

# Constitution of Havelock Housing Limited

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**Havelock Housing Limited**  
(ACN \_\_\_\_\_)

**June 2022**

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1. Definitions

In this Constitution unless the context requires otherwise:

- (a) “**ACNC Law**” means the Australian Charities and Not-for-profits Commission Act 2012 (Cth);
- (b) “**AGM**” means the Annual General Meeting of the Company required to be held by the Company in each calendar year under the Corporations Act;
- (c) “**Annual Membership Fee**” means the membership fee that applies for the period from 1 July to 30 June in a particular year as determined by the Board in accordance with clause 10;
- (d) “**Appointed Director**” means a person appointed by the Board pursuant to clause 12.4;
- (e) “**Board**” means the Board of Directors acting collectively under this Constitution;
- (f) “**Business Day**” means a day other than a Saturday, Sunday, bank holiday or public holiday in the Australian Capital Territory and “**Business Days**” has a corresponding meaning;
- (g) “**Chair**” means the person elected as the Board Chair or any person appointed to chair a meeting of the Company or a meeting of the Board pursuant to this Constitution as the context requires;
- (h) “**CEO**” means the Chief Executive Officer of the Company as appointed under clause 16;
- (i) “**Code of Conduct**” means the code of conduct of the Company as it applies to Members or the Board, as relevant;
- (j) “**Community Housing Asset**” has the same meaning as given in the Community Housing Act applicable in the jurisdiction where the asset is located, and in relation to assets located in Western Australia, has the meaning provided by the Western Australia Community Housing Regulatory Framework;
- (k) “**Community Housing Acts**” means the following legislation or framework:
  - (i) *Community Housing Providers (Adoption of National Law) Act 2012* (NSW);
  - (ii) *Community Housing Providers National Law (ACT) Act 2013* (ACT);
  - (iii) *Community Housing Providers (National Law) Tasmania Act 2013* (TAS);
  - (iv) *Community Housing Providers (National Uniform Legislation) Act 2013* (NT);
  - (v) *Community Housing Providers (National Law) (SA) Act 2013* (SA);
  - (vi) *Housing Act 2003* (QLD); and

- (vii) *Housing Act 1980* (WA) and the Western Australia Community Housing Regulatory Framework;
- (l) “**Company**” means Havelock Housing Limited;
- (m) “**Constitution**” means this Constitution for the Company as amended from time to time, and a reference to a particular clause is a reference to a clause of this Constitution;
- (n) “**Corporations Act**” means the *Corporations Act 2001* (Cth);
- (o) “**Director**” means a Director of the Company;
- (p) “**Expulsion Event**” means, in respect of a Member:
  - (i) the Member has wilfully refused or neglected to comply with the provisions of this Constitution;
  - (ii) the conduct of the Member, in the opinion of the Board, is unbecoming of the Member or prejudicial to the interests or reputation of the Company; or
  - (iii) the Member is, or any step is taken for the Member to become, an externally administered body corporate;
- (q) “**Elected Director**” means a director elected under clause 12.7;
- (r) “**Financial Year**” means the year from 1 July to 30 June;
- (s) “**General Meeting**” means a general meeting of Members and includes the AGM;
- (t) “**Housing Authority**” means the statutory body of the jurisdiction in which the Community Housing Asset is located as established under the applicable Community Housing Act;
- (u) “**Member**” means a member of the Company pursuant to clause 7.3;
- (v) “**Member Representative**” means the person appointed in accordance with clause 8.1 to participate in the business of the Company on behalf of an Organisational Member;
- (w) “**Organisational Member**” means a Member eligible for membership in accordance with clause 8.2(b);
- (x) “**Objects**” means the objects of the Company as set out in clause 4.1;
- (y) “**Policy**” means a policy of the Company made under clause 18 and “**Policies**” has a corresponding meaning;
- (z) “**Principal Purpose**” means the provision of community housing as set out in clause 5;
- (aa) “**Register of Members**” means the register of Members;
- (bb) “**Registered Community Housing Provider**” has the meaning given to that term in the Community Housing Act applicable in the jurisdiction where the Community Housing Asset is located, or in relation to Community Housing Assets

located in Western Australia, an organisation who provides community housing and has received registration under the Western Australia Housing Regulatory Framework;;

- (cc) “**Special Resolution**” means a resolution that must be passed by at least 75% of the votes cast by members entitled to vote on the resolution in accordance with this Constitution or the Corporations Act;
- (dd) “**Telecommunication Meeting**” means a meeting held by any technology (or any combination of technologies), held in accordance with clause 15, or virtual meeting technology in accordance with the Corporations Act; and
- (ee) “**Voting Member**” means a Member who meets the requirements of clause 8.3(a); and
- (ff) “**Western Australia Community Housing Regulatory Framework**” means the regulatory framework for community housing established and maintained by the Housing Authority of Western Australia, including as varied from time to time.

## 1.2. Interpretation

In this Constitution unless the context requires otherwise:

- (a) a reference to the Company is a reference to Havelock Housing Limited a public company limited by guarantee which operates for the Principal Purpose;
- (b) a reference to a Member present at a General Meeting means the Member or Member Representative, present in person, or by proxy, or by attorney, or attending by technological means in accordance with clause 15 or by virtual meeting technology in accordance with the Corporations Act;
- (c) a reference to a document or instrument includes any amendments made to it from time to time and, unless the contrary intention appears, includes a replacement;
- (d) words importing gender include all genders;
- (e) words in the singular include the plural and words in the plural include the singular;
- (f) the word person includes a firm, a body corporate, ABN registered business, a partnership, a joint venture, an unincorporated body or association or an authority;
- (g) a reference to an organisation includes a reference to its successors, executors, administrators, substitutes and permitted assigns;
- (h) headings in this constitution are for reference only and do not form part of the Constitution;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) a reference to a law includes regulations and instruments made under it and includes any statutory modification re-enactments of, or legislative provisions

substituted for, and any subordinate legislation issued under, that legislation or provision;

- (k) the words include, includes, including and for example are not to be interpreted as words of limitation;
- (l) where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied by signing a physical form of the document by hand or by signing an electronic form of the document using electronic means which identifies the person and indicates their intention in respect of the information recorded in the document, or any other manner permitted by law or by any State or Commonwealth law or in any other manner approved by the Board; and
- (m) a reference to “dollars” or “\$” is to an amount in Australian currency.

### 1.3. Corporations and ACNC Law

In this Constitution:

- (a) unless the context requires otherwise, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the ACNC Law or Corporations Act, the same meaning as in that provision of the ACNC Law or Corporations Act as applicable;
- (b) the provisions of the Corporations Act that apply as Replaceable Rules are displaced by this Constitution and accordingly do not apply to the Company;
- (c) in the event that any of the provisions of this Constitution are in breach of any of the provisions of the ACNC Law or the Corporations Act then the provisions will be read down to the extent that they will comply with the ACNC Law and Corporations Act and any provision that is in breach of those Acts will be deemed to be struck out and will not form part of this Constitution; and
- (d) in the event that the ACNC Law or the Corporations Act permit an act to be done, a decision to be made or a meeting to be held in a way that is more convenient for the Company or is more favourable to the Members than as required or permitted by this Constitution then the Company may, but will not be obliged to, make the decision, take the action, give the notice or hold the meeting or do the particular thing as permitted and in the time and in the manner permitted by those Acts as applicable.

## **2. NAME OF THE COMPANY**

The name of the Company is Havelock Housing Limited.

## **3. COMPANY LIMITED BY GUARANTEE**

### 3.1. Status of Company

The Company is a company limited by guarantee.

### 3.2. Limited Liability

Members have no liability to or for the Company in their capacity as a Member except as set out in this clause 3.

3.3. Contribution of Members on winding up

- (a) Each Member must contribute to the Company's property if the Company is wound up while they are a Member or within one year after their Membership ceases.
- (b) The contribution is for:
  - (i) payment of the Company's debts and liabilities contracted before their membership ceased; and
  - (ii) the costs of winding up,and such amount is not to exceed the sum of ten dollars (\$10).

4. **OBJECTS**

4.1. The Objects of the Company are:

- (a) **Relief of poverty through safe, secure and affordable homes** for low income people including those at risk or experiencing homelessness, or with a disability.
- (b) **Tenancy management and support services** ensure quality, sustainable and stable tenancies.
- (c) **Social support services** (including employment services, social welfare and counselling, health services) are appropriate for and accessible by our residents.
- (d) **Principles of diversity, inclusion, peer support and community leadership** are exhibited among our community of residents.
- (e) **Government policy and regulation and broad community awareness** is conducive to achieving the beneficial social impact of community-based non-profit housing and promoting its role in and contribution to society.
- (f) **Cooperative partnerships, networks and alliances** support the furtherance of these Objects.
- (g) **To carry out activities necessary and incidental to the above objects.**

5. **PRINCIPAL PURPOSE**

The Company is established to:

- (a) be a charity whose Principal Purpose is to advance social and public welfare by providing safe, secure, and affordable community housing in accordance with the Objects; and
- (b) do all things necessary to achieve the Objects.

6. **POWERS**

In addition to the powers conferred on the Company by this Constitution and consistent with the assigned authorities of the Board, the Company has all the powers of a body corporate pursuant to the Corporations Act s.124 (except the power to issue shares or

distribute any of the company's property among the members, in kind or otherwise) and may exercise such powers as are necessary, beneficial, or expedient to pursue the Objects including (but not limited to) the following:

- (a) **Employ, appoint and/or engage** and at its discretion **remove, dismiss or suspend** any employees, officers, staff, agents, contractors, tradespersons or professional persons;
- (b) Determine **wages, salaries and gratuities** of appointees and employees;
- (c) Establish and support, or aid in the establishment and support of services, funds, trusts, schemes, etc. calculated to benefit employees or past employees of the Company and their dependants, and the granting of pensions, allowances or other **benefits to employees or past employees of the Company** and their dependants, and the making of payments towards insurance or superannuation in relation to any of those purposes;
- (d) Print and publish by any technological or electronic means any publications or other **documents**;
- (e) Receive or make **gifts, grants, bequests, subscriptions, donations or scholarships** from or to any person, fund, authority, organisation and accept any gift, etc. whether subject to special trust or not and to act as trustee of money or other property vested in the Company on trust;
- (f) Take any measures as the Company may deem expedient or appropriate for the purpose of facilitating **the raising of revenue and the procuring of contributions to the funds of the Company**, whether through commercial activities, fundraising or other events or by way of donations, subscriptions, grants or otherwise;
- (g) Draw, make, accept, endorse, discount and issue cheques, draft bills of exchange, promissory notes and other legal **negotiable instruments**;
- (h) Borrow or raise **money** in such manner and on such terms as the Company may think fit;
- (i) Secure the repayment of money raised or borrowed or the payment of a **debt or liability of the Company** by giving mortgages, charges or securities upon or over all or any of the real or personal property of the Company;
- (j) **Invest** in authorised trustee investments of any monies of the Company not immediately required for any of its Objects or purposes in any manner in which trustees are authorised by Law to administer money held on trust;
- (k) Enter into **contracts**;
- (l) Establish and support or aid in the establishment or support of any **other service** formed for and consistent with any of the aforesaid Objects of the Company;
- (m) Establish, maintain and manage any **building or works** and arrange for the construction maintenance and alteration of buildings or works and expend money and do any other thing necessary or desirable in relation to any building or works;
- (n) Purchase, hire, take on lease or in exchange or otherwise acquire any **real or personal property** that may be deemed necessary or desirable;



- (o) Buy, sell and supply of and deal in, **goods or services** of any kind;
- (p) To **co-operate** with any person or organisation on matters relating to the pursuit of the Objects of the Company;
- (q) Form a solely owned **incorporated entity** as a subsidiary entity if it is deemed necessary or desirable to or in connection with, or with a view to pursuing the Objects of the Company;
- (r) Subscribe to, become a member of, form or participate in the formation of or enter into a **partnership, network, alliance or joint venture** with or co-operate with or amalgamate with any other persons or bodies if it is deemed necessary or desirable to or in connection with, or with a view to, pursuing the Objects of the Company
- (s) Establish and support, or aid in the establishment and support of such internal **organisational units** of the Company that function as logical elements or segments of the Company representing a specific internal organisational function including but not limited to branches, divisions, departments, chapters, interest groups, panels, societies, or other practical or similar associated body or by whichever other name is deemed suitable;
- (t) Undertake, arrange and/or organise **informational exhibitions, conferences and consultative forums (or similar) and educational and professional development seminars, workshops (or similar)** deemed necessary or desirable to achieve the Company's objects;
- (u) Prepare and make **submissions or representations** to governments and governmental departments and agencies deemed necessary or desirable to achieve the Objects of the Company;
- (v) To organise, conduct and make provision for **lotteries and other games of chance or skill** for the purpose of raising funds for the Company, provided always that such activities are lawful in the jurisdiction they are being held; and
- (w) **Do any other lawful act** as may be necessary, incidental or conducive to the achievement of the aforesaid Objects of the Company.

## 7. INCOME AND PROPERTY OF THE COMPANY

### 7.1. Sole Purpose

The income and property of the Company will only be applied towards the promotion of the Objects of the Company and for the Principal Purpose.

### 7.2. Payment to Members

No income or property will be paid or transferred directly or indirectly to any Member except for payments to a Member:

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
- (b) as reimbursement for expenses properly incurred on behalf of the Company; or

- (c) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent; or
- (d) in return for services as a Director for the payment of a reasonable and proper remuneration for fulfilling the functions and duties of a director or office bearer on reasonable commercial terms commensurate with similar not for profit entities which:
  - (i) has been approved by the Board; and
  - (ii) does not exceed the annual total amount (if any) approved by the Members in General Meeting as the remuneration payable to all directors and office bearers for undertaking such functions and duties; or
- (e) of reasonable rent for premises let to the Company by them.

### 7.3. Payment to directors

The Company may make payments to a Director in good faith for the reasonable and proper amount in remuneration for fulfilling the functions and duties of a director or office bearer. Such payments must:

- (a) be on reasonable commercial terms commensurate with similar not for profit entities; and
- (b) be approved by the Members.

## 8. MEMBERSHIP

### 8.1. Member's Representative

- (a) Each Organisational Member must nominate in writing its Member Representative at the time of applying for membership, and may in its absolute discretion and by written notice to the Company to that effect change its Member Representative from time to time.
- (b) For the avoidance of doubt, the presence of the Member representative will be deemed the presence of the member for all purposes.

### 8.2. Membership Eligibility

Members shall have a direct interest in the development and management of community and affordable housing and have experience in one or more of those areas of expertise referred to in clause 4.1 and shall include either:

- (a) individuals; or
- (b) organisations constituted as separate legal entities or professional firms; and may include government authorities and agencies in the Australian Capital Territory, industry and community associations, firms, corporations and corporate bodies including charities and churches.

### 8.3. Categories of Membership

- (a) The Board may from time to time decide to create new categories of Members, or sub-categories of Members by making a Policy or Policies, but new:

- (i) categories of Members created by the Board may not be granted a right to vote at General Meetings unless ratified by the Voting Members; and
  - (ii) sub-category of Members created must be granted at least the same rights as the category of Member it is derived from.
- (b) Voting Members are Members who:
- (i) meet the eligibility requirements set out at clause 8.2 or fall into a category of Member which has been ratified as a Voting Member;
  - (ii) pay the Annual Membership Fee; and
  - (iii) are admitted to membership under clause 8.5.

#### 8.4. Application for Membership

- (a) Application for membership must be made in writing in a form the Board prescribes or in any particular case accepts.
- (b) Applications for membership shall be accompanied by any application fee and or Annual Membership Fee determined under this Constitution from time to time.

#### 8.5. Admission of Members

- (a) As soon as practicable after receipt of any written application for membership of the Company, applications will be considered by the Board which may, in its absolute discretion, determine whether or not the applicant shall be accepted as a Member.
- (b) Applications for membership which the Board considers would benefit the Company and which has applied in writing, shall upon payment of any application and Annual Membership Fee as required by clause 10, be admitted by the Board as a Member of the Company.

#### 8.6. Membership Register

- (a) When an applicant has been accepted for membership the Secretary will enter the members name, address and usual details in the Register and send the applicants written notice of that acceptance.
- (b) Any Member who changes address must promptly give notice of that change in writing to the Secretary who must record that change in the membership register.

#### 8.7. Resignation of Membership

A Member may at any time by giving notice in writing to the Secretary resign its membership of the Company but will continue to be liable for any Annual Membership Fee due and unpaid at the date of its resignation and for all other moneys due by the Member to the Company.

#### 8.8. Non or overdue payment of Membership subscription

- (a) If the Annual Membership Fee of a Member is unpaid for a period of two calendar months after it becomes due, then the Board may, after notice of the default has been sent to the Member by the Secretary, by resolution:

- (i) suspend the Member's membership; and
  - (ii) revoke all privileges of membership from the Member,  
provided that the Board may in its absolute discretion reinstate the Member on payment of all arrears within six calendar months of the original default.
- (b) If the Annual Membership Fee of a Member remains unpaid for a period of six calendar months after notice is provided under clause 8.8(a), the Board may:
- (i) terminate that Member's membership; or
  - (ii) with due consideration to the Member's circumstances, revoke or postpone the Annual Membership Fee or extend the time for payment or allow for pro-rata payments or payment by instalments by the Member.

## **9. DISCIPLINARY POWERS**

### **9.1. Jurisdiction of the Company**

All Members will be subject to, and submit unreservedly to, the jurisdiction, procedures, penalties and appeal mechanisms of the Company whether under this Constitution or the Policies.

### **9.2. Grievance, Dispute, and Complaints Policies**

- (a) the Board may make a Policy or Policies:
- (i) for the hearing and determination of:
    - (A) grievances by any Member who feels aggrieved by a decision or action of the Company;
    - (B) disputes between Members; and
    - (C) complaints by a member of the public;
  - (ii) for the discipline of Members;
  - (iii) for the formation and administration of a Standards Committee or equivalent which must be independent of any party before it on the matter which is the subject of the appeal in question; and
  - (iv) for the termination of Members.
- (b) The Board or the CEO, in their sole discretion may refer an allegation (which in the opinion of the Board is not vexatious, trifling or frivolous) by a complainant (including a Director or a Member) that a Member has:
- (i) breached, failed, refused or neglected to comply with a provision of this Constitution, the Policies or any other resolution or determination of the Board or any duly authorised committee; or
  - (ii) acted in a manner unbecoming of a Member or prejudicial to the Objects and interests of the Company; or

- (iii) prejudiced the Company or brought the Company or that Member into disrepute, which for the avoidance of doubt, will include breaches of a law which subjects that Member to a criminal sanction,

for investigation or determination either under the procedures set down in the Policies or by such other procedure and/or by persons as the Board or the CEO consider appropriate.

## **10. SUBSCRIPTION FEES OF MEMBERS**

10.1. The Annual Membership Fee is determined by resolution of the Board.

10.2. The Board must determine from time to time:

- (a) the amount (if any) payable by an applicant to become a Member;
- (b) the amount of the Annual Subscription Fee payable by each Member, or any category of Members;
- (c) any other amount to be paid by each Member, or any category of Members, whether of a recurrent or any other nature; and
- (d) the payment method and the due date for payment of the Fee within the timeframes specified by the Board from time to time.

10.3. Each Voting Member must pay to the Company the Annual Membership Fee determined under this clause 10.

10.4. Collection of Fees

- (a) the Annual Membership Fee is due and payable by 30 June of each year.
- (b) the Board may make rules relating to the collection and payment of any fees imposed in accordance with 10.1.

## **11. GENERAL MEETINGS**

11.1. General Meeting

General Meetings of the Company are to be held:

- (a) according to the Corporations Act; and
- (b) at a date and venue determined by the Board.

11.2. Power to convene General Meeting

- (a) The Board may convene a General Meeting when they think fit and must do so if required by the Corporations Act.
- (b) The Voting Members eligible to vote may convene a General Meeting, in accordance with the Corporations Act.

11.3. Notice of a General Meeting

- (a) Notice of a General Meeting of Members must be given:

- (i) to all Members entitled to attend the General Meeting, the Board, and the auditor of the Company; and
  - (ii) in accordance with clause 21 (**service of documents**) and the Corporations Act.
- (b) At least 21 days' notice of the time and place of a General Meeting must be given, together with:
- (i) all information required to be included in accordance with the Corporations Act;
  - (ii) in the case of a proposed Special Resolution, the intention to propose the Special Resolution and the wording of the proposed Special Resolution; and
  - (iii) where applicable, a list of all nominations recommended to the Members for positions to be elected at the relevant General Meeting.

#### 11.4. Business of General Meetings

- (a) Subject to clause 11.4(b), and the Corporations Act, no business other than that stated in the notice of meeting may be transacted at a General Meeting.
- (b) The business of an AGM may include any of the following business, even if it is not stated in the notice of meeting:
  - (i) the consideration of the annual financial report, directors' report and auditor's report;
  - (ii) the election of directors;
  - (iii) the appointment of the auditor;
  - (iv) the fixing of the auditor's remuneration.

### **Cancellation or postponement of General Meeting**

#### 11.5. Cancellation or postponement of General Meeting

Where a General Meeting is convened by the Board they may, if they think fit, cancel the meeting or postpone the meeting to a date and time they determine, by giving notice in accordance with clause 11.6. This clause does not apply to a General Meeting convened by:

- (a) Members according to the Corporations Act;
- (b) the Board at the request of Members; or
- (c) a court.

#### 11.6. Written notice of cancellation or postponement of General Meeting

Notice of the cancellation or postponement of a General Meeting must:

- (a) state the reasons for doing so:

- (b) be given to each Member entitled to attend the General Meeting; and
- (c) each other person entitled to notice of a General Meeting under the Corporations Act,

for a notice of postponement only, it must specify:

- (d) the new date and time for the meeting;
- (e) the place where the meeting is to be held, which may be either the same as, or different, to the place specified in the notice originally convening the meeting; and
- (f) if the meeting is to be held in two or more places, the technology that will be used to hold the meeting in that manner.

#### 11.7. Number of clear days for postponement of General Meeting

If a notice to postpone a General Meeting is given pursuant to clause 11.6, the number of days between the date of the notice and the postponed General Meeting must not be less than the number of days' notice required by clause 11.3 or the Corporations Act.

#### 11.8. Business at postponed General Meeting

Subject to clause 11.4(b), the only business that may be transacted at a postponed General Meeting is the business specified in the notice originally convening the meeting.

#### 11.9. Representative, proxy or attorney at postponed General Meeting

Where:

- (a) a Member appoints a proxy or attorney by way of instrument (an **Instrument**) to attend and vote at a General Meeting on a specified date, or at a General Meeting or General Meetings to be held on or before a specified date; and
- (b) the date for the meeting is postponed to a date later than the date specified in the Instrument,

then that later date is substituted for the date specified in the Instrument, unless the appointing Member notifies the Company in writing to the contrary at least 48 hours before the time at which the postponed meeting is to be held.

#### 11.10. Non-receipt of notice

The non-receipt of a notice convening, cancelling or postponing a General Meeting, or the accidental omission to give a notice of that kind to, a person entitled to receive it, does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the cancellation or postponement of the meeting.

### **Proxies**

#### 11.11. Proxy

- (a) Right to appoint proxy

- (i) A Voting Member entitled to attend a General Meeting of the Company is entitled to appoint a person as their proxy to attend the meeting in their place in accordance with the Corporations Act.
  - (ii) A proxy may be revoked by the appointing voting Member at any time by notice in writing to the Company which will be received by the company, at least 48 hours before the time at which the meeting is to be held.
- (b) Form of proxy
- The instrument appointing a proxy may be in a form determined by the Board from time to time provided it complies with the requirements of the Corporations Act.
- (c) Attorney of Member
- A Member may appoint an attorney to act on the Member's behalf at all or any meetings of the Company.
- (d) Lodgement of proxy or attorney documents
- (i) A proxy or attorney of a Voting Member may vote at a General Meeting or adjourned or postponed meeting (as the case may be) only if the instrument appointing the proxy or attorney is received by the Company:
    - (A) at the office specified for that purpose in the notice of meeting; and
    - (B) at least 48 hours before the scheduled commencement time for the meeting or adjourned or postponed meeting (as the case may be) at which the person named in the instrument proposes to vote. The scheduled commencement time is as specified in the notice of meeting.
  - (ii) An undated proxy is taken to be dated on the day that it is received by the Company.
- (e) Authority given by appointment
- (i) Unless the terms of the appointment specify to the contrary, an appointment by a Voting Member confers authority on a proxy or attorney:
    - (A) to agree to a General Meeting being convened by shorter notice than is required by the Corporations Act or by this Constitution;
    - (B) to speak to any proposed resolution; and
    - (C) to demand or join in demanding a poll on any resolution.
  - (ii) Unless the terms of the appointment specify to the contrary, even if the instrument of appointment refers to specific resolutions and directs the proxy or attorney on how to vote on those resolutions, the appointment is taken to confer authority:
    - (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;



- (B) to vote on any procedural motion; and
- (C) to act generally at the meeting.
- (iii) Unless the terms of the appointment specify to the contrary, if the instrument of appointment refers to a specific meeting to be held at a specified time or venue and the meeting is postponed or adjourned or changed to another venue, then the appointment confers authority to attend and vote:
  - (A) at the postponed or adjourned meeting; or
  - (B) at the new venue.
- (iv) An appointment of a proxy may be a standing proxy — that is, the appointment under the proxy remains valid until it is revoked by the Voting Member that made the appointment.
- (v) The instrument appointing a proxy may provide for the Chair to act as proxy in the absence of any other appointment or if the person or persons nominated fails or fail to attend the meeting.
- (vi) The instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution.
- (vii) If a proxy is appointed to vote on a particular resolution by more than one Voting Member and the instruments appointing the proxy direct the proxy to vote on the resolution in different ways, then the proxy must not vote on a show of hands taken on the resolution.

### **Proceedings at General Meeting**

#### 11.12. Proceedings at General Meeting

- (a) The quorum will be 30% of all Voting Members of the Company who must be present (in person or by proxy or by attorney or attending a Telecommunication Meeting) and be eligible to vote at a General Meeting.
- (b) An item of business may not be transacted at a General Meeting unless a quorum is present at the commencement of, and remains throughout, the General Meeting.
- (c) If, within 30 minutes after the time appointed for a General Meeting, a quorum is not present, the meeting:
  - (i) if convened by, or on requisition of, Members, is dissolved; and
  - (ii) in any other case stands adjourned to such other day, time and place as the Chair determines.

#### 11.13. Adjourned meeting

If a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, those Members then present in person or by proxy or attorney will constitute a quorum.

### **Presiding at General Meetings**

11.14. Chair to preside over General Meetings

- (a) The Chair is entitled to preside as Chair at General Meetings.
- (b) If a General Meeting is convened and there is no Chair, or the Chair is not present within 15 minutes after the time appointed for the meeting, or is unable or unwilling to act, the following may preside as Chair:
  - (i) the Deputy Chair; or
  - (ii) if the Deputy Chair and the Chair are not present or unable or unwilling to act, a Director chosen by the majority of the Voting Members present.

11.15. Conduct of General Meetings

- (a) The Chair of the General Meeting:
  - (i) has charge of the general conduct of the meeting and of the procedures to be adopted;
  - (ii) may require the adoption of any procedure which in his or her opinion is necessary or desirable for proper and orderly debate or discussion or the proper and orderly casting or recording of votes;
  - (iii) must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the Company; and
  - (iv) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the Chair considers it necessary or desirable for the proper conduct of the meeting.
- (b) A decision by the Chair of the General Meeting under this clause 11.15 is final.

11.16. Adjournment of General Meeting

- (a) The Chair of the General Meeting may, with the consent of Members at any meeting at which a quorum is present, and must if so directed by the Members, adjourn the meeting or any business, motion, question, debate or discussion being considered or remaining to be considered by the meeting.
- (b) The adjournment may be either to a later time at the same meeting or to an adjourned meeting at any time and place agreed by vote of the Voting Members present.
- (c) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

**Adjournment of General Meeting**

11.17. Notice of adjourned meeting

- (a) It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for 14 days or more.

- (b) Where a meeting is adjourned for 14 days or more, at least the same period of notice as was originally required for the meeting must be given for the adjourned meeting.

### **Voting at General Meetings**

#### 11.18. Questions decided by majority

Subject to the requirements of the Corporations Act and except in the case of a Special Resolution, a resolution is carried if a simple majority of the votes cast on the resolution are in favour of it. A majority of 75% of members present (in person, by proxy or by Telecommunication Meeting) at a meeting is required to pass a Special Resolution.

#### 11.19. Equality of votes

Where an equal number of votes are cast in favour of and against the resolution, the Chair of the General Meeting may exercise a second and casting vote in addition to the their deliberate vote.

#### 11.20. Declaration of results

- (a) At any General Meeting a resolution is to be put to the vote of the meeting unless a poll is properly demanded and the demand is not withdrawn.
- (b) If the Chair of the General Meeting makes a declaration that a resolution has, on show of hands been lost or carried, whether unanimously or by a particular majority, an entry to that effect in the minutes of meetings of the Company is conclusive evidence of the fact.
- (c) Neither the Chair of the General Meeting nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded for or against the resolution.

#### 11.21. Poll

- (a) If a poll is properly demanded by any single Member or by the Chair of the General Meeting, it must be taken in the manner and at the date and time directed by the Chair of the General Meeting, and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a Chair or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.
- (d) A demand for a poll does not prevent the General Meeting continuing for the transaction of any business other than the question on which the poll was demanded.

#### 11.22. Objection to voting qualification

- (a) An objection to the right of a person to attend or vote at a General Meeting (including an adjourned meeting):
  - (i) may not be raised except at that meeting; and

(ii) must be referred to the Chair of the General Meeting, whose decision is final.

(b) A vote not disallowed under the objection, is valid for all purposes.

#### 11.23. Chair to determine any poll dispute

If there is a dispute about the admission or rejection of a vote, the Chair of the General Meeting must decide it and the Chair's decision made is final.

#### 11.24. Voting of Members

(a) Voting will be by show of hands unless a poll is held in accordance with clause 11.21.

(b) Each Voting Member is entitled to one vote.

(c) For the avoidance of doubt, Voting Members may only vote if they have paid all money owing to the Company, including the payment of the Annual Membership Fee paid in accordance with any conditions imposed under clause 10.2 and there are no rent arrears or other monies outstanding to the Company.

### **12. BOARD OF DIRECTORS**

#### 12.1. Eligibility

An Elected Director must be a Voting Member and must not be an employee of the Company. A Director must have a commitment to the Objects of the Company and possess core competencies determined by the Board to fulfil the role.

#### 12.2. Composition of Board

The Board will comprise of a minimum of seven (7) Directors and up to nine (9) Directors in total, comprised of:

(a) up to seven (7) Elected Directors; and

(b) up to two (2) Appointed Directors, appointed by the Board on terms it considers appropriate in accordance with clause 12.4.

#### 12.3. Board Expertise

All candidates for Director shall have or be prepared to acquire a demonstrated knowledge or experience of the Corporations Act and a commitment to and an understanding of community and affordable housing and the Company's objects.

#### 12.4. Appointed Directors

(a) The Board may at any time appoint up to two (2) Directors in addition to the Elected Directors in accordance with clause 12.2(b).

(b) An Appointed Director cannot be an employee of the Company.

(c) When appointing Directors the Board should select persons with skills that are commensurate with the nature and complexity of the Company, with an understanding of the needs of the community it serves, and be able to contribute to the achievement of the Objects.

- (d) The appointment of Appointed Directors will, where possible, be within any of the following eight categories of expertise profiles:
  - (i) Housing development and procurement;
  - (ii) Asset management;
  - (iii) Social housing management;
  - (iv) Community development;
  - (v) Social policy development;
  - (vi) Law;
  - (vii) Accounting; or
  - (viii) Corporate Finance.
- (e) An Appointed Director's term commences on the date on which the Board resolves to appoint the Appointed Director to the Board.
- (f) An Appointed Director is subject to the maximum term of office outlined in accordance with clause 12.6.

#### 12.5. Nomination for election of Elected Directors

- (a) At least 45 days prior to the proposed date of the AGM at which a resolution or resolutions will be proposed to fill a vacancy in an Elected Director position or the Chair, the Company Secretary will request from Members nominations (which comply with this clause 12.5(b)) for elections to positions falling vacant, which must be received no less than 30 days prior to the AGM.
- (b) A nomination must:
  - (i) be in the form required by the Board and this Constitution;
  - (ii) be in writing, endorsed by the nominee and seconded by another Member;

#### 12.6. Term of office of Directors Generally

- (a) Elected Directors and Appointed Directors will hold office for a term of two (2) years, or in the case of Appointed Directors such lesser time as the Board may determine at the time of appointment.
- (b) Elected Directors and Appointed Directors and can be re-elected or re-appointed up to a maximum term of ten consecutive years (**Maximum Term**).
- (c) The office of the Board Chair may be occupied by a director for a maximum cumulative period of four years.
- (d) The office of the Board Deputy Chair may be occupied by a director for a maximum cumulative period of four years.
- (e) For the purpose of this clause 12.6, one year is deemed to be the period between the end of one AGM and the next AGM.

- (f) For the avoidance of doubt, a person may be re-elected or re-appointed for a term that if fully served would exceed the Maximum Term, provided that person resigns or retires upon reaching the Maximum Term.

#### 12.7. Election of Board Positions

- (a) Elections for Elected Directors will be by ballot in accordance with this clause 12.7 at the AGM.
- (b) The ballot for an election to fill one or more Elected Director positions will be conducted in accordance with the following procedure:
  - (i) if at the close of nominations the number of nominees for a position is equal to or less than the number of that position to be filled, then no election is to take place and those eligible nominees will be taken to be elected;
  - (ii) if at the close of nominations there are more nominees than the number of Elected Director positions to be filled a ballot will be conducted, and may be conducted electronically as determined by the Board, and the nominee/s who receives the highest number of votes will be elected to fill the Elected Director positions;
  - (iii) if two or more eligible nominees get the same number of votes and at the relevant time there is only one position to be filled the Chair of the meeting may exercise a casting vote in addition to their deliberative vote as a Member.
- (c) Elected Members will take office at the conclusion of the General Meeting at which they are elected and will hold office for 2 years until the conclusion of the AGM at which they are due to retire.

#### 12.8. Casual vacancies

- (a) The Board may at any time appoint a person to fill a casual vacancy, as caused pursuant to clauses 12.10, or 12.9(a), in the ranks of the Directors.
- (b) A person appointed under clause 12.8(a) holds office until the next AGM at which time they may be nominated for re-election pursuant to clause 12.5.
- (c) For the avoidance of doubt, service in a casual vacancy will not be counted towards the maximum term of a Director under clause

#### 12.9. Removal of Director

- (a) Subject to the provisions of the Corporations Act, the Company may, in a General Meeting by resolution passed by at least two thirds of the Voting Members present in person or by proxy at the meeting, remove any Director prior to the expiration of that Director's term of office.
- (b) Unless otherwise resolved at a General Meeting, a Director removed in accordance with clause 12.9(a) cannot be re-appointed as a Director within three (3) years from the date of their removal.
- (c) The Board may, by resolution of not less than a 75% majority (of the total number of Directors) of the Board, suspend a Director from their position as a Director with immediate effect, provided that:

- (i) in their opinion they establish sufficient legitimate grounds for them to determine a breach of the Corporations Act or ACNC Law or the conduct of a Director is in persistent breach of this Constitution or the Policies of the Company or is such that it brings disrepute to the Company or such that continuance in office would be prejudicial or detrimental to the interests of the Company; and
- (ii) they then give notice of a General Meeting within two (2) months of that suspension to be held to consider whether the Director should be removed or re-instated.

#### 12.10. Vacation of office

The office of a Director becomes vacant if the Director:

- (a) is removed in accordance with clause 12.9(a)
- (b) under the Corporations Act or the ACNC Law is disqualified from:
  - (i) managing a corporation under the Corporations Act; or
  - (ii) being a Responsible Person by the ACNC Commissioner, within the previous 12 months;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (d) dies;
- (e) resigns from office by notice in writing to the Company;
- (f) is not present at three (3) consecutive Board meetings without leave of absence from the Board;
- (g) is found to have breached this Constitution or the Policies;
- (h) is prohibited from being an officeholder of the Company pursuant to the Corporations Act or by reason of any order made pursuant to the Corporations Act; or
- (i) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act or the ACNC Law.

#### 12.11. Alternate Director

A Director cannot appoint an alternate.

### **13. POWERS AND DUTIES OF THE BOARD**

#### 13.1. General Powers of the Board

- (a) The Board is responsible for the management, direction and control of the Company's affairs and may exercise those of the Company's powers that are not required, by the Corporations Act or the ACNC Law or by this Constitution, to be exercised by the Company in a General Meeting.

- (b) Without limiting clause 13.1(a), the Board may exercise all the Company's powers to borrow or raise money, to charge any property or business or give any other security for a debt, liability or obligation of the Company or of any other person and in all cases to do all things necessary in pursuance of the Company's Objects and its Principal Purpose.

#### 13.2. Governance policies

The Board may from time to time determine

- (a) Policies for the Company's governance that are necessary or desirable for the control, administration and management of the Company's affairs, and may adopt a Code of Conduct and Board charter.
- (b) periodically review the Policies in light of the general principles of good corporate governance and the requirements of the ACNC Law but in any event such review must be conducted annually.

#### 13.3. Deputy Chair

The Board may, from time to time, elect one of its number to the position of Deputy Chair until the next General Meeting, provided that this position may not be filled by the Chair.

#### 13.4. Time and extension of time

Subject to the Corporations Act, where this Constitution requires that something be done by a particular time, or within a particular period, or that an event is to occur or a circumstance is to change on or by a particular date, the Board may at its absolute discretion extend that time, period or date as it thinks fit.

#### 13.5. Appointment of Attorney

- (a) The Board may appoint any person to be the Company's attorney for the purposes, with the powers, authorities and discretions, for the period and subject to the conditions it thinks fit.
- (b) The attorney appointed under clause 13.5(a) may exercise a power or carry out tasks, services or other affairs for and on behalf of the Company in the Company's name under the terms of a power of attorney granted under clause 13.5(a). The power granted may be very wide in scope and may include the power to sign documents on behalf of the Company, or deal with its financial affairs or property.

#### 13.6. Provisions in power of attorney

A power of attorney granted under clause 13.5 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Board thinks fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

#### 13.7. Delegation of powers

- (a) Without limiting clause 16.4 the Board may by resolution, approval of Policies or by power of attorney or writing under seal, delegate any of their powers to a committee; or a Director; or an employee; or any other person they believe are reliable and competent to enact the power.



- (b) Any delegation by the Board of their powers:
  - (i) must specify in writing the powers delegated, any restrictions on, and conditions attaching to, the exercise of those powers and the period during which that delegation is to be in force;
  - (ii) may be either general or limited in any way provided in the terms of the delegation;
  - (iii) need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position; and
  - (iv) can be revoked at any time.
- (c) If exercising a power depends on a person's opinion, belief or state of mind, then that power may be exercised by the delegate on the delegate's opinion, belief or state of mind about that matter.
- (d) Any power exercised by a delegate is as effective as if it had been exercised by the Board.

#### 13.8. Duties of the Board

Without limiting the general powers of the Board pursuant to clause 13.11 and as otherwise stated in this Constitution, the role, functions and activities of the Board include (in the main, but not necessarily limited to):

- (a) formulating the Company's strategic direction that is consistent with furthering the Objects of the Company;
- (b) determining the Company's governance policies;
- (c) appointing and working with and through the CEO;
- (d) monitoring, overseeing and supervising the Company's strategic, organisational, financial and reputational performance and risk and compliance management processes;
- (e) establishing any Board committees required to assist with governance functions;
- (f) providing accountability to the Members and complying with this Constitution and the general duties of directors in the Act and the Law.

#### 13.9. Directors Duties under ACNC Law

The Directors must comply with their duties as Directors required under the Corporations Act, the common law and in accordance with the duties described in the ACNC Law as follows:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise in a similar circumstance if they were a Director of the Company;
- (b) to act for a proper purpose and in good faith in the best interests of the Company;

- (c) not to misuse their position as a Director to gain advantage for themselves, other persons, or cause detriment to the Company;
- (d) not to misuse information they gain in their role as a Director;
- (e) to disclose any perceived or actual material personal interest that a director has in a matter that relates to the affairs of the company;
- (f) to ensure that the Company maintains fair and true financial records (clause 20.1) and ensuring proper statutory financial reporting in Annual Report and at AGM(clause 11) and
- (g) not to allow the Company to operate while it is insolvent.

#### **14. PROCEEDINGS OF THE BOARD**

##### **14.1. Board meetings**

- (a) subject to clause 14.1(b), the Board may meet for conducting business, adjourn and otherwise regulate their meetings as they think fit.
- (b) the Board must meet at least once (1) every three months in each calendar year, face to face, by a Telecommunication Meeting, or at one or more physical locations using a Telecommunication Meeting.

##### **14.2. Questions decided by majority**

- (a) A question arising at a Board meeting is to be decided by a majority of votes of the Directors present in person or by a Telecommunication Meeting and entitled to vote.
- (b) Each Member present has one vote on a matter arising for decision by the Board.

##### **14.3. Chair's casting vote**

The Chair of the meeting will have a casting vote in addition to the Chair's deliberate vote.

##### **14.4. Quorum**

The quorum necessary for the transaction of business at a meeting will be a majority of the total number of Directors or such greater number as may be fixed by the Board.

##### **14.5. Effect of vacancy**

- (a) The continuing Directors may continue act despite a vacancy in their number.
- (b) However, if the number of Directors is reduced below the minimum number of Directors set out at clause 12.2, the remaining Directors may act only for the purpose of filling vacancies to the extent necessary to bring their number to that required for a quorum or to convene a General Meeting.

##### **14.6. Convening meetings**

- (a) The Chair must, on the request of any three (3) Directors, convene a Board meeting.

- (b) At least 72 hours notice of a meeting of the Board must be given individually to each Director (except a Director on leave of absence approved by the Board). Notice of a meeting of the Board may be given in person, or by post or by telephone, or other electronic means.
- (c) A Director may waive notice of a meeting of the Board by giving notice to that effect to the Company in person or by post or by telephone, or other electronic means.
- (d) A person who attends a meeting of the Board waives any objection that person may have in relation to a failure to give proper notice of the meeting.
- (e) The non-receipt of a notice of a meeting of the Board or the accidental omission to give notice of a meeting to a person entitled to receive notice does not invalidate anything done (including the passing of a resolution) at a meeting of the Board.
- (f) The Chair will preside at Board Meetings. If a Chair is not appointed or if at any meeting the Chair is not present within five minutes after the appointed start time for the meeting, or is unwilling to act, the Deputy Chair will preside, or if the Deputy Chair is not present, or is unwilling to act, then the Directors present may choose one of their number to preside over the meeting. Any such person presiding may exercise any vote to which that person might otherwise be entitled and will have a casting vote.

#### 14.7. Circulating resolutions

- (a) The Board may pass a resolution without a Board Meeting being held if notice in writing of the resolution is given to all Directors and a majority of Directors, subject to the quorum set out at clause 14.4 being satisfied, vote in favour of the resolution by:
  - (i) signing a document containing a statement that they are in favour of the resolution set out in the document; or
  - (ii) confirming via an electronic means agreed to by the Board that they are in favour of the resolution set out in the document.
- (b) Separate copies of the document may be used for signing if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Director to constitute a majority of Board confirms or signs in accordance with clause 14.7(a)

#### 14.8. Validity of acts of Board

Everything done at a Board meeting, or by a person acting as a Director is valid even if it is discovered later that there was some defect in the appointment, election or qualification of any of them or that any of them was disqualified or had vacated office.

#### 14.9. Directors' Interests

- (a) A Director will declare to the Board any material personal interest or related party transaction (**Conflict of Interest**), as defined by the Corporations Act, as soon as practicable after that Director becomes aware of their Conflict of Interest.
- (b) Where a Director declares a Conflict of Interest, that Director must absent himself or herself from discussion of such matter unless Directors who do not have a

material personal interest in the matter have passed a resolution that they are satisfied the Conflict of Interest should not disqualify the conflicted director from voting or being present.

- (c) In the event of any uncertainty in this regard, the issue will immediately be determined by a vote of the Board or, if this is not possible, the matter will be adjourned or deferred to the next meeting.
- (d) The Conflict of Interest will be entered into the Conflicts Register which will be maintained by the Company Secretary and disclosed to Directors and where relevant the Members by way of a standing notice.

#### 14.10.Minutes

The Board must cause minutes of meetings to be made and kept according to the Corporations Act which must be approved by the Board at the next Meeting.

### 15. TELECOMMUNICATION MEETINGS OF THE COMPANY

#### 15.1. Telecommunication Meeting

- (a) A General Meeting or a Board Meeting may be held by means of a Telecommunication Meeting, provided that:
  - (i) the number of Members or Directors participating is not less than the quorum required for a General Meeting or Board meeting (as applicable); and
  - (ii) the meeting is convened and held in accordance with the Corporations Act.
- (b) All provisions of this Constitution relating to a meeting apply to a Telecommunication Meeting in so far as they are not inconsistent with the provisions of this clause 15.

#### 15.2. Conduct of Telecommunication Meeting

The following provisions apply to a Telecommunication Meeting:

- (a) all persons participating in the meeting must be **linked** by telephone, audio-visual or other instantaneous means for the purpose of the meeting;
- (b) all persons participating in the meeting via telecommunication who are entitled to **vote** may do so by announcing his or her vote, or by any other method to be pre-determined by the Chair;
- (c) each of the persons taking part in the meeting must **be able to hear and be heard** by each of the other persons taking part at the commencement of the meeting and each person so taking part is deemed for the purposes of this Constitution to be present at the meeting;
- (d) at the commencement of the meeting each person must **announce his or her presence** to all other persons taking part in the meeting;
- (e) a person may **not leave a Telecommunication Meeting** by disconnecting his or her telephone, audio-visual or other communication equipment **unless that person has previously notified the Chair**;

- (f) a person may conclusively be presumed to have been present and to have formed a part of a **quorum** at all times at a Telecommunication Meeting unless that person has previously notified the Chair of leaving the meeting; and
- (g) a **minute** of proceedings of a Telecommunication Meeting is sufficient evidence of the proceedings and of the observance of all necessary formalities if the minute is certified to be a correct minute by the Chair.

## **16. CHIEF EXECUTIVE OFFICER**

### **16.1. Appointment of Chief Executive Officer**

The Board may appoint a CEO for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in a particular case, may revoke any such appointment. The CEO will not be a member of the Board.

### **16.2. Powers, duties and authorities of Chief Executive Officer**

- (a) The CEO holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, delegated by the Board.
- (b) The exercise of those powers and authorities, and the performance of those duties, by the CEO is subject at all times to the control of the Board.

### **16.3. Suspension and removal of Chief Executive Officer**

Subject to the terms and conditions of the appointment and the law, the Board may suspend or remove the CEO from that office.

### **16.4. Delegation by Board to Chief Executive Officer**

The Board may delegate to the CEO the power (subject to such reservations on the power as are decided by the Board) to conduct the day-to-day management of the operations of the Company.

### **16.5. Chief Executive Officer to attend meetings**

- (a) The CEO is entitled to attend all meetings of the Company, meetings of the Board and may speak on any matter, but does not have a vote.
- (b) The Board may exclude the CEO where the Board reasonably and with justification determines such exclusion is in the best interest of the Company.

## **17. COMPANY SECRETARY**

### **17.1. Appointment of Company Secretary**

The Board will appoint the Company Secretary.

### **17.2. Suspension and removal of Company Secretary**

The Board may suspend or remove a Company Secretary from that office at any time.

### **17.3. Powers, duties and authorities of Company Secretary**

A Company Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, delegated to them by the Board and this Constitution.

## **18. POLICIES**

- (a) In addition to the Policies made pursuant to clause 9.2 and those pursuant to clause 13.2 the Board may from time to time make Policies:
  - (i) that are required to be made under this Constitution; and
  - (ii) which in their opinion are necessary or desirable for the control, administration and management of the Company's affairs and may amend, repeal and replace those Policies.
- (b) The Policies referred to in clauses 9.2, 13.2 and 18 must be made available to Members and take effect upon approval by ordinary resolution of the Board..

### 18.2. Effect of Policies

A Policy:

- (a) is subject to this Constitution;
- (b) must be consistent with this Constitution; and
- (c) when in force, is binding on all Members, the Board, Directors, Officers, Committees, the Chair, Deputy Chair, Company Secretary and CEO and staff and has the same effect as a provision of this Constitution.

## **19. INSPECTION OF RECORDS**

### 19.1. Right of the Members to Inspect Records

A Member does not have the right to inspect any document of the Company (including registers kept by the Company) except as set out in the Corporations Act or the ACNC Law, court order or by special resolution of the Board.

## **20. ACCOUNTS**

### 20.1. Accounting Records

The Board will cause proper accounting and other records to be kept and will distribute copies of financial statements as required by the Corporations Act and the ACNC Law.

### 20.2. Auditor

A properly qualified auditor or auditors must be appointed and remuneration approved by the Members, and may be by the Board in accordance with Corporations Act and the remuneration of such auditor or auditors fixed and duties regulated in accordance with the Corporations Act and the ACNC Law.

## **21. SERVICE OF DOCUMENTS**

### 21.1. Document includes notice

In this clause 21, document includes a notice.

**21.2. Methods of service on a Member**

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register of Members or an alternative address nominated by the Member; or
- (c) by sending it to an electronic address nominated by the Member.

**21.3. Methods of service on the Company**

Unless otherwise specified in this Constitution, a Member may give a document to the Company:

- (a) by delivering it to the registered office of the Company (the Registered Office);
- (b) by sending it by post to the Registered Office; or
- (c) by sending it to an electronic address nominated by the Company.

**21.4. Post**

A document sent by post if sent to an address:

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

and in either case is taken to have been received on the fifth Business Day after the date of its posting.

**21.5. Electronic transmission**

If a document is sent by electronic transmission, delivery of the document is taken to:

- (a) be effected by properly addressing and transmitting the electronic transmission; and
- (b) have been delivered on the Business Day following its transmission.

**22. INDEMNITY**

**22.1. Indemnity of officers**

- (a) This clause 22 applies to every person who is or has been:
  - (i) a Director, CEO, or Company Secretary of the Company;
  - (ii) an Auditor appointed by the Company; and

- (iii) to any other officers, employees, former officers or former employees of the Company or of its related bodies corporate as the Board may determine.
- (b) Each person referred to in paragraph 22.1(a) is referred to as an Officer as defined in the Corporations Act for the purposes of the rest of clause 22.
- (c) The Company, to the extent permitted by Law, will indemnify each Indemnified Officer out of the property of the Company against:
  - (i) every liability that the Indemnified Officer incurs as an officer of the Company or of a related body corporate of the Company; and
  - (ii) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the Indemnified Officer becomes involved as an officer of the Company or of a related body corporate of the Company,unless:
  - (iii) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
  - (iv) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

#### 22.2. Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring an Indemnified Officer against liability that the Indemnified Officer incurs as an officer of the Company or of a related body corporate of the Company including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute,

and the Indemnified Officer must comply with the requirements of the insurance contract.

#### 22.3. Deed

The Company may enter into a deed with any Indemnified Officer or a deed poll to give effect to the rights conferred by clause 22.122.1 on the terms the Board thinks fit (as long as they are consistent with clause this clause 22).

### **23. WINDING UP**

#### 23.1. Contributions of Members on winding up

- (a) Each Member must contribute the amounts set out in clause 3.3(b) on winding up of the Company.

#### 23.2. Winding up or Revocation of Deductible Gift Recipient Endorsement

- (a) Subject to the any applicable law or court order, on winding up or dissolution of the Company, any assets, excluding Community Housing Assets, remaining after



the satisfaction of all the Company's debts and liabilities (**Surplus Assets**), will not be paid to or distributed among the Members, but will be transferred to another community housing provider or similar organisation, decided in accordance with clause 23.2(e), which:

- (i) has the objectives similar to and inclusive of the Objects and Primary Purpose; and
  - (ii) by its constituent documents prohibits the distribution of any surplus assets to its members to at least the same extent as the Company, and for the avoidance of doubt is not carried on for purpose of profit or gain of its members; and
  - (iii) is endorsed by the Australian Taxation Office as a deductible gift recipient (DGR) in the same category as the Company within the meaning of Division 30 of the *Tax Assessment Act 1997* (Cth).
- (b) On winding up or dissolution of the Company, any surplus Community Housing Assets will be transferred to a Registered Community Housing Provider or to the Housing Authority located in the jurisdiction in which the Community Housing Asset is located and in accordance with any requirements set out in the applicable Community Housing Act.
- (c) On winding up or dissolution of the Company, any part of the Surplus Assets consisting of property supplied by a government or public authority, including any unexpended portion of a grant, must be returned to, or otherwise dealt with in the way directed by the department or authority that supplied it.
- (d) If the endorsement of the Company as a DGR is lost or revoked (whether or not the Company is wound up), the following assets remaining after the payment of the Company's liabilities, must be transferred to one or more charities or charitable funds, authorities, or institutions, which is endorsed as a DGR in the same category as the Company within the means of Division 30 of the *Tax Assessment Act 1997* (Cth):
- (i) deductible gifts of money or property for the Principal Purpose;
  - (ii) deductible contributions made in relation to an eligible fundraising event held for the Principal Purpose; and
  - (iii) money received by the Company because of such gifts or contributions.
- (e) The decision as to where to distribute assets in accordance with clauses 23.2(a) or 23.2(d) above must be made by a Special Resolution of Members at or before the time of winding up or loss or revocation of DRG endorsement, as applicable. If the Members do not make this decision, the Company must apply to the Australian Capital Territory Supreme Court to make this decision.

### 23.3. Establishment and Operation of Gift Funds

- (a) The Company, by resolution of the Board, may establish one or more Gift Funds to be used for the Principal Purpose and Objects of the Company and into which the public, or specific members of the public, will be invited to make gifts and donations of money and property.

(b) Subject to anything else in this clause, the Board will determine the operation and administration procedures of each Gift Fund established under clause 23.3(a).

(c) Despite anything else in this Constitution, upon the first occurrence of a Gift Fund created under this clause 23.3:

(i) being wound up; or

(ii) where the fund is endorsed as a deductible gift recipient within the meaning of section 30-227 of the *Income Tax Assessment Act 1997* (Cth), ceasing to have that endorsement;

any surplus contributions, gifts of money or property or surplus assets of that fund must be transferred to funds, authorities or institutions:

(i) that have objects similar to the objects of the Company;

(ii) which are charitable at law; and

(iii) in the case of a fund of the Company, endorsed at any time as a deductible gift recipient; which are deductible gift recipients within the meaning of section 30-227 of the *Income Tax Assessment Act 1997* (Cth).

## **24. AMENDMENTS TO CONSTITUTION**

24.1. This Constitution may be amended or repealed in accordance with this Constitution, the Corporations Act and the ACNC Law.

24.2. Amendments to this Constitution will be made by Special Resolution passed at either an AGM or a General Meeting.

24.3. A Special Resolution amending, adopting or repealing the Constitution takes effect:

(a) if no later date is specified in the Special Resolution, then on the date on which the resolution is passed; or

(b) on a later date specified in, or determined in accordance with, the Special Resolution.

24.4. The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to cease being a charity or lose deductible gift recipient or public benevolent institution status.

## **25. TRANSITIONAL PROVISIONS**

25.1. The provisions in this Constitution relating to the length of a term for a Director apply on and from the conclusion of the General Meeting adopting this Constitution, subject to this clause 25.

25.2. Those Elected Directors elected prior to the commencement of this Constitution will continue to hold office for a term of 2 years from the date they were last elected.

25.3. Those Appointed Directors appointed prior to the commencement of this Constitution, will continue to hold office for a term of 2 years from the date they were appointed, or such other lesser term as determined by the Board on appointment.

- 25.4. Notwithstanding any other provision in this Constitution, for the purpose of clause 12.6, a Director who at the beginning of the General Meeting adopting this Constitution has served as Director for:
- (a) more than five consecutive years in any capacity will, at the end of the next AGM, be deemed to have served five years for the purpose of calculating the Maximum Term; and
  - (b) less than five consecutive years in any capacity, their term of service prior to the commencement of this Constitution will be included for the purpose of calculating the Maximum Term.