



Nightingale, not-for-profit.

Nightingale Communities Ltd is a Not-For-Profit (NFP) organisation. Our Constitution has been readily available and public since the NFP was registered with ASIC in April 2021.

For clarity:

A NFP structure means that the legal entity, 'Nightingale Communities' in our case, now controls the assets, the intellectual property, the brand and any income of Nightingale (all of which must only be used for its purpose). A NFP is an organisation that does not operate for the profit, personal gain or other benefit of particular people (for example, its members). We are not yet registered as a Charity (though we are working on it) which means you won't see us on the ACNC register.

For any entity to be a bona fide NFP it must include the following clauses in its Constitution:

- the NFP clause - this requires that the assets and income of the organisation will only be used for furthering its purposes (sometimes called objects). This means these can not be used directly or indirectly for members;
- The wind-up clause - this requires that in the event of the organisation being dissolved, all assets that remain after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purpose.

Nightingale Communities' Constitution has both of these clauses and they can not be changed.

The Members of a NFP are not owners. The powers of a member are less than those of a shareholder in a Pty Ltd entity.

Members can vote at an AGM, they can request financial statements and they can appoint and re-elect Directors, though the number of Directors can never be less than 3. Whilst a Member can make a change to the Constitution they cannot change the above mentioned clauses that define a NFP.

We are very proud that our status as a NFP means the huge amount of work by staff and Board alike can only ever contribute to delivering on our mission to revolutionise the way we live together.



Constitution

This constitution is dated 19 June 2021
Nightingale Communities Limited
ACN 649 301 011
A Company Limited By Guarantee



Nightingale acknowledges the Wurundjeri Woiwurrung people as the Traditional Owners and Custodians of the land on which we were founded.

We pay our respects to all First Nations peoples of Australia and we acknowledge their continued and unceded connection to country and culture.

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Preamble

Why We Exist

Welcome home, welcome to our revolution.

The Company exists to revolutionise the way we live together, by facilitating the construction of carbon- neutral housing that is socially, ecologically and financially sustainable. Our vision is to create a world in which housing is built sustainably to support wellbeing, community and liveability.

Climate Change and a Built Environment that adds to the problem

Despite Australia's fortunate position of being one of the wealthiest countries per capita in the OECD, we lag far behind other developed countries on a commitment to carbon reduction targets and the mitigation of climate change. Our National Construction Code is decades behind that of the UK, the US and Europe. Coupled with a built environment that relies on natural gas for cooking, space heating and domestic hot water, our buildings contribute nearly 40% of our national carbon emissions. If we are to have any chance of meeting our commitments under the 2015 Paris Agreement, we must reduce our carbon emissions related to the built environment, and we must electrify all buildings to provide a pathway to net zero emissions.

Financial Inequity and Housing Insecurity

For decades, housing our population has been left to the hands of the private market. Despite the wealth in this country, the housing delivered has been unsustainable, carbon intensive, poor quality and often built in the wrong locations (at the edges of our cities, far from schools, work, public transport and opportunity). There has been a consistent under supply of housing, which, alongside economic growth and tax incentives for investors, has led to home ownership for under 35 year olds being at its lowest level since 1947. It has never been harder for an Australian to buy their first home. At the 2016 census, there were over 116,000 Australian's living with homelessness. This is unacceptable.

Social Isolation and the Health Problems of a Poorly Planned City

We have been warned about the problems of urban sprawl in Australia since the 1960s, and yet today our cities bleed into green wedges and farming land at our city's edges, providing low scale, low density, low quality housing in all the wrong places.

Places that are far from work and education facilities, far from local shops and amenity and far from utilities and infrastructure. These places not only have high infrastructure costs for the state but they also have high instances of poor health outcomes. These suburbs that are built over our food bowls, compromising our future food security in a time of catastrophic climate change, are also the places that experience the highest levels of domestic violence, depression, anxiety and obesity.

At the opposite end of the spectrum, in the centre of cities like Melbourne and Brisbane, housing is being provided in curtain walled towers with population densities higher than that of Hong Kong and New York. The sheer number of residents in these buildings, and their disconnection from the streets below has led to a similar problem in our city centres, of a place that lacks a sense of neighbourhood and social connection.

Density Done Well

The City of Melbourne, under their postcode 3000 strategy looked at how to house a growing population in a meaningful way. A way that created a welcoming urban experience and a place that strengthened community, rather than diluting it. They looked at examples of mid-rise European cities, such as Rome, Barcelona, Paris and Amsterdam, and found that they could house most of Melbourne's growing population in buildings no taller than 8 storeys along our major public transport infrastructure.

The Company was established in response to these key issues.

1. Name of Company

The name of the Company is Nightingale Communities Limited ACN 649 301 011.

2. Type of Company

The Company is a not-for-profit public company limited by guarantee.

3. Limited Liability of Members

Each Member must contribute an amount not more than \$10.00 (the guarantee) to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for:

- (a) the payment of debts and liabilities of the Company;
- (b) the payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

4. Definitions

4.1 In this Constitution, unless there is something in the subject or context which is inconsistent:

Act means the Corporations Act 2001.

Board means the Board of Directors.

Business Day means a day on which banks are open for business in Sydney.

Chairperson means the person holding that office under this Constitution and includes any assistant or acting chairperson.

Committee means a committee established in accordance with clause 41.

Company means Nightingale Communities Limited.

Constitution means this Constitution as amended or supplemented from time to time by a Special Resolution of the Members in a general meeting.

Director means any person holding the position of a director of the Company and Directors means the directors for the time being of the Company or as the context permits such number of them as have authority to act for the Company.

Financial Year means the financial year of the Company ending on 30 June.

Founding Members means:

- (a) Jeremy James McLeod; and
- (b) Tamara Veltre.

General Manager means the person holding that office from time to time under this Constitution.

Member means a Member of the Company.

Office means the registered office for the time being of the Company which must always be located in Australia.

Officer has the same meaning as given to that term in section 9 of the Act.

Register means the register of Members to be kept pursuant to the Act.

Replaceable Rules means the replaceable rules applicable to a public company limited by guarantee set out in the Act.

Representative means a person authorised in accordance with section 250D of the Act to act as a representative of a body corporate that is a Member of the Company.

Secretary means the person appointed as the secretary of the Company and includes any assistant or acting secretary.

Special Resolution means a resolution:

- (a) of which notice has been given in accordance with the Act; and
- (b) that has been passed by at least 75% of the votes cast by Members present and entitled to vote on the resolution.

- 4.2 In this Constitution, unless there is something in the subject or context which is inconsistent:
- (a) the singular includes the plural and vice versa;
 - (b) each gender includes the other gender;
 - (c) the word “person” means a natural person and any partnership, association, body or entity whether incorporated or not;
 - (d) the words “writing” and “written” include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
 - (e) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
 - (f) the words ‘including’, ‘for example’, or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and a reference to any clause or schedule is to a clause or schedule of this Constitution;
 - (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.
- 4.3 An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.
- 4.4 The provisions of this Constitution displace the Replaceable Rules (but not Replaceable Rules which mandatorily apply to a public company) contained in the Act.
- 4.5 Headings do not form part of or affect the construction or interpretation of this Constitution.

5. Objects and Powers

- 5.1 The Company is established as a triple bottom line housing model that:
- (a) tackles climate change;
 - (b) that tries to rebuild urban communities; and
 - (c) aims to provide an example of what a more equitable housing system could be.
- 5.2 The Company is established to deliver housing for people, not for profit.
- 5.3 The Company can only exercise the powers in section 124(1) of the Act to:
- (a) carry out the objects of the Company set out in clause 5.1; and
 - (b) do all things incidental or convenient in relation to the attainment of an object under clause 5.1.

6. Not-For-Profit

- 6.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in clause 5.1.
- 6.2 No income or assets of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Company unless it is paid, transferred or distributed in carrying out the Company’s objects. However nothing in this Constitution will prevent payment in good faith to a Member:
- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
 - (b) of interest at a rate not exceeding current bank overdraft rates of interest for money lent to the Company;
 - (c) of reasonable and proper rent for premises leased by any Member to the Company, for carrying out the Company’s purposes.

7. Amending the Constitution

The Members may amend this Constitution by passing a Special Resolution.

8. Membership

8.1 The Members of the Company are:

- (a) the Founding Members; and
- (b) any other person that the Members resolve by a Special Resolution to admit as a Member, in accordance with this Constitution.

8.2 A person is eligible for membership of the Company if that person:

- (a) is a natural person over the age of 18 years or an organisation; and
- (b) in the opinion of the Members shares the values and holds the ideals of the objects of the Company as set out in clause 5.1; and
- (c) has been recommended by at least 2 Members.

9. Application for Membership

9.1 Every application for Membership of the Company must:

- (a) be lodged with the Secretary and must set forth the name and address of the applicant;
- (b) specify the relevant credentials of the applicant to qualify as a Member; and
- (c) state that the applicant agrees to comply with the terms of the Company's Constitution.

9.2 Applications for Membership of the Company must be made in writing on a form approved by the Members for that purpose and signed by the applicant.

9.3 As soon as practicable after an application for Membership has been received, the Members will in their absolute discretion:

- (a) determine the admission or rejection of the applicant; or
- (b) decide to call on the applicant to supply any evidence of eligibility that they consider reasonably necessary.

9.4 An applicant will be admitted to Membership of the Company if the Members resolve by a Special Resolution to admit the applicant.

9.5 If the Members approve an application for Membership, they must notify the Secretary who must, as soon as practicable, notify the applicant in writing of their approval for Membership.

9.6 If the Members reject an application for Membership, they must notify the Secretary who must, as soon as practicable, notify the applicant in writing that their application has been rejected.

10. Register of Members

10.1 The Company must establish and maintain a Register of Members. The Register of Members must be kept by the Secretary and must contain:

(a) for each current Member:

- (i) name;
- (ii) address (which may also include an electronic address such as email);
- (iii) any alternative address nominated by the Member for the service of notices (which may also include an electronic address such as email); and

(iv) date the Member was entered on to the Register;

(b) for each person who stopped being a Member in the last 7 years:

- (i) name;
- (ii) address (which may also include an electronic address such as email);
- (iii) any alternative address nominated by the Member for the service of notices (which may also include an electronic address such as email); and

(iv) dates the Membership started and ended.

10.2 The Company must give current Members reasonable access to the Register of Members.

10.3 Information that is accessed from the Register of Members must only be used in a manner relevant to the interests or rights of Members.

11. When a Person Stops Being a Member

A person immediately stops being a Member if:

- (a) they die;
- (b) they are wound up or otherwise dissolved or deregistered (for an incorporated Member);
- (c) they resign, by writing to the Secretary;
- (d) the Company, in a general meeting, resolves by a resolution with a 75% majority of Members to terminate the Membership of a Member whose conduct or circumstances in the opinion of the Company renders it undesirable that that Member continue to be a Member of the Company. The Member must be given at least 21 days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is proposed; or
- (e) they have not responded within 3 months to a written request from the Secretary that they confirm in writing that they want to remain a Member.

12. Membership Entitlements Not Transferable

A right privilege or obligation which a person has by reason of being a Member of the Company:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates on cessation of the person's Membership.

13. Entrance Fee and Subscriptions

There shall be no entrance fee, annual fee or subscription payable by any Member to the Company.

14. Members' Rights

14.1 Members of the Company will be entitled to:

- (a) receive notice of and attend and vote at general meetings of the Company; and
- (b) receive annual reports of the Company including financial reports in relation to each Financial Year.

14.2 All other rights, privileges and obligations of Members are in accordance with the Act.

15. Dispute Resolution

15.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between a Member or Director and:

- (a) one or more Members;
- (b) one or more Directors; or
- (c) the Company.

15.2 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

15.3 If those involved in the dispute do not resolve it under clause 15.2, they must within 10 days:

- (a) tell the Directors about the dispute in writing;
- (b) agree or request that a mediator be appointed; and
- (c) attempt in good faith to settle the dispute by mediation.

15.4 The mediator must:

- (a) be chosen by agreement of those involved; or
- (b) where those involved do not agree:
 - (i) for disputes between Members, a person chosen by the Chairperson; or
 - (ii) for other disputes, a person chosen by the president of the Law Institute of Victoria.

15.5 A mediator chosen by the Chairperson under clause 15.4:

- (a) may be a Member or former Member of the Company;
- (b) must not have a personal interest in the dispute; and
- (c) must not be biased towards or against anyone involved in the dispute.

15.6 When conducting the mediation, the mediator must:

- (a) allow those involved a reasonable chance to be heard;
- (b) allow those involved a reasonable chance to review any written statements;
- (c) ensure that those involved are given natural justice; and
- (d) not make a decision on the dispute.

16. Convening of General Meetings

- 16.1 Any 3 Directors may whenever those Directors think fit convene a general meeting of the Company in accordance with the provisions of the Act.
- 16.2 5% of Members shall be entitled to require a general meeting to be convened in accordance with the provisions of the Act.
- 16.3 A general meeting of the Company may be convened at 2 or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting, including to hear and be heard.

17. Annual General Meeting

- 17.1 A general meeting, called the annual general meeting, must be held:
- (a) within 18 months after registration of the Company; and
 - (b) after the first annual general meeting, at least once in every calendar year and within 5 months of the end of the Company's Financial Year.
- 17.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
- (a) a review of the Company's activities;
 - (b) a review of the Company's finances;
 - (c) any auditor's report;
 - (d) the election of Directors; and
 - (e) the appointment and payment of auditors, if any.
- 17.3 Before or at the annual general meeting, the Directors must give information to the Members on the Company's activities and finances during the period since the last annual general meeting.
- 17.4 The Chairperson of the annual general meeting must give Members a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

18. Notice of General Meetings

- 18.1 Notice of a general meeting must be given to:
- (a) each Member entitled to vote at the meeting;
 - (b) each Director; and
 - (c) the auditor (if any).
- 18.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 18.3 Subject to clause 18.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual general meeting, all the Members entitled to attend and vote at the annual general meeting agree beforehand; or
 - (b) for any other general meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 18.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a Director;
 - (b) appoint a Director in order to replace a Director who was removed; or
 - (c) remove an auditor.
- 18.5 Notice of a general meeting must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
 - (b) the general nature of the meeting's business;
 - (c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution; and
 - (d) any other information required under the Act.
- 18.6 The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.
- 18.7 Where any general meeting is cancelled or postponed or the venue for the same is changed:

- (a) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
- (b) any accidental failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

19. Right of Non-Members to Attend General Meeting

The Chairperson of a general meeting may invite any person who is not a Member to attend and/or address a meeting.

20. Quorum

- 20.1 No business may be transacted at any general meeting unless a quorum of Members is present at all times during the meeting.
- 20.2 When determining whether a quorum is present, a person may only be counted once (even if that person is a Representative or proxy of more than one Member).
- 20.3 A majority of Members entitled to vote constitute a quorum for all general meetings.
- 20.4 If within 30 minutes after the time appointed for holding a general meeting a quorum is not present:
 - (a) the meeting if convened upon the requisition of Members shall be dissolved;
 - (b) in any other case:
 - (i) the meeting will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Board may by notice to the Members appoint; and
 - (ii) if at such adjourned meeting a quorum is not present within 30 minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.
- 20.5 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

21. Chairperson

- 21.1 The Chairperson shall be elected by the Members as soon as practicable after incorporation and then annually by majority vote of the Members at the annual general meeting of the Company.
- 21.2 Only Directors are eligible to be elected as the Chairperson.
- 21.3 The Chairperson shall be entitled to preside as Chairperson at every general meeting.
- 21.4 Where a general meeting is held and:
 - (a) there is no Chairperson; or
 - (b) the Chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or if present is unwilling to act as Chairperson of the meeting, the Members present may choose one of their number to be Chairperson of the meeting.
- 21.5 The rulings of the Chairperson of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

22. No Chairperson's Casting Vote

In the case of an equality of votes whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands is taken or at which the poll is demanded is not entitled to a casting vote.

23. Adjournment of Meetings

- 23.1 The Chairperson of a general meeting at which a quorum is present:
- (a) may adjourn a meeting with the consent of the meeting; and
 - (b) must adjourn the meeting if the meeting so directs, to a time and place as determined by the Chairperson.
- 23.2 No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 23.3 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- 23.4 It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting, except if the meeting is adjourned for 30 days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

24. Circulating Resolution of Members

- 24.1 Subject to clause 24.3, the Directors may put a resolution to the Members to pass a resolution without a general meeting being held.
- 24.2 The Directors must notify the auditor (if any) as soon as possible that a circulating resolution has or will be put to Members, and set out the wording of the resolution.
- 24.3 Circulating resolutions cannot be used where the Act or this Constitution requires a meeting to be held.
- 24.4 A circulating resolution is passed if a majority of Members or in the case of a Special Resolution at least 75% of all Members entitled to vote on the resolution, sign or agree to the circular resolution, in the manner set out in clause 24.5 or clause 24.6.
- 24.5 Members may sign:
- (a) a single document setting out the circulating resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 24.6 The Company may send a circulating resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

25. How Voting is Carried Out

- 25.1 At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:
- (a) the Chairperson of the meeting; or
 - (b) a majority of Members entitled to vote on the resolution.
- 25.2 Before a vote is taken, the Chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 25.3 On a show of hands, the Chairperson's decision is conclusive evidence of the result of the vote.
- 25.4 The Chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

26. Polls

- 26.1 A poll may be demanded:
- (a) before a vote on a resolution is taken;
 - (b) before the voting results on a show of hands are declared; or
 - (c) immediately after the voting results on a show of hands are declared.
- 26.2 If a poll is demanded it must be taken in such manner and at such time and place as the Chairperson of the meeting directs subject to clause 26.5.
- 26.3 The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- 26.4 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 26.5 A poll demanded on the election of a Chairperson or any question of adjournment of the meeting must be taken immediately.
- 26.6 The demand for a poll may be withdrawn.

27. Voting Rights

- 27.1 A Member entitled to vote has one vote.
- 27.2 No person other than a Member shall be entitled to vote at a general meeting.

28. Challenge to a Member's Right to Vote

- 28.1 A Member or the Chairperson may only challenge a person's right to vote at a general meeting at that meeting.
- 28.2 If a challenge is made under clause 28.1, the Chairperson must decide whether or not the person may vote. The Chairperson's decision is final.

29. Right to Appoint Proxies

A Member who is entitled to attend and vote at a general meeting of the Company may appoint a person as the Member's proxy to attend and vote for the Member at the meeting and such person need not be a Member.

30. Appointing a Proxy

- 30.1 The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing or if the appointor is a corporation signed by an authorised Officer or attorney of the corporation.
- 30.2 The instrument of proxy is valid if it contains the information required by the Act which at the date of this Constitution is the following information:
- (a) the name and address of the Member;
 - (b) the name of the Company;
 - (c) the proxy's name or the name of the office of the proxy; and
 - (d) the meetings at which the instrument of proxy may be used.

- 30.3 An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
- 30.4 An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by this clause 30.
- 30.5 An instrument of proxy may be revoked at any time by notice in writing to the Company.

31. Lodgement of Proxies

- 31.1 An instrument appointing:
- (a) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
 - (b) an attorney to exercise a Member's voting rights at a general meeting or a certified copy of that power of attorney,

must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than 48 hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be, at which the person named in the instrument proposes to vote and in default the instrument of proxy or the power of attorney will not be treated as valid.

- 31.2 For the purposes of this clause, it will be sufficient that any document required to be lodged by a Member be received in legible form by facsimile at the place at which the document is required to be delivered by the Member and the document shall be regarded as received at the time the facsimile was received at that place.
- 31.3 For the purposes of this clause, it will be sufficient that any document required to be lodged by a Member be received in legible form by email if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded as received at the time of the receipt of the email transmission by the Company.

32. Validity of Proxies

32.1 A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:

- (a) the death or unsoundness of mind of the Member;
- (b) the bankruptcy or liquidation of the Member;
- (c) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

unless the Company has received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation at least 48 hours (or such shorter period as the Board may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

32.2 A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

33. Voting by Proxy

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

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

33.2 A proxy will not be revoked by the appointor attending and taking part in any general meeting, but if the appointor votes on a resolution either on a show of hands or on a poll the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.

34. Number of Directors

The Company must have at least 3 and no more than 9 Directors.

35. Composition of Board

The Board will consist of:

- (a) for so long as he remains a Member, Jeremy James McLeod; and
- (b) at least 2 Directors appointed pursuant to clause 36.

36. Appointment of Directors

36.1 The Members may appoint any number of persons to be a Director of the Company in addition to themselves, so long as the maximum number of Directors does not exceed the number specified in clause 34.

36.2 A person is eligible for appointment as a Director of the Company if they:

- (a) give the Company their signed consent to act as a Director of the Company;
- (b) are nominated by 2 members or representatives of Members entitled to vote; and
- (c) are not ineligible to be a Director under the Act.

36.3 Subject to clause 37, a Director will hold office for a term of 3 years, at the end of which they may be reappointed, subject to clause 36.4.

36.4 A Director who has held office for a continuous period of 9 years or more may only be re-appointed by a Special Resolution.

36.5 A Director may, but is not required to, be a Member.

37. When a Director Stops Being a Director

A Director stops being a Director if they:

- (a) give written notice of resignation as a Director to the Office of Company and the vacancy shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company);
- (b) die;
- (c) are removed as a Director by a resolution of the Members;
- (d) are absent for 3 consecutive Board meetings without approval from the Directors and the Directors resolve that his or her office be vacated;
- (e) become ineligible to be a Director of the Company under the Act; or
- (f) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health.

38. Negotiable Instruments

- 38.1 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by at least one Member. The Members may determine that a negotiable instrument may be signed, accepted, drawn, endorsed or otherwise executed in a different way.
- 38.2 Notwithstanding clause 38.1, the Members may delegate their rights under clause 38.1 to any other person or persons, including but not limited to the Directors or the General Manager.

39. Power of Directors

Except as the Members resolve otherwise, all day-to-day control, management and conduct of the Company shall be vested in the Board who shall exercise all such powers of the Company as are not by the Act or by this Constitution required to be exercised in any other manner.

40. Delegation of Directors' Powers

- 40.1 The Directors may delegate any of their powers and functions to a Committee, a Director, an employee of the Company (such as a general manager) or any other person, as they consider appropriate, on such terms and conditions and with such restrictions as it may think expedient.
- 40.2 Powers conferred under this clause may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.
- 40.3 The delegation must be recorded in the Company's minute book.

41. Committee of Directors

- 41.1 The Board may form and delegate any of its powers to a Committee consisting of such Directors and other persons as it thinks fit and may from time to time revoke such delegation. All such Committees must be chaired by a Director.
- 41.2 A Committee must, in exercise of the powers delegated to it, conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- 41.3 The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- 41.4 A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act and this Constitution to be made, entered and signed. A copy of these minutes shall be tabled at the next Board meeting.

42. General Manager

- 42.1 Subject to the approval of the Members, the Board will employ a General Manager (howsoever named) who will manage the day- to- day business of the Company.
- 42.2 The General Manager will report to and be responsible to the Board for the Company's activities and operations.
- 42.3 The General Manager is eligible for appointment as a Director in accordance with clause 36.

43. Payments to Directors

- 43.1 Subject to compliance with the terms of any applicable laws, the Directors may, if the Members resolve to do so, be paid reasonable remuneration for their services the aggregate annual sum that is fixed by the Members from time to time. If a sum is fixed by the Members, it will be divided amongst the Directors as the Members decide.
- 43.2 Clause 43.1 does not limit the Company from:
- (a) paying a Director for any services rendered to the Company in a professional or technical capacity, other than as a Director, if the amount is no more than a reasonable fee for the work done; or
 - (b) reimbursing a Director for expenses properly incurred by the Director in connection with the affairs of the Company.
- 43.3 Any payment made under clause 43.2 must be approved by the Directors.
- 43.4 The Company may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Act) and this Constitution.

44. Conflicts of Interest

- 44.1 A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of the Board (or that is proposed in a circular resolution):
- (a) to the other Directors, or
 - (b) if all of the Directors have the same conflict of interest, to the Member at the next general meeting, or at an earlier time if reasonable to do so.
- 44.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- 44.3 Each Director who has a material personal interest in a matter that is being considered at a meeting of the Board (or that is proposed in a circular resolution) must not, except as provided under clause 44.4:
- (a) be present at the meeting while the matter is being discussed, or
 - (b) vote on the matter.
- 44.4 A Director may still be present and vote if:
- (a) their interest arises because they are a Member and the other Members have the same interest
 - (b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a director of the Company
 - (c) their interest relates to an indemnity payment by the Company, or any contract relating to an indemnity that is allowed under the Corporations Act
 - (d) the Australian Securities and Investments Commission makes an order allowing the Director to vote on the matter, or
 - (e) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company, and
 - (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

45. Duties of Directors

The Directors must comply with their duties as Directors under legislation and common law (judge-made law) which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they were a Director of the Company;
- (b) to act in good faith in the best interests of the Company and in furtherance of the Company's purposes specified at clause 5.1;
- (c) not to improperly use their position to gain an advantage for themselves or someone else, or to the detriment to the Company;
- (d) not to improperly use the information they gain in the course of their acting as a Director to gain an advantage for themselves or someone else, or to the detriment to the Company;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 45;
- (f) to ensure that the financial affairs of the Company are managed responsibly; and
- (g) not to allow the Company to operate while it is insolvent.

46. When the Directors Meet

The Directors may decide how often, where and when they meet, provided that they shall meet together not less than 4 times each calendar year.

47. Calling Board Meetings

- 47.1 A Director may at any time and the Secretary upon the request of a Director shall convene a Board meeting by giving at least 24 hours' notice of the meeting to all Directors.
- 47.2 Notice of a Board meeting need not be in writing.

48. Using Technology to Hold Board Meetings

- 48.1 The Directors may hold Board meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Directors.
- 48.2 The Directors' agreement may be a standing one.
- 48.3 A Director may only withdraw their consent within a reasonable period before the meeting.

49. Quorum at Board Meetings

- 49.1 Unless the Directors determine otherwise, the quorum for a Board meeting is a majority (more than 50%) of Directors.
- 49.2 No business may be transacted at any Board meeting unless a quorum of Directors is present at all times during the meeting.
- 49.3 Directors who are personally present (or in conference in accordance with clause 48) form a quorum. A Director who is disqualified from voting on a matter pursuant to clause 44 shall be counted in the quorum despite that disqualification.
- 49.4 All resolutions of the Directors passed at a Board meeting where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be valid as if notice of the meeting had been duly given to all Directors.

50. Chairperson at Board Meetings

- 50.1 The Chairperson shall, if present, preside as chairperson of every Board meeting.
- 50.2 If a Board meeting is held and the Chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or, if present, does not wish to chair the meeting, then the other Directors present must elect one of their number to be Chairperson of the meeting.

51. Voting

- 51.1 A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- 51.2 Each Director shall have one vote.
- 51.3 In case of an equality of votes at a Board meeting, the Chairperson does not have a casting vote in addition to a deliberative vote.

52. Resolutions By Directors

- 52.1 The Board may pass a resolution by way of a circular resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document.
- 52.2 The resolution is passed when the last Director signs.
- 52.3 A transmission, via whatever technological means, which is received by the Company and which purports to have been signed by a Director shall for the purposes of this clause be taken to be in writing and signed by that Director at the time of the receipt of the transmission by the Company in legible form.
- 52.4 The Company may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

53. Validation of Acts of Directors

All acts done:

- (a) at any Board meeting; or
- (b) by any person acting as a Director,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

54. Minutes and Records

54.1 The Company must make and keep the following records:

- (a) minutes of proceedings and resolutions of general meetings;
- (b) circular resolutions of Members;
- (c) a copy of a notice of each general meeting.

54.2 The Company must make and keep the following records:

- (a) minutes of proceedings and resolutions of Board meetings (including meetings of any Committees); and
- (b) circular resolutions of Directors.

54.3 To allow Members to inspect the Company's records:

- (a) the Company must give a Member reasonable access to the records set out in clause 54.1; and
- (b) the Directors may authorise a Member to inspect other records of the Company, including records referred to in clause 54.2 and clause 57.1.

54.4 The Directors must ensure that minutes of a general meeting or a Board meeting are signed within a reasonable time after the meeting by:

- (a) the Chairperson of the meeting; or
- (b) the Chairperson of the next meeting.

54.5 The Directors must ensure that minutes of the passing of a circular resolution (of Members or Directors) are signed by the Chairperson within a reasonable time after the resolution is passed.

55. Appointment and Role of Secretary

- 55.1 The Company must have at least one Secretary, who may also be a Director.
- 55.2 A Secretary must be appointed by the Directors (after giving the Company their signed consent to act as Secretary of the Company) and may be removed from that role by the Directors.
- 55.3 The Directors must decide the terms and conditions under which the Secretary is appointed, including any remuneration.
- 55.4. The role of the Secretary includes:
- (a) maintaining a Register of the Company's Members; and
 - (b) maintaining the minutes and other records of general meetings (including notices of meetings), Board meetings and circular resolutions.

56. Execution of Documents

- 56.1 Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Act, the Company may execute a document without using a common seal if the document is signed by:
- (a) two Directors of the Company, or
 - (b) a Director and the Secretary.
- 56.2 Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

57. Financial and Related Records

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

58. Directors' Access to Documents

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

59. By-Laws

- 59.1 The Directors may pass a resolution to make by-laws to give effect to this Constitution. By-laws may not be inconsistent with this Constitution and, in the event of any inconsistency, the provisions of the Constitution will prevail.
- 59.2 Members and Directors must comply with by-laws as if they were part of this Constitution.

60. When Notice is Taken to be Given

Written notice under this Constitution may be:

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

61. Winding Up

61.1 The Company may be dissolved by a Special Resolution of Members at a meeting of Members. If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members UNLESS THE Members satisfies the criteria in (a) to (c), but will be given or transferred to one or more corporations or institutions which have:

- (a) objects are similar to or inclusive of, the objects of the Company as set out in clause 5.1;
- (b) a governing document which requires its income and property to be applied in promoting its objects; and
- (c) a governing document which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Company by clause 6.

61.2 The identity of the corporation(s) or institution(s) is to be determined by a Special Resolution of the Members at or before the time of dissolution and failing such determination being made, by application to the Supreme Court for determination.

62. Indemnity

To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Company under this clause unless:

- (a) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Act.

63. Payment of Indemnity Policy Premium

63.1 To the extent permitted by law, the Company may at the discretion of the Board enter into and pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:

- (a) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
- (b) a contravention of sections 182 or 183 of the Act.

63.2 The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.

63.3 Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions then the Company shall not be required to indemnify the Officer under clause 62 except to the extent that the indemnity affected by the insurance policy does not fully cover the persons liability.

64. Indemnity to Continue

The indemnity granted by the Company, contained in clause 62, shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.