieve the purpose(s) set out in clause 6.
- 51.2 The directors may use all the powers of the company except for powers that, under the Corporations Act or this constitution, may only be used by members.
- 51.3 The directors must decide on the responsible financial management of the company including:
  - (a) any suitable written delegations of power under clause 55;
  - (b) entering into contracts and partnership with third parties in furtherance of the purpose(s) set out in clause 6; and
  - (c) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 51.4 Without limiting the generality of the preceding paragraphs, the directors may exercise all the powers of the company to further the objects of the company and promotion of the objects to:
  - (a) acquire parcels of land, with or without buildings and other improvements, through donation, purchase or otherwise as the Board shall determine is prudent to acquire; and
  - (b) convey an interest in land, through shared ownership arrangements, leases or other limited conveyances to Resident Members in accordance with this constitution.
- 51.5 The directors may borrow money, to charge to any property or business of the company or give any other security for a debt, liability or obligation of the company or of any other person, noting the requirement for a special resolution by members at clause 52.1(c).
- 51.6 The directors may, by power of attorney, appoint any person (either by name or by reference to position or office held) to be the attorney 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.
  - (a) Any such power of attorney may contain 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 or her.

- 51.7 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a general meeting.

**52. Limitations on powers of the directors**

- 52.1 Directors must seek by special resolution<sup>1</sup>, the approval of the members in a General Meeting, before the following decisions become effective;

- (a) changes to the constitution, including alteration of the categories of Membership;
- (b) in accordance with clause 52.2, the disposal of land held by the company, other than:
  - (i) a conveyance pursuant to clause 51.4(b); or
  - (ii) a bona fide exercise of a power of sale by a mortgagee in the case of default under an approved instrument under clause 54;
- (c) the creation of a mortgage, floating charge or similar interest over assets held by the company, other than:
  - (i) a Board approved mortgage / instrument by Resident Members in accordance with clause 54;
  - (ii) where such an interest is required for the company to develop the land for residential and community purposes, and is in accordance with the considerations listed in clause 53.1; and
- (d) the alteration of the "resale formula" as further described in clause 6(b) or the development of an additional "resale formula" for different tenure types.

- 52.2 The company's interest in land must not be sold (other than where a special resolution is not required under clause 52.1(b)) unless the following requirements are met:

- (a) no less than two thirds of the Board of directors at a meeting of directors have approved the sale, provided that written notice of such meeting is provided to directors describing the proposed sale and its reason for sale; and
- (b) a general meeting has considered the sale and passed a special resolution, approving the sale, provided the notice of the meeting includes a description of the proposal sale and reasons for the proposal are given.

- 52.3 Despite sub clauses 52.2(a) and 52.2(b) above, land subject to a lease or co-ownership deed with a Resident Member may only be sold by the company where that land is subject to a bona fide exercise clause of a power of sale under an agreement made in accordance with clause 54.1.

- 52.4 The directors may agree to the creation of encumbrances such as restrictive covenants, easements, conservation agreements and the like over the property of

---

<sup>1</sup> Note that a special resolution needs to have been passed by at least 75% of the company's membership with a majority from both membership classes. Ref Special Resolution definition at clause 81.

the company only where evidence is considered at a meeting of directors and the Board is satisfied the encumbrance is consistent with the company's objects as set out at clause 6.

**53. Stewardship of Land**

53.1 Before the directors may make a decision regarding use of land owned by the company, including such use of land by Resident Members, and in accordance with the objects of the company as set out at clause 6, the Board must take into account the following principles:

- (a) the Board must consider the needs of potential Resident Members and make decisions on land development and use including co-ownership and lessee arrangements in a way that is transparent and fair;
- (b) the Board must convey land use rights to Resident Members on terms that will preserve the affordable access to land for future Resident Members; and
- (c) the Board must convey land use rights that will promote the long term wellbeing of the community and long term health of the environment.

**54. Restriction on encumbrances by Resident Members**

54.1 A Resident Member may only enter a mortgage or other financial instrument that encumbers land or improvements to any property or land that is subject to an interest by the company where:

- (a) an application is made to the Board in the specified form; and
- (b) the legal agreement for the mortgage or other financial instrument satisfies the minimum terms specified by the Board to ensure that the protection of interests of the company and the furtherance of the objects at clause 6; and
- (c) the application is approved by the Board.

54.2 Applications made pursuant to clause 54.1(a) are to be considered by the Board within a reasonable timeframe and approval must not be unreasonably withheld.

54.3 The directors will develop a set of land use by-laws that outline the company's commitment to positive environmental, social and governance (ESG) outcomes.

**55. Delegation of directors' powers**

55.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the company (such as a chief executive officer) or any other person, as they consider appropriate.

55.2 The delegation must be recorded in the company's minute book.

55.3 The exercise of the power by the delegate is as effective as if the directors had exercised it.

**56. Payments to directors**

56.1 The company must not pay fees to a director for acting as a director.

56.2 The company may:

- (a) pay a director for work they do for the company, other than as a director, if the amount is no more than a reasonable fee for the work done; or
  - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the company.
- 56.3 Any payment made under clause 56.2 must be approved by the directors.
- 56.4 The company may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.
- 57. Execution of documents**
- 57.1 The company may execute a document without using a common seal if the document is signed by:
  - (a) two directors of the company; or
  - (b) a director and the secretary.
- 57.2 A person may sign a document:
  - (a) by signing a physical form of the document by hand; or
  - (b) by signing an electronic form of the document using electronic means.

## **Duties of directors**

- 58. Duties of directors**
- 58.1 The directors must comply with their duties as director, including the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
  - (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company;
  - (b) to act in good faith in the best interests of the company and to further the objects of the company set out in clause 6;
  - (c) not to misuse their position as a director;
  - (d) not to misuse information they gain in their role as a director;
  - (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 59;
  - (f) to ensure that the financial affairs of the company are managed responsibly; and
  - (g) not to allow the company to operate while it is insolvent.
- 59. Conflicts of interest**
- 59.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
  - (a) to the other directors; or

- (b) if all of the directors have the same conflict of interest, to the members at the next general meeting, or at an earlier time if reasonable to do so.
- 59.2 A director does not need to disclose an actual or perceived material conflict of interest to the other directors under clause 59.1 if:
  - (a) their interest arises because they are a member of the company, and the other members have the same interest;
  - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the company (see clause 77); or
  - (c) their interest relates to a payment by the company under clause 76 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act.
- 59.3 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 59.4 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clause 59.5:
  - (a) be present at the meeting while the matter is being discussed; or
  - (b) vote on the matter.
- 59.5 A director may still be present and vote if:
  - (a) their interest arises because they are a member of the company, and the other members have the same interest;
  - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the company (see clause 77);
  - (c) their interest relates to a payment by the company under clause 76 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
  - (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter; or
  - (e) the directors who do not have a material personal interest in the matter pass a resolution that:
    - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the company; and
    - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

## **Directors' meetings**

### **60. When the directors meet**

- (a) The directors may decide how often, where and when they meet.

- (b) All meetings of the Board must be open to any member, except when the Board has voted during such an open meeting to go into executive session.
- (c) The Board must not vote to hold an executive session except to consider one or more of the following matters:
  - (i) contracts, labour relation agreements with employees, arbitration, grievances or litigation involving the company;
  - (ii) real estate purchase offers and the negotiating or securing of real estate purchase options or contracts;
  - (iii) the consideration of applications from persons seeking to purchase land or housing or other improvements, lease land or housing, or arrange finance from the company;
  - (iv) relationships between the company and any party who may be harmed by a public discussion of matters relating to the relationships; or
  - (v) any other matter that the Board determines from time to time is a matter in relation to which the Board can vote to hold an executive session.

**61. Calling directors' meetings**

- 61.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 61.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.
- 61.3 Members will be advised of director meetings in the manner that the Board chooses, including forward circulating an annual schedule.

**62. Chairperson for directors' meetings**

- 62.1 The elected chairperson is entitled to chair directors' meetings.
- 62.2 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the elected chairperson is:
  - (a) not present within 30 minutes after the starting time set for the meeting; or
  - (b) present but does not want to act as chairperson of the meeting.

**63. Quorum at directors' meetings**

- 63.1 The quorum for directors' meetings, otherwise known as Board meetings, is six directors, with at least two directors from each category, unless the company has less than six directors, in which case a quorum is a majority of directors.
- 63.2 For the first 12 months following incorporation, a quorum is at least a majority of the directors.
- 63.3 A quorum must be present for the whole directors' meeting.

**64. Using technology to hold directors' meetings**

- 64.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.

- 64.2 The directors' agreement may be a standing (ongoing) one.
- 64.3 A director may only withdraw their consent within a reasonable period before the meeting.

**65. Passing directors' resolutions**

- (a) A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution with at least one director from each director category voting for the resolution.
- (b) The chairperson has a casting vote.
- (c) A director may not appoint a proxy for the purpose of voting at a directors' meeting

**66. Circular resolutions of directors**

- 66.1 The directors may pass a circular resolution without a directors' meeting being held.
- 66.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 66.3 or clause 66.4.
- 66.3 Each director may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 66.4 The company may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 66.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 66.3 or clause 66.4.

## **Secretary**

**67. Appointment and role of secretary**

- 67.1 The company must have at least one secretary, who may also be a director.
- 67.2 A secretary must be appointed by the directors (after giving the company their signed consent to act as secretary of the company) and may be removed by the directors.
- 67.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 67.4 The role of the secretary includes:
- (a) maintaining a register of the company's members; and
  - (b) maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.



## **Minutes and records**

### **68. Minutes and records**

- 68.1 The Company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of general meetings;
  - (b) minutes of circular resolutions of members;
  - (c) a copy of a notice of each general meeting; and
  - (d) a copy of a members' statement distributed to members under clause 32.
- 68.2 The company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
  - (b) minutes of circular resolutions of directors.
- 68.3 To allow members to inspect the company's records:
- (a) the company must give a member access to the records set out in clause 68.1; and
  - (b) the directors may authorise a member to inspect other records of the company, including records referred to in clause 68.1 and clause 68.2.
- 68.4 The directors must ensure that minutes of a general meeting or a directors' meeting are signed within a reasonable time after the meeting by: the chairperson of the meeting, or the chairperson of the next meeting.
- 68.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

### **69. Financial and related records**

- 69.1 The company must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 69.2 The company must also keep written records that correctly record its operations.
- 69.3 The company must retain its records for at least 7 years.
- 69.4 The directors must take reasonable steps to ensure that the company's records are kept safe.

## **By-laws**

### **70. By-laws**

- 70.1 The directors may pass a resolution to make by-laws to give effect to this constitution.

- 70.2 Members and directors must comply with by-laws as if they were part of this constitution.

## **Notice**

### **71. What is notice**

- 71.1 Anything written to or from the company under any clause in this constitution is a written notice and is subject to clauses 72 to 74, unless specified otherwise.
- 71.2 Clauses 72 to 73 do not apply to a notice of proxy under clause 43.5.

### **72. Notice to the company**

Written notice or any communication under this constitution may be given to the company, the directors or the secretary by:

- (a) delivering it to the company's registered office;
- (b) posting it to the company's registered office or to another address chosen by the company for notice to be provided; or
- (c) sending it to an email address or other electronic address notified by the company to the members as the company's email address or other electronic address.

### **73. Notice to members**

- 73.1 Written notice or any communication under this constitution may be given to a member:
- (a) in person;
  - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
  - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any); or
  - (d) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 73.2 If the company does not have an address for the member, the company is not required to give notice in person.

### **74. When notice is taken to be given**

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs; and
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent.

## **Financial year**

### **75. Company's financial year**

The Company's financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

## **Indemnity, insurance and access**

### **76. Indemnity**

- 76.1 The company indemnifies each officer of the company out of the assets of the company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the company.
- 76.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 76.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the company is not precluded by law (including the Corporations Act) from doing so; and
  - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 76.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the company.

### **77. Insurance**

To the extent permitted by law (including the Corporations Act), and if the directors consider it appropriate, the company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the company against any liability incurred by the person as an officer of the company.

### **78. Directors' access to documents**

- 78.1 A director has a right of access to the financial records of the company at all reasonable times.
- 78.2 If the directors agree, the company must give a director or former director access to:
- (a) certain documents, including documents provided for or available to the directors; and
  - (b) any other documents referred to in those documents.

## **Winding up**

### **79. Surplus assets not to be distributed to members**

- 79.1 If the company is wound up, any surplus assets must not be distributed to a member or a former member of the company, unless that member or former member is a charity described in clause 80.1.

**80. Distribution of surplus assets**

- 80.1 Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets (including 'gift funds' defined in 80.4) that remain after the company is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6; and
  - (b) required to apply its income in promoting its charitable purposes; and
  - (c) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the company; and
  - (d) that is or are deductible gift recipients within the meaning of the Tax Act.
- 80.2 The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the company may apply to the Supreme Court of New South Wales to make this decision.
- 80.3 If the company's deductible gift recipient endorsement is revoked (whether or not the company is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of clause 80.1, as decided by the directors.
- 80.4 For the purpose of this clause:
- (a) 'gift funds' means:
    - (i) gifts of money or property for the principal purpose of the company;
    - (ii) contributions made in relation to a fund-raising event held for the principal purpose of the company; and
    - (iii) money received by the company because of such gifts and contributions.
  - (b) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the Tax Act.

## Definitions and interpretation

### 81. Definitions

In this constitution:

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth)

**Applicable Not-For-Profit Law** means any law relating to the regulation of charities or not for profit entities applicable to the company, including the ACNC Act, the Charities Act, each Charitable Fundraising Act, the Tax Act and any rulings or requirements of any commissioner or body under any such law, having application to the company.

**Board** means the board of directors of the company.

**Charities Act** means the *Charities Act 2013* (Cth).

**Charitable Fundraising Act** means the legislation of any State or Territory of Australia, or the Commonwealth of Australia, regulating the raising of funds for charitable purposes and applicable to the company.

**Company** means the company referred to in clause 1.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Deed of Agreement** means the contract entered into between the company and the Resident Member outlining the agreements related to co-ownership or long term leasehold.

**Elected Chairperson** means a person elected by the directors to be the company's chairperson under clause 47.

**General Director** means a director who has been nominated and appointed to the Board by the General Members in accordance with clause 45(b)(ii).

**General Meeting** means a meeting of members and includes the annual general meeting, under clause 23.1 .

**General Member** means a person or incorporated body who has been admitted as a General Member of the company in accordance with clause 12.

**Initial Resident Director** means a person appointed as a director of the company under clause 45(d) or 45(e).

**Initial Contribution** means the financial contribution to be paid by the first Resident Member for the home as specified in the Deed of Agreement. The initial contribution amount is to be verified by a licensed Quantity Surveyor.

**Major Improvements** means improvements to the property that are consistent with the relevant conditions set out in the Deed of Agreement and agreed in writing between the Resident Member and the company.

**Nominated Director** means a director who has been nominated and appointed to the Board in accordance with clause 45(b)(iii).

**Person in Benevolent Need** has the meaning given to it in clause 6.

**Registered Charity** means a charity that is registered under the ACNC Act.

**Resale Formula** has the meaning set out in clause 6(b).

**Resident Member** means a Person in Benevolent Need person who has been admitted as a Resident Member of the company in accordance with clause 13.

**Resident Director** means a director who has been nominated and appointed to the Board by Resident Members in accordance with clause 45(b)(i).

**Special Resolution** means a resolution: of which notice has been given under clause 24.6(c), and that has been passed by at least 75% of the membership of the company entitled to vote on the resolution, with General Members passing the resolution by a majority and Resident Members passing the resolution by a majority.

**Surplus Assets** means any assets of the company that remain after paying all debts and other liabilities of the company, including the costs of winding up.

**Tax Act** means the *Income Tax Assessment Act 1997* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any rulings or requirements of the Commissioner of Taxation of the Commonwealth of Australia having application to the company.

**Treasurer** means the person elected as treasurer of the company under clause 47.1.

## **82. Interpretation**

82.1 In this constitution, except where the context otherwise requires:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression; and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations); and
- (c) the singular includes the plural and vice versa, and a gender includes other gender; and
- (d) another grammatical form of a defined word or expression has a corresponding meaning.