



Constitution of  
Illawarra Retirement Trust  
(ACN 000 726 536)

Corporations Act 2001

A company limited by guarantee

Registered in New South Wales

**As amended at 11 November 2021**

# Constitution of Illawarra Retirement Trust

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# Constitution of Illawarra Retirement Trust

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Constitution of Illawarra Retirement Trust ACN 000 726 536, a public company limited by guarantee.

## 1. Definitions and Interpretation

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### 1.1 Definitions

The following definitions apply in this Constitution unless the context requires otherwise:

**Alternate Director** means any person who, for the time being, has been duly appointed in accordance with rule 17.11 and is acting as an alternate for a Director.

**Appointed Director** means a Director appointed by the Board under rule 17.7.

**Board** means the Directors for the time being of the Company.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, New South Wales.

**Chair** means the person occupying the position of chair of the Board under rule 19.6.

**Company** means *Illawarra Retirement Trust ACN 000 726 536*.

**Constitution** means this constitution as amended, supplemented or replaced from time to time in accordance with rule 9.

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

**Deductible Gift Recipient** has the meaning given in the Tax Act.

**Director** means a person appointed or elected to the office of director in accordance with this Constitution and, where appropriate, includes an Alternate Director.

**Elected Director** means a person elected as a Director by the General Members at an annual general meeting.

**Financial Year** means the 12 month period ending on 30 June.

**Fund-Raising Event** has the meaning given to that term in the Tax Act.

**General Members** means Members of the Company who are not Resident Members or Members of another class.

**Gift** means a donation, contribution, gift, settlement, benefaction or other voluntary transfer or disposition of money, money's worth, property or benefits and whether inter vivos or by will.

**Member** means a person admitted to the membership of the Company in accordance with the provisions of this Constitution. For the avoidance of doubt, Member includes a Resident Member and a Member of another class, unless specifically excluded by a rule of this Constitution.

**Member Present** means, in connection with a meeting, the Member being present in person or by proxy or attorney, and includes being present at a different venue from the venue at which other Members are participating in the same meeting, provided the pre-requisites for a valid meeting at different venues are observed.

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**Nominations Committee** means the Board or a committee established or nominated by the Board from time to time.

**Nominations Committee Charter** means the charter adopted by the Board governing the role and operations of the Nominations Committee.

**Register of Members** means the register of Members of the Company.

**Resident Member** has the meaning given to this term in rule 11.9.

**Secretary** means a person appointed as secretary of the Company in accordance with this Constitution.

**Self Care Resident** means a resident of any Self Care Residential Facility.

**Self Care Residential Facility** means a retirement village owned or operated by the Company, but, for the avoidance of doubt, excludes a residential aged care facility.

**Special Business** means:

- (a) all business that is transacted at an extraordinary general meeting; and
- (b) all business that is transacted at an annual general meeting, other than:
  - (i) consideration of the accounts, balance sheets and the report of the Board and auditors; and
  - (ii) the election of officers and other Directors in the place of those retiring.

**Special Resolution** has the meaning given to that term in the Corporations Act.

**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.

**Surplus Gifts** means any surplus:

- (a) gifts of money or property for the principal purpose of the Company;
- (b) contributions described in item 7 or 8 of the table in section 30-15 of the Tax Act in relation to a Fund-Raising Event held for that purpose; and
- (c) money received by the Company because of such gifts of contributions.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

## 2. Interpretation

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Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless any contrary intention appears in this Constitution or the context requires otherwise:

- (a) A gender includes all genders.
- (b) The singular includes the plural and conversely.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

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- (d) A reference to a rule or paragraph is to a rule or paragraph, as the case may be, of this Constitution.
- (e) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (f) A word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution unless otherwise stated or defined.
- (g) Except in so far as a contrary intention appears in this Constitution, an expression has, in a provision of this Constitution which relates to a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.
- (h) Except as otherwise stated, a reference to a person or persons includes an organisation as well as to an individual or body corporate.

## **3. Replaceable Rules**

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The replaceable rules contained in the Corporations Act do not apply to the Company.

## **4. Previous Constitution Superseded**

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This Constitution supersedes the Memorandum and Articles of Association of the Company which were taken to be the Company's constitution in force immediately before the adoption of this Constitution.

## **5. Transitional**

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Everything done under any previous Memorandum and Articles of Association or constitution of the Company continues to have the same operation and effect after the adoption of this Constitution as if properly done under this Constitution.

## **6. Actions authorised under the Corporations Act and compliance with the Corporations Act**

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Where the Corporations Act authorises or permits a company to do any matter or thing if so authorised by its constitution, the Company is and will be taken by this rule to be authorised or permitted to do that matter or thing, despite any other provisions of this Constitution.

## **7. Objects and Powers of the Company**

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### **7.1 Objects of the Company**

The objects of the Company are to:

- (a) assist, arrange, manage, promote, provide and undertake the maintenance, sustenance, medical, surgical, dental, physiotherapy and other care, nursing, convalescence, hospitalisation and housing of persons in need of relief/help,



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including elderly and aged persons and specific groups such as women and/or single persons; and

- (b) provide relief in the form of training, advice and the provision of other services to persons in necessitous circumstances and to support initiatives by Government, business and community groups to increase employment opportunities in the community.

## 7.2 Powers of the Company

**In furtherance of the objects of the Company set out in rule 7.1 the powers of the Company include:**

- (a) to acquire, purchase, hire, lease or otherwise provide, establish, endow, furnish, and fit out all necessary lands, buildings, furniture, instruments, equipment and appurtenances and construct, demolish, rebuild and to alter, repair, improve, maintain, conduct and manage:
  - (i) clinics, hospitals, nursing and convalescence homes; and
  - (ii) houses, home units, flats, apartments, common rooms, kitchens, laundries and all necessary appurtenances,

having special reference to the requirement of elderly and aged persons or other specific groups for the requirements, use, occupation and enjoyment thereof by and of such persons for such period or periods and subject to such terms and conditions as to eligibility, payment or otherwise as the Board may determine from time to time.

- (b) to undertake such other measures for the assistance and advancement of aged and elderly persons or other specific groups as the Company may determine in carrying out its objects;
- (c) (b) of this rule includes but is not limited to the establishment of a charitable foundation (the **Foundation**) or a separate Division of the Company for the purpose of research directed to developing better ways to assist the Company in improving how it meets its object of providing welfare of or assistance to the aged and elderly population of Australia or any part thereof or other specific groups and for the purpose of funding and/or otherwise assisting the Company in carrying out its objectives, including making or providing or soliciting donations, gifts, bequests or devises in favour of the Foundation;
- (d) to purchase, take on lease or in exchange, hire and otherwise acquire any lands, buildings, easements or property, real and personal, and any rights or privileges which may be requisite for the purposes of, or capable of being conveniently used in connection with, any of the objects of the Company, provided that in case the Company shall take or hold any property which may be subject to any trusts the Company shall only deal with the same in such manner as is allowed by law having regard to such trusts;
- (e) to raise, borrow, collect and accept monies in any lawful manner whatsoever and in particular by issuing Corporate Bonds Debentures or other securities and/or mortgaging or charging all or any of the assets of the organisation whether real or

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personal or with terminal annuities for lives or years for the purpose of enabling all or any of the above objects to be carried out in such manner and upon which terms as the Board may determine;

- (f) in furtherance of the objects of the Company to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company;
- (g) to invest and deal with the money of the Company not immediately required in furtherance of the objects of the Company in such manner as may be permitted by law for the investment of trust funds;
- (h) to take such steps by personal or written appeals, public meetings or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Company, in the shape of donations, annual subscriptions or otherwise;
- (i) to accept subscriptions and donations whether of real or personal estate and devises and bequests for all or any of the purposes aforesaid and to sell and dispose of or to lease and accept surrenders of leases of and manage all real estate (including leaseholds) so received and not required to be or capable of use or occupation for any of the aforesaid purposes and generally to manage, invest and expend all monies and property belonging to the Company. In the case the Company shall take or hold any property which may be subject to any trusts the Company shall only deal with the same in such manner as allowed by law having regard to such trust;
- (j) in furtherance of the objects of the Company to amalgamate with any companies, institutions, societies or associations having objects altogether or in part similar to those of the Company and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as that imposed upon the Company under or by virtue of rule 8;
- (k) in furtherance of the objects of the Company to purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate;
- (l) in furtherance of the objects of the Company to transfer all or any part of the property, assets, liabilities and engagements of the Company to any one or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate;
- (m) to appoint, employ, remove or suspend such managers, clerks, secretaries, servants, workmen and other persons as may be necessary or convenient for the purposes of the Company;
- (n) to register and maintain registration as a charity pursuant to the *Charitable Fundraising Act 1991* (NSW) as amended and to qualify as an approved organisation pursuant to the said Act; and

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- (o) to obtain such subsidies as may be available for the furtherance of the above objects from the Government of the Commonwealth of Australia pursuant to the *Aged Care Act 1997* (Cth) and to do all such acts and things and execute all documents as may be required for such purpose.

## 8. Application of Income and Property to Objects

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- (a) Subject to paragraph (b), the income and profits and property of the Company must only be used to further the objects of the Company set out in rule 7.1. No part of that income or property may be paid or transferred, directly or indirectly, by way of a dividend, bonus, profit or return of capital to any Member.
- (b) Paragraph (a) does not prevent the Company from making a payment in good faith to a Member of the Company:
  - (i) of reasonable and proper remuneration for any services actually rendered or goods supplied in the ordinary and usual course of business to the Company; or
  - (ii) the payment or reimbursement of out-of-pocket expenses incurred by a Member on behalf of the Company where the amount payable does not exceed an amount previously approved by the Board; or
  - (iii) of reasonable and proper rent for premises let or demised by any Member to the Company; or
  - (iv) moneys to any Member, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service; or
  - (v) for payment of interest at a rate not exceeding ruling bank rate on money borrowed from any Member for any of the purposes of the Company.
- (c) Subject to, and only to the extent permitted by, any applicable laws, the Company may:
  - (i) determine in general meeting to pay such fees to Directors for or in respect of their participation as Directors in such amounts as the Company deems appropriate from time to time, but which are not more than the amounts which commercially would be reasonable payment for the services provided by the Directors; and
  - (ii) without limiting sub-paragraph (i), make payments in good faith for:
    - (A) the payment or reimbursement of out-of-pocket expenses incurred by a Director in the performance of any duty as Director where the amount payable does not exceed an amount previously approved by the Board;

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- (B) moneys to any Director, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;
- (C) any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Board; or
- (D) an indemnity, exception, insurance premium or payment for legal costs as referred to in s212 of the Corporations Act and as permitted by rule 25;

## **9. Amendment of Constitution**

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No addition, alteration or amendment of this Constitution will be effective unless:

- (a) such addition, alteration or amendment has been approved by special resolution of the General Members; and
- (b) any other approval or notification required by the Corporations Act or any other law has been given.

## **10. Liability and undertaking of Members**

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### **10.1 Limited liability of Members**

The liability of the Members of the Company is limited.

### **10.2 Members' liability on winding up**

Each Member undertakes to contribute to the assets of the Company if it is wound up while they are a Member, or within one year after they cease to be a Member, such amount required by the Company for payment of:

- (a) the debts and liabilities of the Company contracted before the Member ceases to be a Member; and
  - (b) the costs, charges and expenses of winding up,
- provided that the amount payable by a Member shall not exceed \$20.00.

### **10.3 Compliance and promotion**

Every Member undertakes to the best of their ability to:

- (a) comply with this Constitution and any regulations, policies or standards of the Company in force from time to time; and
- (b) promote the objects, interests and standing of the Company.

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## **11. Membership**

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### **11.1 Members of the Company**

The Members are those persons admitted to the membership of the Company whose names are entered into the Company's Register of Members.

### **11.2 Classes of Members**

The Board may from time to time establish other classes of members (in addition to General Members and Resident Members) and may make appropriate provisions for the granting of membership of such classes and the conditions of membership of such classes.

### **11.3 Restriction on Membership**

- (a) Two or more persons cannot be registered as holding a single Membership interest, whether as joint tenants or as tenants in common.
- (b) Each Member must be a natural person.

### **11.4 Admission as a General Member**

This rule 11.4 applies only to General Members and is as follows:

- (a) Applicants for membership must be nominated by two General Members. The applicant must be personally known to both of his or her nominators.
- (b) A person who wants to apply for membership must submit a written application to the Board signed by the applicant and the two Members making the nomination. The application must include the applicant's name, address and occupation and must be in the form determined by the Board from time to time.
- (c) At the next meeting of the Board after the expiration of 21 days from the receipt of an application for membership, the Board will consider the application and decide whether or not to admit the applicant in their absolute discretion.
- (d) An applicant will be admitted to membership of the Company as a General Member if a majority of no less than 75% of those present and entitled to vote at the meeting of the Board vote to admit the applicant as a General Member.
- (e) If the Board decides not to admit an applicant to the membership, the Secretary must, as soon as practicable, notify the applicant in writing that the applicant has not been admitted to the membership. The Board do not have to give any reasons for their decision.
- (f) If the Board decides to admit an applicant to the membership the applicant will be registered in the Company's Register of Members and upon such registration will immediately become a Member. The Secretary must, as soon as practicable, notify the applicant in writing that the applicant has been admitted to the membership.

### **11.5 Register of General Members**

- (a) A Register of General Members must be kept by the Secretary in accordance with the Corporations Act and the name of all General Members may be published in the

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annual report. The Register is available for inspection free of charge by any Member on request to the Secretary and a Member may make a copy of entries in the Register.

- (b) The following details must be entered and kept current in the Register in respect of each General Member:
  - (i) the full name and address of the General Member;
  - (ii) the date of admission to and cessation of membership; and
  - (iii) such other information as the Board or the Corporations Act requires.
- (c) Each General Member must notify the Secretary in writing of any change in that person's name and details within 1 month after the change.

## **11.6 General Member Charter**

- (a) The Members may determine by ordinary resolution to adopt a "General Member Charter". The charter may outline, amongst other things, the attributes to be sought in any new General Members and responsibilities and requirements of General Members.
- (b) Where a General Member Charter is adopted:
  - (i) General Members admitted after the date of adoption are required to sign an undertaking to agree to be bound by its terms;
  - (ii) General Members admitted prior to the date of adoption may voluntarily elect to sign an undertaking and agree to be bound by its terms.
- (c) A General Member who has signed the undertaking to be bound by its terms must comply with the terms of the General Member Charter.

## **11.7 Rights of Members**

Subject to the rights and restrictions attaching to a particular class of membership, Members are entitled to all the rights of Members under this Constitution.

## **11.8 Address of Members**

Every Member must inform the Secretary in writing of any change in their address and any such change of address must be entered in the Register of Members. The latest address in the Register of Members is deemed to be the Member's registered address.

## **11.9 Resident Members**

- (a) Any person who:
  - (i) is at the 14<sup>th</sup> November 2009 a Self Care Resident of any of the Company's Self Care Residential facilities; or
  - (ii) who at any time after the 14<sup>th</sup> November 2009 becomes a Self Care Resident in any of the Company's Self Care Residential facilitiesmay apply to the Board to become a Resident Member.

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- (b) The Board may from time to time determine to accept applications for membership from persons who wish to become Resident Members provided that, despite anything else in this Constitution, any such determination is made by the unanimous resolution of the Board.

Resident membership continues whilst the Resident Member remains a Self Care Resident, but automatically ceases when the Resident Member permanently vacates a Self Care Residential Facility or where a Self Care Residential Facility is no longer owned or operated by the Company.

- (c) Despite anything else in these rules, a Resident Member:
- (i) shall not have a right to vote at any meeting of the Company other than at a meeting at which a resolution is to be put, and considered, in relation to a matter described in rule 24.1(winding up of the Company), 24.2 (revocation of Deductible Gift Recipient endorsement) and 24.4(proposal by third party to acquire or control);
  - (ii) shall only have the right to attend a general meeting of the Company if, and to the extent that, a resolution is to be put, and considered, at the meeting in relation to a matter described in rule 11.9(c)(i); and
  - (iii) shall only have the right to receive notice of a general meeting of the Company if and to the extent that a resolution is to be put and considered at the meeting in relation to a matter described in rule 11.9(c)(ii).

## **12. Membership not transferable**

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A right, privilege or obligation which a Member has by reason of being a Member is not capable of being transferred or transmitted to another person.

## **13. Cessation of membership**

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### **13.1 Resignation of a Member**

A Member may resign from the Company by giving notice in writing to the Secretary. The resignation will be effective from the date it is received by the Secretary.

### **13.2 Misconduct of a Member**

- (a) The Board may suspend or expel from the Company any Member:
- (i) who wilfully refuses or neglects to comply with the provisions of this Constitution; or
  - (ii) whose conduct in the opinion of the Board is unbecoming of a Member or brings the reputation of the Company into disrepute or prejudicial to the interests of the Company; or

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- (iii) where the Member no longer meets the conditions for membership as established by the Board under rule 11.2,  
and remove the Member's name from the Register.
- (b) At least 7 days before the Board meets to suspend or expel a Member the Board must send a notice to the Member which states:
  - (i) all relevant information, including any allegations against the Member;
  - (ii) the proposed resolution for the Member's suspension or expulsion;
  - (iii) that the Member has an opportunity to address the meeting either orally or in writing; and
  - (iv) that the Member may elect to have the question of suspension or expulsion dealt with by the Company in an extraordinary general meeting, with the notice of meeting to enclose a copy of the notice sent to the relevant Member and such relevant information as the Member reasonably requests, provided that the Member notifies the Secretary in writing, at least 24 hours before the meeting at which the resolution is to be considered by the Board.
- (c) The Company must suspend or expel a Member and remove the Member's name from the Register where:
  - (i) an extraordinary general meeting is held to suspend or expel a Member; and
  - (ii) a resolution is passed at the meeting for the suspension or expulsion of the Member by a majority of no less than two-thirds of those present and entitled to vote (such voting will be by poll).

## **13.3 Ceasing to be a Member**

A Member's membership of the Company will automatically cease on the date that:

- (a) the Member dies;
- (b) the Member becomes of unsound mind or a person whose assets or estate are liable to be dealt with in any way under the law relating to mental health;
- (c) the Member is convicted of a criminal offence; or
- (d) the Member becomes bankrupt or makes an arrangement or composition with that Member's creditors generally.

## **13.4 Liability after a person ceases to be a Member**

A person who ceases to be a Member must pay to the Company:

- (a) all amounts owing to the Company which are due and unpaid at the date that the person ceases to be a Member; and
- (b) amounts which the Member is liable to pay under rule 10.2.



# Constitution of Illawarra Retirement Trust

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## 14. General Meetings

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### 14.1 Annual general meeting

A general meeting called an annual general meeting shall, in addition to any other meeting:

- (a) be held at least once in every calendar year; and
- (b) within 5 months after the end of the Financial Year (or within such other period required by the Corporations Act); and
- (c) be held at the place that the Board sets for the meeting.

### 14.2 Extraordinary general meeting

All general meetings other than the annual general meeting shall be called an extraordinary general meeting. Any 4 or more Directors may convene an extraordinary general meeting of the Company when those Directors think fit.

### 14.3 Notice

- (a) Written notice of a general meeting must be given on at least 21 clear days' notice (or such other notice period required by the Corporations Act).
- (b) Every notice of a general meeting must:
  - (i) set out the time, place and time of the meeting (and, if the meeting is to be held in 2 or more places in accordance with rule 14.9, the technology that will be used to facilitate this);
  - (ii) state the general nature of the business to be transacted at the general meeting, including any Special Business;
  - (iii) if a special resolution is to be proposed, set out an intention to propose that special resolution and state the resolution;
  - (iv) in the case of an election of Directors, give the names of the candidates for election; and
  - (v) contain a statement setting out the following in relation to proxy voting:
    - (A) that the Member has a right to appoint a proxy; and
    - (B) that a proxy does not need to be a Member.
- (c) Subject to the Corporations Act, the Company may give notices to Members electronically, by notifying the member:
  - (i) that the notice is available; and
  - (ii) how the Member may use electronic means to access the notice,by any electronic means permitted by the Corporations Act and to an electronic address nominated by the relevant Member.

### 14.4 Entitlement to notice

Notice of a general meeting must be given to:

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- (a) each Member, apart from any Member who under this Constitution is not entitled to the notice;
- (b) the auditor of the Company;
- (c) each Director; and
- (d) the Senior Officer(s), Secretary and any officer of the Company appointed by the Board under rule 20.6.

## **14.5 Consent to short notice**

Subject to the provisions of the Corporations Act, with the consent in writing of 50% of the Members for the time being entitled to vote at a general meeting, any general meeting may be called on short notice and in any manner the Members think fit. In those circumstances, all provisions of this Constitution shall be modified accordingly.

## **14.6 Failure to give notice**

Any resolution passed at a general meeting is not invalidated by:

- (a) the accidental omission to give notice of a general meeting to any Member or non-receipt of that notice by a Member; or
- (b) the accidental omission to send out the instrument of proxy to a person entitled to receive notice or non-receipt of that instrument.

## **14.7 Power to cancel or postpone a general meeting**

- (a) The Directors may cancel or postpone the holding of any general meeting. If the meeting was called by requisitioning Members or in response to a requisition by Members, the Directors may only cancel or postpone the holding of it with the consent of a majority of the requisitioning Members.
- (b) The Directors may notify the Members of a cancellation or postponement of a meeting by such means as they see fit. If any meeting is postponed for 28 days or more, then no less than 5 days' notice must be sent to the Members of the postponed meeting. It is not necessary to specify in such notice the nature of the business to be transacted at the postponed meeting.

## **14.8 Calling of general meeting when requested by General Members**

- (a) The Directors must call and arrange to hold a general meeting on the request of General Members with at least 25% of the votes that may be cast at the general meeting;
- (b) The request must:
  - (i) be in writing;
  - (ii) state any resolution to be proposed at the meeting;
  - (iii) be signed by the Members making the request; and
  - (iv) be given to the Company.

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- (c) Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.
- (d) The percentage of votes that Members have is to be worked out as at the midnight before the request is given to the Company.
- (e) The Directors must call the meeting within 21 days after the request is given to the Company. The meeting is to be held not later than 2 months after the request is given to the Company.
- (f) Reference to Members in this rule 14.8 applies only to General Members.
- (g) The Members calling the general meeting must pay the expenses of calling and holding it under this rule 14.8.

## **14.9 Venue**

- (a) Despite any other rule, the Company may hold a general meeting of Members at 2 or more venues using technology that gives the Members as a whole a reasonable opportunity to participate in the meeting, provided that arrangements are made at each venue for the recording of all votes cast.
- (b) The general meeting is taken to be held where the Chair of the general meeting conducts the general meeting. All proceedings conducted in accordance with this rule 14.9 are as valid as if conducted at a single gathering of a quorum of those Members entitled to be present.

## **14.10 Non-receipt of notice**

The fact that a person entitled to receive notice of a general meeting does not receive that notice or is accidentally not given notice, does not invalidate any resolution passed at the meeting.

## **14.11 Business of general meetings**

Unless all Members are present as Members Present and agree otherwise, the only business to be transacted at a general meeting will be that set out in the notice.

## **14.12 Persons entitled to attend**

The following persons only may attend a general meeting:

- (a) each Member, apart from any Member who under this Constitution is not entitled to attend;
- (b) each Director, Senior Officer, Secretary and auditor of the Company;
- (c) each validly appointed proxy of a Member;
- (d) any other person that has been given the prior written approval of the Board to attend the meeting; and
- (e) any other person who has been given prior approval by the Chair if prior written approval by the Board has not been obtained (provided that the Chair shall not be entitled to permit a Resident Member (or a proxy or representative of a Resident

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Member) to attend at a meeting that the Resident Member is not entitled to attend in accordance with rule 11.9(c).

## **14.13 Attendance of Resident Members**

Each Resident Member shall only attend a general meeting where a resolution is to be put and considered for their vote in accordance with rule 11.9(c), such resolution being set out in the notice of the general meeting.

## **15. Proceedings at General Meetings**

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### **15.1 Number for a quorum**

Subject to this Constitution and to any rights or restrictions attaching to a particular class of membership, a quorum for a meeting shall be constituted by:

- (a) subject to paragraph (b), one quarter of the Members (other than Resident Members) entitled to attend and vote at the meeting; or
- (b) where Resident Members are entitled to attend and vote at a meeting, one quarter of the Members (other than Resident Members) and one third of the Resident Members, in each case entitled to attend and vote at the meeting,

whether present in person or by proxy or by attorney.

### **15.2 Requirement for a quorum**

No business may be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.

### **15.3 No quorum**

- (a) Subject to rule 15.3(b), if there is no quorum at a general meeting within 30 minutes after the time specified in the notice of the meeting, the meeting shall be adjourned to the same day in the next week at the same time and place, or to such other time and place as the Board may determine.
- (b) If no quorum is present at any meeting convened on the requisition of Members within 30 minutes after the time specified in the notice of the meeting, the meeting shall be automatically dissolved.
- (c) If no quorum is present at any adjourned meeting within 30 minutes after the time appointed for the meeting, the Members present (being not less than four) shall be a quorum. If less than four Members are present, the meeting is dissolved. In this rule 15.3 (c) the reference to Members means General Members only.
- (d) If no quorum is present at any adjourned meeting within 30 minutes after the time appointed for the meeting, the Resident Members present (being not less than one hundred) shall be a quorum. If less than one hundred Resident Members are present, the meeting is dissolved.

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## 15.4 Chair of general meetings

Subject to rule 15.5, the Chair is entitled to preside as chair at every general meeting.

## 15.5 Absence of Chair

- (a) The Chair may, at any time before a general meeting, nominate a Director of the Board to act as Chair (the **Acting Chair**) at the meeting if the Chair is unable to attend for any reason whatsoever.
- (b) Where a general meeting is held and:
  - (i) there is no Chair or Acting Chair; or
  - (ii) the Chair or Acting Chair is not present within 15 minutes after the time appointed for the meeting or does not wish to act as chair of the meeting,the Members Present may elect one of their number (who is also a Director of the Board) to be acting Chair of the meeting.

## 15.6 Conduct of general meetings

- (a) The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined at, during or prior to the meeting by the chair of the meeting.
- (b) The chair of the meeting may make rulings without putting the question (or any question) to the vote if the chair of the meeting considers action is required to ensure the orderly conduct of the meeting.
- (c) At any time the chair of the meeting considers it necessary or desirable for the proper and orderly conduct of the meeting, the chair of the meeting may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members Present.
- (d) Any determination by the chair of the meeting in relation to matters of procedure (including any procedural motions moved at, or put to, any meeting) or any other matter arising directly or indirectly from the business is final (including any procedural motions moved at, or put to, any meeting). Any challenge to a right to vote (whether on a show of hands or on a poll) or to a determination to allow or disregard to vote may only be made at the meeting (or adjourned meeting) at which the vote objected to is tendered and may be determined by the chair of the meeting whose decision is final. A vote allowed after any such challenge is valid for all purposes.
- (e) If a person purports to cast a vote on a resolution in contravention of the Corporations Act, the chair of the meeting may determine that the vote be disregarded and treated as not having been cast. Such vote will not invalidate the resolution unless that vote is detected at the meeting and is, in the opinion of the chair of the meeting acting reasonably, of sufficient magnitude as to invalidate the resolution.

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- (f) Nothing contained in this rule limits the powers conferred on a chair of a meeting by law.

## **15.7 Business of annual general meetings**

The business of the annual general meetings may include any of the following, even if not referred to in the notice of annual general meeting:

- (a) the consideration of the annual financial report, directors' report and auditor's report;
- (b) the election (or re-election as the case may be) of directors;
- (c) the appointment of the auditor; and
- (d) the fixing of the auditor's remuneration.

## **15.8 Adjournments**

- (a) During the course of a general meeting, the chair of the meeting may, and if so directed by the meeting must, adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to a meeting held at another time and place determined by the chair of the meeting.
- (b) The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting. Otherwise it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (d) A resolution passed at a meeting resumed after an adjournment is passed on the day it was in fact passed.

## **15.9 Voting at general meetings**

- (a) Any resolution submitted to a general meeting is to be decided by a show of hands of the Members Present and entitled to vote unless a poll is demanded.
- (b) In the case of an equality of votes, the chair of the meeting has, both on a show of hands and on a poll, a casting vote in addition to the vote or votes to which the chair of the meeting may be entitled as a Member or as a proxy, attorney or properly appointed representative of a Member.
- (c) Unless a poll is demanded, a declaration by the chair of the meeting following a vote on a show of hands that a resolution has been passed or lost, and an entry to that effect in the minutes of the meeting, is conclusive.
- (d) A poll may be demanded by at least 5 Members Present or Members Present representing at least 5% of the total votes that may be cast on the resolution or a poll in accordance with the Corporations Act (and not otherwise) or by the chair of the meeting. No poll may be demanded on the election of a chair of a meeting or, unless the chair of the meeting otherwise determines, the adjournment of a meeting. A poll may be demanded before a vote is taken or before or immediately after the

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voting results on a show of hands are declared. A demand for a poll may be withdrawn.

## **15.10 Procedure for polls**

- (a) When demanded, a poll may be taken in the manner and at the time the chair of the meeting directs provided always that a poll demanded on the election of the chair of the meeting or on any question of adjournment is to be taken at the meeting and without adjournment.
- (b) The result of a poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) as the chair of the meeting considers appropriate.
- (c) The result of the poll is the resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll does not prevent a general meeting from proceeding with any other business.

## **16. Votes of Members**

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### **16.1 Voting rights**

Subject to this Constitution and any rights or restrictions attaching to a particular class of membership or for the time being placed on any Member:

- (a) at meetings of Members each Member entitled to attend and vote may attend and vote in person or by proxy or by attorney; and
- (b) each Member that is entitled to vote at a general meeting has one vote both on a show of hands and a poll.

### **16.2 Voting restrictions**

- (a) If permitted or contemplated by the Corporations Act or this Constitution, the Board may direct that particular persons (whether specified by name or description) do not cast a vote on particular business of a meeting. In relation to that business, votes cast by the prohibited persons are to be disregarded.
- (b) A Member who has a material personal interest in a matter that is the subject of a resolution to be put to, and considered at, a general meeting shall not be entitled to vote on the resolution at a meeting. For the avoidance of any doubt, this restriction shall apply even where the Member appoints another person as his/her proxy to exercise his/her vote. A material personal interest includes, without limitation, circumstances where the Member (or any of his/her related bodies or associates) has a financial interest in the outcome of the vote.
- (c) The Company or the Chair of the Board may request a Member to sign a statutory declaration stating that he/she does not have a material personal interest in a resolution prior to casting a member's vote, whether in person or by proxy and until such Statutory Declaration is made the member shall not be entitled to vote.

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## **16.3 Right to appoint proxy**

- (a) A Member who is entitled to attend and vote at a general meeting may appoint one proxy provided that the person appointed must be the Chair or another Member.
- (b) A proxy appointed to attend and vote at a general meeting for a Member in accordance with this rule 16.3 has the same rights as the Member to:
  - (i) speak at the meeting;
  - (ii) vote (to the extent allowed by his/her appointment as proxy); and
  - (iii) demand, or join in a demand, for a poll.

## **16.4 Form of proxy**

- (a) A form of appointment of a proxy is valid if it is in the form set out in the Schedule 1, or as near to that form as circumstances permit.
- (b) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution. Where it does so, the proxy is not entitled to vote on the resolution except as specified in the instrument. A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- (c) An instrument appointing a proxy will not be valid after 12 months from the date of its execution, unless it is expressly stated to be a standing appointment or to extend for a longer period.

## **16.5 Lodgement of proxies**

- (a) An instrument appointing a proxy is not valid unless it and the power of attorney or other authority (if any) under which the instrument is signed is received at the registered office of the Company or at such other place as specified in the notice convening the meeting, not less than 48 hours before the time for commencement of the meeting, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll.
- (b) The instrument appointing a proxy cannot be delivered to the Company by way of an email communication.

## **16.6 Validity of proxies**

- (a) A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:
  - (i) the previous death or unsoundness of mind of the principal; or
  - (ii) the revocation of the instrument (or of the authority under which the instrument was executed) or the power of attorney,

if no notice in writing of the death, unsoundness of mind or revocation (as the case may be) has been received by the Company at its registered office at least 48 hours (or any shorter period as the Board may permit or specified by the Corporations Act)



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before the commencement of the meeting, or adjourned meeting at which the instrument is used or the power is exercised.

- (b) A proxy is not revoked by the principal attending and taking part in the meeting unless the principal actually votes at the meeting on a resolution for which the proxy is proposed to be used.

## **16.7 Where proxy is incomplete**

- (a) No instrument appointing a proxy is treated as invalid merely because it does not contain:
  - (i) the address of the appointor or of a proxy;
  - (ii) the date;
  - (iii) the proxy's name or the name of the office held by the proxy; or
  - (iv) in relation to any or all resolutions, an indication of the manner in which the proxy is to vote.
- (b) Where the instrument does not specify the name of a proxy, the instrument is taken to be given in favour of the chair of the meeting.
- (c) A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.

## **17. Appointment, Removal and Remuneration of Directors**

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### **17.1 Number of Directors**

- (a) The number of Directors (not including alternate Elected Directors) must be not less than 5 and no more than 9, unless otherwise determined by the Board in its absolute discretion. At least 2 of the Directors must ordinarily reside in Australia.
- (b) The number of Elected Directors must always be greater than the number of Appointed Directors.
- (c) The Company in general meeting may by ordinary resolution alter the number of Directors, provided that the minimum number is not reduced below 5.

### **17.2 Casual appointment**

- (a) The Board may at any time appoint a person to be a Director to fill a casual vacancy.
- (b) Any Director appointed under paragraph (a) may hold office only until the end of the next annual general meeting of the Company and is then eligible for election at that meeting.

### **17.3 Qualification as an Elected Director**

- (a) Each Elected Director must be a General Member.
- (b) A person must give the Company a signed written consent to act as a Director before being appointed as an Elected Director.

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- (c) Any person who resides at a facility operated by the Company cannot be a Director.

## **17.4 Term of office for an Elected Director**

- (a) The term of office of each Elected Director shall be:
  - (i) 3 years; or
  - (ii) in the case of a person elected to replace a Director who has ceased to hold office under rules 17.9 and 17.10, the period remaining in the term of the replaced Director.
- (b) At the conclusion of an Elected Director's term of office, that Elected Director shall be eligible for appointment by the Board as an Appointed Director, subject to paragraph (c) and to paragraph 17.7(i).
- (c) The maximum term of office spent as an Elected Director and as an Appointed Director will not exceed 12 years in total.

## **17.5 Nominations Committee**

The nomination of candidates for election to the office of Elected Director shall take place in the following manner:

- (a) The Secretary shall display in a conspicuous place at the registered office of the Company at least 4 months prior to the date of the relevant annual general meeting of the Company, a list of the vacancies due to be filled on the Board with the term of office associated with each vacancy;
- (b) any 2 Members may nominate any other General Member to serve as an Elected Director;
- (c) the nomination must:
  - (i) be in writing in such form as may be prescribed by the Board from time to time and which has been initialled by a Senior Officer and the Chair and signed by the nominated General Member and the 2 General Members nominating that General Member;
  - (ii) indicate the vacancy for which the General Member is nominated; and
  - (iii) be lodged with the Secretary for consideration by the Nominations Committee at least 3 months before the annual general meeting at which the election is to take place.
- (d) The Nominations Committee in accordance with the Nominations Committee Charter will consider any nominations from the General Members made under this rule in addition to any other candidates it chooses, including candidates from outside the General Members to be put to the general meeting for election as an Elected Director. Only nominees who satisfy the Nominations Committee Charter test to be fit and proper persons to serve as Directors and are otherwise recommended for nomination by the Nominations Committee will be put to the general meeting for election as Elected Directors.

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## **17.6 Mode of election**

The election of persons for the office of Director shall take place in the following manner:

- (a) a list of the names of the candidates nominated by the Nominations Committee for each vacancy, and Directors standing for re-election in alphabetical order shall be posted in a conspicuous place in the registered office of the Company for at least 7 days immediately preceding the annual general meeting;
- (b) balloting lists for each vacancy shall be prepared (if necessary) containing the names of the candidates in alphabetical order, and each Member Present at the annual general meeting shall be entitled to vote for each vacancy in accordance with the normal voting procedures for general meetings prescribed in this Constitution; and
- (c) in the event that there is not a sufficient number of candidates nominated, the Board shall appoint a person to be a Director to fill the casual vacancy in accordance with rule 17.2.

## **17.7 Appointment as an Appointed Director**

- (a) Subject to rule 17.1, the Board may appoint up to a maximum of 3 Appointed Directors of the Company at any one time.
- (b) The Appointed Directors will be appointed to allow the Board to provide knowledge or skill attributes that may be required from time to time.
- (c) A person must give the Company a signed written consent to act as a Director before being appointed as an Appointed Director.
- (d) Each Appointed Director shall have the same responsibilities and Director voting rights as the Elected Directors.
- (e) Appointed Directors do not need to be Members, and appointment of a person as an Appointed Director does not make that person a Member.
- (f) Any person who resides at a facility operated by the Company cannot be an Appointed Director.
- (g) Subject to rule 17.7(j), the Board will determine the term of office of each Appointed Director.
- (h) At the end of his or her term of office, an Appointed Director is eligible for reappointment or (where they are a General member) election.
- (i) Subject to rule 17.4(c), an Appointed Director may not serve any more than 3 terms, whether before, or after, any term or terms as an Elected Director.
- (j) Each term of office of an Appointed Director must not exceed 3 years.

## **17.8 Engagement in another capacity**

Subject to rule 8(c), a Director may be engaged by the Company in any other capacity (other than auditor) and may be appointed on such terms as to remuneration, tenure of office and otherwise as has been approved by the Board.

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## **17.9 Removal**

- (a) Directors may call a general meeting if 5 General Members request, or by resolution of the Board, to vote on whether a Director ought to be removed.
- (b) A Director must only be removed in accordance with the Corporations Act.
- (c) In the case of the removal of an Elected Director only, the Members at general meeting may appoint another person to hold that vacant office until the next annual general meeting.

## **17.10 Vacation of office**

- (a) In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, as a result of a resolution giving effect to the vacation of a Director's office, or in accordance with rule 17.4, the office of a Director becomes vacant if the Director:
  - (i) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (ii) becomes physically incapable of performing that Director's duties and the Board resolves that his or her office be vacated;
  - (iii) becomes bankrupt or makes any arrangement or composition with that Director's creditors generally;
  - (iv) holds any salaried position as an officer, servant, agent or employee of the Company;
  - (v) in the case of an Elected Director, ceases to be a Member;
  - (vi) resigns from the office of Director by notice in writing to the Company in accordance with paragraph (b);
  - (vii) is absent (and not represented by an Alternate Director) without the consent of the Board, or special leave of absence granted by the Board, from meetings of the Board held during a continuous period of six months;
  - (viii) ceases to be a fit and proper person in accordance with the requirements of any fit and proper test approved by the Board; or
  - (ix) dies.
- (b) Any Director may retire from office by giving notice in writing to the Company of his or her intention to do so. Such resignation takes effect immediately unless the resignation is stated in the notice to take effect at some future time. However, the resignation must take effect no later than 3 months from the date of the giving of the notice.

## **17.11 Alternate Director**

Subject to this Constitution, each Director may appoint any person who is approved by a majority of the other Directors to act as an Alternate Director in the Director's place, either for a stated period or until the happening of a specified event, whenever by absence or illness or otherwise the Director is unable to attend to duties as a Director. The appointment

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must be in writing and signed by the Director and a copy of the appointment must be given to the registered office or to a meeting of the Board. The appointment takes effect on approval by a majority of the other Directors or, where the approval has been granted, at any later time specified in the appointment. The following provisions apply to any Alternate Director:

- (a) the appointment of the Alternate Director is terminated or suspended on receipt at the registered office of notice in writing from the Director by whom the Alternate Director was appointed;
- (b) the Alternate Director is entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the Director by whom the Alternate Director was appointed is not present;
- (c) the Alternate Director is entitled to exercise all the powers (except the power to appoint an Alternate Director) and perform all the duties of a Director, to the extent the Director by whom the Alternate Director was appointed has not exercised or performed them or they have not been limited by the instrument appointing the Alternate Director;
- (d) where the Alternate Director is another Director, that Director is entitled to cast a deliberative vote on the Director's own account and on account of each appointing Director by whom the Director has been appointed as an Alternate Director;
- (e) the Alternate Director will be entitled to be reimbursed under rule 8(c) as if the Alternate Director were a Director;
- (f) the office of the Alternate Director is terminated on their vacation of office in accordance with rule 17.10, or on the death of, or termination of office by, the Director by whom the Alternate Director was appointed;
- (g) the Alternate Director is not to be taken into account in determining the number of Directors; and
- (h) the Alternate Director is, while acting as a Director, responsible to the Company for the Alternate Director's own acts and defaults and is not the agent of the Director by whom the Alternate Director was appointed.

## **17.12 Fit and Proper**

The Board may approve a fit and proper person test outlining the requirements for persons to be eligible to serve as a Director. Where a test has been approved, a person must satisfy the requirements of the test to be appointed as a Director and must continue to satisfy those requirements during the term of their appointment.

## **18. Powers of Directors**

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### **18.1 Management**

The business of the Company will be managed by the Board, who may exercise all powers of the Company which are not, by the Corporations Act or this Constitution, required to be exercised by the Company in general meeting. The Board may delegate its powers in accordance with this Constitution, including as contemplated by rules 19.10 and 20.2.

# Constitution of Illawarra Retirement Trust

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## **18.2 By-laws**

- (a) The Directors have the power to make by-laws regulating the establishment, organisation and conduct of the Company and its committees, provided such by-laws are not inconsistent with this Constitution or the Corporations Act.
- (b) All by-laws made and in force from time to time are binding on the Members.

## **18.3 Cheques, bills etc.**

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments or electronic payments, and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any 2 Directors, 1 of whom shall be either the Chair or the Treasurer, or in such other manner as the Board from time to time determines.

## **18.4 Minutes**

- (a) The Board shall cause minutes to be made:
  - (i) of all appointments of its Senior Officers;
  - (ii) of names of Directors present at all meetings of the Company and of the Board; and
  - (iii) of all proceedings at all meetings of the Company and of the Board, and retain the minutes in a minute book for a period of at least 10 years or such other period as may be required under the Corporations Act.
- (b) The Company must ensure that minutes are signed within a reasonable time after the date of the meeting or of the resolution being passed by:
  - (i) the chair of the meeting; or
  - (ii) the chair of the subsequent meeting; or
  - (iii) in the case of a written resolution under rule 19.11, a Director.
- (c) In the absence of evidence to the contrary, contents of the minute book that is recorded and signed in accordance with this rule 18.4 is evidence of the matters shown in the minute.

## **19. Proceedings of the Board**

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### **19.1 Board meetings**

The Board may meet for conducting business and may adjourn and otherwise regulate their meetings as they see fit.

### **19.2 Power to call for a Board meeting**

3 Directors may at any time, and the Secretary must on the request of 3 Directors, call a meeting of the Board.

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## **19.3 Quorum for Board meetings**

The number of Directors necessary to form a quorum at a meeting of the Board is 3 Directors, or such greater number as may be determined by the Board.

## **19.4 Notice**

Reasonable notice must be given to every Director of the place, date and time of every meeting of the Board. Notice of a meeting of the Board may be given by mail (electronic or otherwise), personal delivery or facsimile transmission to the usual place of business or residence of the Directors or at any other address given to the Secretary by the Director or by any technology agreed to by the Board.

## **19.5 Board meetings by technology**

(a) For the purposes of the Corporations Act, each Director, by consenting to be a Director (or by reason of the adoption of this Constitution), consents to the use of each of the following technologies for holding a Board meeting:

- (i) video conference;
- (ii) telephone;
- (iii) electronic mail;
- (iv) any other technology which permits each Director to communicate with every other Director; or
- (v) any combination of these technologies.

A Director may withdraw the consent given under this rule in accordance with the Corporations Act.

(b) Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:

- (i) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of the Board, taken to be assembled together at a meeting and to be present at that meeting;
- (ii) all proceedings of those Directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were physically present in one location; and
- (iii) the meeting is taken to be held where the Chair is located.

If a failure in communications prevents any Director present at the meeting from participating in the meeting, then the meeting will be suspended until communications are restored, unless communications cannot be restored within 15 minutes, in which case the meeting will be deemed to have terminated.

## **19.6 Chair of the Board**

- (a) The Board may elect one of their number as their Chair on an annual basis.
- (b) The Chair must be an Elected Director.

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- (c) Subject to rule 19.6(d), the Chair shall preside as chair of every meeting of the Board.
- (d) Where a meeting of the Board is held and:
  - (i) a Chair has not been elected as provided by paragraph (a); or
  - (ii) the Chair is not present within 10 minutes after the time appointed for the holding of the meeting or does not wish to chair the meeting,the Directors present may elect one of their number to be chair of the meeting.
- (e) Where a person is appointed to chair a meeting under rule 19.6(d), in relation to that meeting, references to the Chair in this Constitution include a reference to that person.

## **19.7 Directors' voting rights**

- (a) Subject to this Constitution, questions arising at a meeting of the Board are decided by a majority of votes of Directors present and voting.
- (b) Subject to the Corporations Act, in the case of an equality of votes, the Chair has a casting vote in addition to the Chair's deliberative vote.

## **19.8 Conflict of interests**

- (a) A Director is not disqualified from contracting with the Company in any capacity by reason of holding the office of Director.
- (b) A Director may exercise the voting rights conferred by shares in any body corporate held or owned by the Company in the manner they think fit.
- (c) In relation to a contract or arrangement in which a Director is in any way interested:
  - (i) the fact that the Director signed the document evidencing the contract or arrangement will not of itself affect its validity provided that the Board was informed of the Director's interest before the contract or arrangement was entered into and nonetheless approved the contract or arrangement;
  - (ii) the contract or arrangement may not be avoided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and
  - (iii) the Director will not be liable to account to the Company for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.

## **19.9 Material personal interest**

- (a) Subject to paragraph (b), a Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of his or her interest in accordance with the Corporations Act.



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- (b) A Director with a material personal interest in a matter that relates to the affairs of the Company is not required to give notice in the following circumstances:
  - (i) if all of the following conditions are met:
    - (A) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company;
    - (B) if a person who was not a Director at the time the notice was given is appointed as a Director, the notice is given to that person; and
    - (C) the nature or extent of the interest has not materially increased above that disclosed in the notice;
  - (ii) if the Director has given a standing notice of the nature and extent of the interest in accordance with the Corporations Act and that standing notice is still effective in relation to the interest; or
  - (iii) as otherwise permitted under the Corporations Act.
- (c) Unless permitted by the Corporations Act, a Director who has a material personal interest in a matter that is being considered at a meeting of the Board cannot be counted as part of the quorum, be present while the matter is being considered at the meeting or vote on the matter.
- (d) Nothing in this rule affects the duty of a Director:
  - (i) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Director's duties or interests as a Director, to declare at a meeting of the Board, the fact and the nature, character and extent of the conflict; or
  - (ii) to comply with the Corporations Act or any other law.

## 19.10 Committees

- (a) The Chair shall at the initial meeting of the Board in each calendar year appoint:
  - (i) such committees or sub-committees of the Board as the Chair may select; and
  - (ii) any member of the Board or other person to act as the Chair of any such committees or sub-committees and such other members of the Board and other persons to be members of such committees or sub-committees.
- (b) The Board may, by resolution, delegate any of its powers in respect of specified matters, to committees consisting of any one or more Directors or any other person or persons as the Board thinks fit and may revoke that delegation, or to a committee established under paragraph (a) hereof, but unless such specific resolution is made to the contrary, the Committees shall have no power other than to make recommendations to the Board.
- (c) A committee to which any powers have been delegated under paragraph (b), must exercise those powers in accordance with any directions of the Board. These powers are then taken to have been exercised by the Board. If the Board does not

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delegate any of its powers to a committee, that committee will act as an advisory committee only.

- (d) Subject to paragraph (c), the meetings and proceedings of any committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as they are applicable.
- (e) Nothing in this rule 19.10 limits the power of the Board to delegate.
- (f) A committee may elect a chair of its meetings. If no such chair is elected, or if at any time the chair of the committee is not present within 10 minutes after the time appointed for holding the meeting, the members of the committee may choose one of their number to be chair of the meeting.
- (g) A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes, the chair of the meeting shall have a casting vote in addition to the chair's deliberative vote.

## **19.11 Written resolutions**

- (a) A resolution in writing signed by all Directors or a resolution in writing of which notice has been given to all Directors and which is signed by a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the Board) is a valid resolution of the Board and is effective when signed by the last of all the Directors or the last of the Directors constituting the majority, as required, and satisfies any requirement in this Constitution or the Corporations Act that the resolution be passed at a general meeting.
- (b) For the purpose of this rule, the references to Directors include any Alternate Director appointed by a Director who is not available to sign the document or is otherwise unable to sign the document within a reasonable time but do not include any other Alternate Director.
- (c) The resolution may consist of several documents in the same form each signed by one or more of the Directors. A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is considered a document in writing signed by the Director and is deemed to be signed when received in legible form.

## **19.12 Defects in appointments**

- (a) All acts done by any meeting of the Directors or person acting as a Director are as valid as if each person was duly appointed and qualified to be a Director or a member of a committee.
- (b) Paragraph (a) applies even if it is afterwards discovered that there was some defect in the appointment of a person to be a Director or to act as a Director or that a person so appointed was disqualified.

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## **19.13 If less than minimum number of Directors**

If the number of Directors is reduced below the minimum number fixed under this Constitution, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the Company but for no other purpose.

## **20. Officers of the Company**

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### **20.1 Appointment of Senior Officer**

The Board may appoint a person or persons to be senior officers of the Company (**Senior Officers**) for such period and on such terms as they think fit. Subject to the terms of any agreement entered into in a particular case, the Board may at any time terminate any such appointment.

### **20.2 Powers of a Senior Officer**

The Board may delegate, on the terms and conditions and with any restrictions as they determine, to a Senior Officer any of the powers exercisable by them under this Constitution and may at any time withdraw, suspend or vary any of those powers. Giving powers to the Senior Officer does not prevent the exercise of those powers by the Board.

### **20.3 Appointment of Secretary**

There must be one or more Secretaries, whose appointment is to be endorsed by the Board. The person or persons appointed as Secretary need not be a Member of the Company. Prior to being appointed as a Secretary, the person or persons must provide the Company with a signed written consent to act as a Secretary.

### **20.4 Powers, duties and authorities of Secretary**

A Secretary of the Company holds office on the terms and conditions, and with the powers, duties and authorities, as the Board decides.

### **20.5 Termination of appointment of Secretary**

Subject to the terms of any agreement entered into in a particular case the Board may at any time terminate the appointment of a Secretary.

### **20.6 Appointment of other officers**

Subject to the terms of any agreement entered into in a particular case the Board may from time to time:

- (a) create any other position or positions in the Company with the powers and responsibilities as the Board may from time to time decide; and
- (b) appoint any person, whether or not a Director, to any position or positions created under paragraph (a).

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## **20.7 Termination of appointment of other officers**

The Board may at any time terminate the appointment of a person holding a position created under rule 20.6(a) and may abolish the position.

## **21. Seals and execution of documents**

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### **21.1 Seals and their use**

The Board shall provide for the safe custody of the seal, which shall only be used by the Board or of a committee of Directors authorised by the Board on its behalf. The Company may validly execute a document, including a deed, by fixing the seal to the document and the fixing being witnessed by a Director and countersigned by the Secretary or by a second Director or by some other person appointed by the Board for the purpose. The Company need not use a seal to execute documents or deeds.

### **21.2 Seal register**

- (a) The Secretary must record details of every document to which the seal, if any, is fixed in a seal register.
- (b) Where the Company has a seal, the seal register must be produced at each meeting for the purposes of the Board, or a committee of Directors authorised by the Board on its behalf, approving the fixing of the seal to each document recorded in the seal register since the last meeting.

### **21.3 Additional seal**

Where the Company has a seal, the Company may have for use outside the state or territory in which the registered office is located, one or more seals each of which must only be used in accordance with this rule 21.

### **21.4 Execution of documents**

- (a) The Company may execute documents (including deeds) in any way permitted by the Corporations Act.
- (b) Without limiting rule 21.4(a), the Company may validly execute a document (including a deed) if the document is signed by a Director and countersigned by another Director, Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

## **22. Accounts and records**

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### **22.1 Books of account**

The Board must ensure that proper books of account and other records are kept in respect of all receipts and payments, the matter in respect of which the receipt and payment took place, and of the property, credits and liabilities of the Company, in accordance with the requirements of the Corporations Act.

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## **22.2 Inspection**

- (a) The Board may authorise a Member to inspect the books of account and other records of the Company, at the time and places and under the conditions the Board considers reasonable.
- (b) A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or as authorised by the Board.

## **22.3 Audit**

The Company must arrange for its books of account to be audited at least once every year by at least one properly qualified auditor in accordance with the Corporations Act.

## **22.4 Financial reporting**

The Board must cause the Company to comply with all financial reporting obligations imposed on it under the Corporations Act.

## **22.5 Profit and loss statement**

The Board shall present to Members at every annual general meeting a profit and loss account for the period since the date of the last profit and loss statement, together with any other documents prescribed by the Corporations Act.

## **23. Notices**

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### **23.1 How notice may be given**

The Company may give notice to a Member, in its discretion, by:

- (a) serving it on the Member personally;
- (b) sending it by post to or leaving it at the Member's address as shown in the Register of Members or an alternative address supplied by the Member;
- (c) sending it to the fax number supplied by the Member;
- (d) sending it via any other electronic means permitted by the Corporations Act and nominated by the Member, including providing an electronic link to the notice;
- (e) serving it in any manner contemplated in this rule 23.1 on a Member's attorney as specified by the Member under a notice given under rule 23.2.

If the delivery or receipt of the notice is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am (addressee's time) on the next Business Day.

### **23.2 Notices to an attorney**

By written notice to the Secretary left at or sent to the registered office, a Member may request that all notices to be given by the Company or the Board be served on the Member's attorney at an address specified in the notice and the Company may do so in its discretion.

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## **23.3 Personal service or delivery**

A notice served on a Member personally or left at the Member's address is considered to have been served when delivered.

## **23.4 Notice by post**

A notice sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and in either case is considered to have been served at the expiration of 24 hours after the notice is posted, whether delivered or not, provided that it is properly addressed.

## **23.5 Notice by fax or electronic mail**

Any notice sent by fax or electronic mail is considered to have been served on the day it is sent, provided that it is properly addressed.

## **24. Winding Up and other matters**

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### **24.1 Winding up**

The Company may be wound up or dissolved with the approval of Members (by way of a special resolution) and on such winding up or dissolution:

- (a) the Surplus Gifts must be given or transferred to another organisation in Australia which is a public benevolent institution for the purposes of any Commonwealth taxation act, or to one or more organisations (also approved by special resolution of Members at or before the time of winding up or dissolution) that:
  - (i) has charitable objects similar to or inclusive of the objects of the Company set out in rule 7;
  - (ii) is covered by an item in any of the tables in subdivision 30-B of the Tax Act; and
  - (iii) by its Constitution is required to apply its profits (if any) or other income in promoting its objects and is prohibited from distributing its income and property to its members to at least the same extent as the Company.
- (b) Subject to the Corporations Act and any other applicable Act, and any court order, any Surplus Assets that remain after the Company is wound up and after the distribution of Surplus Gifts in accordance with rule 24.1(a) above:
  - (i) must not be distributed to a Member or a former Member, unless that Member or former Member is a charity described in rule 24.1(b)(ii) below;
  - (ii) must be distributed to one or more charities:
    - A. with charitable purpose(s) similar to, or inclusive of, the purpose(s) in rule 7, and

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- B. which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company.

The organisation or organisations selected for the purpose of rule 24.1(a) and 24.1(b) will be determined by a Special Resolution of Members or if it not practicable to obtain such a Special Resolution, by a Judge of the court of [New South Wales](#) who has jurisdiction in the matter.

## **24.2 Revocation of Deductible Gift Recipient endorsement**

If the Company's endorsement as a Deductible Gift Recipient is revoked by the Australian Taxation Office, then on such revocation the Surplus Gifts must be given or transferred to another organisation in Australia which is a public benevolent institution for the purposes of any Commonwealth taxation act, or to one or more organisations (also approved by special resolution of Members at or before the time of winding up or dissolution) that:

- (a) has charitable objects similar to or inclusive of the objects of the Company set out in rule 7;
- (b) is covered by an item in any of the tables in subdivision 30-B of the Tax Act; and
- (c) by its Constitution is required to apply its profits (if any) or other income in promoting its objects and is prohibited from distributing its income and property to its members to at least the same extent as the Company.

The organisation or organisations selected for the purpose of rule 24.1 will be determined by a Special Resolution of Members or if it not practicable to obtain such a Special Resolution, by a Judge of the court of [New South Wales](#) who has jurisdiction in the matter.

## **24.3 Additional requirements on winding up for community housing assets**

In addition to the requirements in rule 24.1 any property remaining to be dealt with which is a community housing asset in a participating jurisdiction on winding up must be given or transferred to one or more recipients:

- (a) who are also either a registered community housing provider or a housing agency as defined in the community housing providers national law in the jurisdiction in which the asset is located; and
- (b) whose constituent documents contain a winding up clause no less restrictive than rule 24.1 above.

A community housing asset is as defined in the community housing provider's national law in the jurisdiction in which the asset is located.

## **24.4 Acquisition or control by third parties**

Any proposal by which a person (whether alone or together with any associates) would, if the proposal were implemented:

- (a) acquire (directly or indirectly) or become the holder of 30% or more of the business or assets of the Company; or
- (b) acquire control (as determined in accordance with section 50AA of the Corporations Act) of the Company,

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must be approved by way of a special resolution of Members.

## 25. Indemnity

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- (a) To the fullest extent permitted by law and without limiting the powers of the Company, the Company may indemnify each officer of the Company and if the Board considers it appropriate, any officer of a wholly-owned subsidiary of the Company out of the assets of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or the wholly-owned subsidiary or in or arising out of the discharge of the duties of the officer.
- (b) To the fullest extent permitted by law and without limiting the powers of the Company, where the Board considers it appropriate, the Company may execute a documentary indemnity in any form in favour of any officer of the Company or a wholly-owned subsidiary of the Company on such terms as approved by the Board and such documentary indemnity applying to acts or omissions prior to or after the time of execution of that documentary indemnity as approved by the Board from time to time.
- (c) To the fullest extent permitted by law and without limiting the powers of the Company, where the Board considers it appropriate, the Company may:
  - (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company or a wholly-owned subsidiary of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company or the wholly-owned subsidiary or in or arising out of the discharge of the duties of the officer; and
  - (ii) bind itself in any contract or deed with any officer of the Company or a wholly-owned subsidiary of the Company to make the payments.
- (d) Where the Board considers it appropriate, the Company may:
  - (i) give a former Director access to certain papers, including documents provided or available to the Board and other papers referred to in those documents; and
  - (ii) bind itself in any contract with a Director or former Director to give the access.
- (e) In this rule :
  - (i) **officer** means:
    - (A) a Director, or Secretary, the senior officers, senior manager or employee; or



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- (B) a person appointed as a trustee by, or acting as a trustee at the request of, the Company or a wholly-owned subsidiary of the Company,  
and includes a former officer.
- (ii) **duties of the officer** includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the Company or, where applicable, a subsidiary of the Company to any other corporation.
- (iii) **to the relevant extent** means:
  - (A) to the extent the Company is not precluded by law from doing so;
  - (B) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
  - (C) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation; and
  - (D) in the case of an employee who is not a Director, Secretary or senior manager, to the extent that the conduct of the employee did not constitute serious and wilful misconduct.
- (iv) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

