



**CONSTITUTION
OF
JACARANDA HOUSING**

A public company limited by guarantee

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Constitution of Jacaranda Housing

Public company limited by guarantee

Preliminary

1. Name of the Company

The name of the Company is Jacaranda Housing (the **Company**).

2. Nature of the Company

The company is a not-for-profit public company limited by guarantee and not having a share capital.

3. Limited liability of members

- 3.1 The liability of each member upon the winding up of the Company is limited to the amount of the guarantee as set out in rule 3.2.
- 3.2 Each member must contribute an amount not more than \$10 (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 the:
- (a) debts and liabilities of the Company incurred before the member stopped being a member;
 - or
 - (b) costs of winding up.

4. Objects of the Company

4.1 Primary Object

To provide direct services and assistance for the relief of poverty, suffering, distress, misfortune or helplessness by providing subsidised Housing options to people who are in need, including Underprivileged People, persons in Very Low Income Households, and people experiencing Housing Stress.

4.2 Further Objects

- 4.2.1 To be a public benevolent institution in terms of item 4.1.1 of the table in section 30- 45 of the *Income Tax Assessment Act 1997*
- 4.2.2 To be a charitable institution in terms of item 1.1 in section 50-5 of the *Income Tax Assessment Act 1997*
- 4.2.3 To act as a not for profit company with any surplus made by the company to be used to meet its objectives
- 4.2.4 To provide a range of low rental and affordable rental Housing options for people in disadvantaged target groups including, but not limited to:
- People from culturally diverse backgrounds including temporary protection visa holders and refugees;
 - People with disabilities, including mental illness and other impairments;
 - Elderly people in need, and
 - Parents and children in need.
- 4.2.5 To contribute to strong, diverse and inclusive communities by facilitating participation of disadvantaged citizens in community life and engaging local community members in actions that address housing and related needs
- 4.2.6 To promote active participation of tenants in the governance of the organisation and in the development of organisational policy and strategic direction
- 4.2.7

5. Definitions

In this constitution, words and phrases have the meaning set out in rules 68 and 70.

Charitable purposes and powers

6. Income and Property of the Company is not for Member's Profit

- 6.1 Subject to clause 6.2, the income and property of the Company shall be used solely for achieving the objects of the Company (as set out in clause 4 [Objects of the Company]).
- 6.2 No part of the income and property of the Company may be paid or transferred in any way, directly or indirectly, to any Member, unless:
- (a) the payment is a reasonable amount made fairly and properly for services actually performed for, or real property or goods supplied to, the Company in the ordinary and usual course of business
 - (b) for payment or reimbursement of reasonable out-of-pocket expenses incurred by a Member on behalf of the Company
 - (c) the payment is made for reasonable interest on money lent by any person to the Company, or
 - (d) the payment is made for reasonable rent for premises used by the Company.

Winding up

7A. National Regulatory System for Community Housing winding-up requirements

- 7A.1 This clause does not affect any other clause relating to the winding up or dissolution of the Company and relates only to the Community Housing Assets of the Company. Any remaining assets of the Company on winding up or dissolution that are that are Community Housing Assets must be transferred under this clause and not Clause 7.
- 7A.2 In this clause "Community Housing Asset", "Corresponding Law", "Housing Agency", "Participating Jurisdiction" and "Registered Provider" have the same meaning as in the *Housing Act 2003* (Qld).
- 7A.3 Despite Clause 7A(2), each Community Housing Asset remaining after satisfaction of the Company's liabilities must be transferred as follows:
- (a) each remaining Community Housing Asset of the Company in Queensland must be transferred under s37H(2)(a) of the *Housing Act 2003* (Qld); and
 - (b) each remaining Community Housing Asset of the Company located in a Participating Jurisdiction must be transferred under the Corresponding Law of that Participating Jurisdiction to:
 - i. the Housing Agency in the Participating Jurisdiction;
 - ii. another Registered Provider in the Participating Jurisdiction; or
 - iii. another entity as prescribed under the Corresponding Law.

7. Income and Property of Company if Company Wound Up or Ceases to be Endorsed

- 7.1 If after winding up or dissolution of the Company there is any property remaining (after satisfaction of all its debts and liabilities) the property remaining must not be paid or distributed to the Members.
- 7.2 If the Company ceases to be endorsed by the Commissioner of Taxation as a public benevolent institution and deductible gift recipient for the purposes of any Commonwealth Taxation Act, the property remaining must not be paid or distributed to the Members.
- 7.3 If an event occurs that is set out in 7.1 or 7.2, the property remaining (after satisfaction of all its debts and liabilities), must be given or transferred to some other organisation (or organisations) that:
- (a) is a not-for-profit organisation with similar objects to the Company
 - (b) prohibits the distribution of its income or property to its Members under provisions which are consistent with this clause and clause 6 [Income and Property of Company is Not for Member's Profit], and
 - (c) is endorsed by the Commissioner of Taxation as a public benevolent institution and deductible gift recipient for the purposes of any Commonwealth Taxation Act.

8. Powers

- 8.1 Subject to Rule 10, the Company has the following powers, which may only be used to carry out its purpose(s) set out in rule 4:
- (a) the powers of an individual; and
 - (b) all the powers of a company limited by guarantee under the Corporations Act.
- 8.2 Nothing restricts the Company from exercising a power which in itself is not charitable, for any purpose which is incidental to the charitable objects of the Company or which is intended to generate revenue for, or otherwise further, those objects.

9. Membership is not transferable

9.1 - 9.5. Intentionally Blank

9.6. Membership is not transferable

- 9.6.1 The rights of membership are personal to the Member.
- 9.6.2 Members may not transfer, sell, or hold on trust, all or any part of the rights of membership.

10. Not-for-profit – Payments must be approved by directors

- 10.1 All payments to directors must be approved by the directors including, but not limited to:
- (a) out of pocket expenses incurred by a director in performing a duty as a director; and
 - (b) a service rendered to the Company by a director in a professional or technical capacity or as an employee, other than in the capacity as a director where:
 - i. the provision of the service has the prior approval of the directors; and
 - ii. the amount payable is not more than an amount which commercially would be reasonable payment for the service.

Members

11. Membership and register of members

- 11.1 The members of the Company are:
- (a) the persons who are named in the application for registration of the Company, with their consent; and
 - (b) any other person that the directors allow to be a member, in accordance with this constitution, including under the following three membership classes:
 - i. Class A membership – Founding members;
 - ii. Class B membership – Interested Persons; and
 - iii. Class C membership – Significant Contributors.
- 11.2 The Company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain any relevant class of membership and:
- (a) for each current member:
 - i. name;
 - ii. address;
 - iii. any alternative address nominated by the member for the service of notices; and
 - iv. date the member was entered on to the register; and
 - (b) for each person who stopped being a member in the last 7 years:
 - i. name;
 - ii. address;
 - iii. any alternative address nominated by the member for the service of notices; and
 - iv. dates the membership started and ended.
- 11.3 The Company must give current members access to the register of members.
- 11.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.
- 11.5 **(Class A – Founding members)** A person who is listed on the Register of Foundation Members automatically becomes a Class A Member of the Company, or
- 11.6 A person is eligible to become a Founding Member if –
- (a) on the date of registration of the Company, the person is properly recorded on the register of members of a Participating Entity

- (b) the person has indicated in writing that they wish to be included on the Register of Foundation Members of the Company, and
 - (c) the Participating Entity has passed a special resolution to wind up, deregister, amalgamate or otherwise change the structure of the Participating Entity and to transfer any property remaining (after satisfaction of all its debts and liabilities) to the Company.
- 11.7 Clause 14 does not apply to acceptance of persons who are automatically Class A Founding Members. A person may request to be included on the Register of Foundation Members by completing a form for this purpose, that has been approved by the Board, and by sending it to the Secretary detailing how the prospective member would satisfy the eligibility criteria set out under rule 11.6.
- 11.8 (**Participating Entity**) For the purposes of 11.6, a Participating Entity is one of the following –
- (a) Alpha Housing Company Limited
 - (b) Bayside Housing Community Limited
 - (c) Inner-Western Suburbs Housing Collective Limited
 - (d) Latin American Housing Company Ltd
 - (e) Limestone Independent Housing Ltd, or
 - (f) West End Housing Cooperative Ltd.
- 11.9 (**Class B – Interested Persons**) A person may be eligible to become a Class B Member if the person:
- (a) is a natural person,
 - (b) supports the achievement of the objects of the Company.
- 11.10 (**Class C – Significant Contributors**) A person may be eligible to become a Class C Member if the person:
- (a) is a natural person; and
 - (b) is determined by the Board to be a person (or a person who represents an organisation) who supports the achievement of the objects of the Company through making a significant financial, asset or resource contribution.

12. Who can be a member

- 12.1 A person may apply to be a member of the Company under rule 13 if they are:
- (a) supportive of the objects of the Company;
 - (b) have the written nomination of two other members; and
 - (c) pay an application or membership fee (being an amount determined by the board from time to time).
- 12.2 In this rule, 'person' means an individual or incorporated body.

13. How to apply to become a member

A person (as defined in rule 12.2) may apply to become a member of the Company by writing to the secretary stating that they:

- (a) want to become a member;
- (b) support the object(s) of the Company; and
- (c) agree to comply with the Company's constitution, including specifying the relevant class and paying the guarantee under rule 3 if required.

14. Directors decide whether to approve membership

- 14.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.
- 14.2 If the directors approve an application, the secretary must as soon as possible:
- (a) enter the new member on the register of members; and
 - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see rule 15).
- 14.3 If the directors reject an application (which they may do in their absolute discretion), the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- 14.4 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in rules 13(a), 13(b), 13(c). In that case, by applying to be a member, the applicant agrees to those three matters.

15. When a person becomes a member and stops being a member

- 15.1 Other than the individuals whose names were included in the application for registration of the Company, with their consent, an applicant will become a member when they are entered on the register of members.
- 15.2 A person immediately stops being a member if they:
- (a) resign, by writing to the secretary;
 - (b) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member;
 - (c) are a director, the individual is removed, retires, or otherwise ceases to be a director of the Company;
 - (d) are an individual, die;
 - (e) are an incorporated member, are wound up or otherwise dissolved or deregistered; or
 - (f) have their membership terminated by the board under rule 15.3.
- 15.3 The board may terminate a member's membership if the member:
- (a) has membership fees or similar fees required by the board in arrears; or
 - (b) has conducted themselves in a way the board considers to be injurious or prejudicial to the character or interests of the Company.
- 15.4 The board must give the member written notice of its intention to terminate the Member's membership and the reason for the proposed termination;
- 15.5 If the reason set out in the notice under rule 15.4 remains unresolved, in the opinion of the board, for one month after the date of the notice, the member's membership is terminated.
- 15.6 The rights or privileges of membership may be reinstated at the absolute discretion of the board.

Changing the Constitution

16. Changing the Constitution

16.1 Passing Special Resolutions

Subject to clause 16.2:

- (a) The Constitution may be changed by passing a special resolution and by giving at least twenty-one (21) days notice to Members of the proposed resolution, or as provided by the Law.
- (b) A special resolution must be passed by at least three-quarters (3/4) of Members attending personally, or by proxy, and entitled to vote, or as provided by the Law.

16.2 Special Resolutions requiring approval by 90% of the General Meeting and 100% of the Board

- 16.2.1 A special resolution proposing any change to the following clauses must be passed in accordance with the additional requirements contained in 16.2.2:
- (a) Nature of the Company (clause 2)
 - (b) Objects of the Company (clause 4)
 - (c) Income and property of the Company is not for Member's profit (clause 6)
 - (d) Income and property of Company if Company wound up or ceases to be endorsed (clause 7)
 - (e) Membership is not transferable (clause 9.6), and
 - (f) Changing the Constitution (clause 16)
- 16.2.2 A special resolution to make a change to the clauses of the Constitution listed in 16.2.1, must fulfil the following additional requirements:
- (a) 90% of Members must be present at the General Meeting (in person or by proxy) at which the resolution is proposed
 - (b) the resolution must be passed by a vote in the affirmative of at least 90% of Members present and entitled to vote
 - (c) Following the General Meeting, the Board must immediately convene a Board meeting to consider the resolution as passed by the General Meeting
 - (d) A quorum of 100% of the members of the Board must be present at the meeting, and
 - (e) A resolution of the Board approving the terms of the special resolution must be passed by a vote in the affirmative by all Directors entitled to vote.

- 16.2.2 A special resolution to change a clause of the Constitution listed in 16.2.1 which is not passed in accordance with this clause is invalid, unenforceable and of no effect.

Dispute resolution procedures

17. Dispute resolution

- 17.1 The dispute resolution procedure in this rule 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.
- 17.2 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 17.3 If those involved in the dispute do not resolve it under rule 17.2, then the dispute resolution procedure will follow the procedure determined by board.

General meetings of members

18. General meetings called by directors

- 18.1 The directors may call a General Meeting.
- 18.2 If Members with at least 25% of the votes that may be cast at a General Meeting make a written request to the Company for a General Meeting to be held, the directors must:
- (a) within 21 days of the members' request, give all members notice of a General Meeting; and
 - (b) hold the General Meeting within 2 months of the members' request.
- 18.3 The percentage of votes that members have (in rule 18.2) is to be worked out as at midnight before the members request the meeting.
- 18.4 The members who make the request for a General Meeting must:
- (a) state in the request any resolution to be proposed at the meeting;
 - (b) sign the request; and
 - (c) give the request to the Company.
- 18.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

19. General meetings called by members

- 19.1 If the directors do not call the meeting within 21 days of being requested under rule 18.2, 50% or more of the members who made the request may call and arrange to hold a General Meeting.
- 19.2 To call and hold a meeting under rule 19.1 the members must:
- (a) as far as possible, follow the procedures for General Meetings set out in this constitution;
 - (b) call the meeting using the list of members on the Company's member register, which the Company must provide to the members making the request at no cost; and
 - (c) hold the General Meeting within three months after the request was given to the Company.
- 19.3 The Company must pay the members who request the General Meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

20. Annual General Meeting

- 20.1 A General Meeting, called the AGM, must be held:
- (a) within 18 months after registration of the Company; and
 - (b) after the first AGM, at least once in every calendar year.
- 20.2 Even if these items are not set out in the notice of meeting, the business of an AGM 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.

- 20.3 Before or at the AGM, the directors must give information to the members on the Company's activities and finances during the period since the last AGM.
- 20.4 The chairperson of the AGM must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

21. Notice of General Meetings

- 21.1 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).
- 21.2 Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- 21.3 Subject to rule 21.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an AGM, all the members entitled to attend and vote at the AGM 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.
- 21.4 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.
- 21.5 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 two 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;
 - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - i. the proxy does not need to be a member of the Company;
 - ii. the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
 - iii. the proxy form must be delivered to the Company at least 48 hours before the meeting.
- 21.6 If a General Meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

22. Quorum at General Meetings

- 22.1 For a General Meeting to be held, at least two (2) times the current serving directors plus one (1) (a **quorum**) must be present (in person, by proxy or by representative) for the whole meeting. 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).
- 22.2 No business may be conducted at a General Meeting if a quorum is not present.
- 22.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting, the General Meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week;
 - (b) if the time is not specified – the same time; and
 - (c) if the place is not specified – the same place.
- 22.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.
- 22.5 For the avoidance of doubt, and despite any other rule in this constitution, where there is only one member of the Company, that member will satisfy quorum.

23. Auditor's right to attend meetings

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

- 23.2 The Company must give the auditor (if any) any communications relating to the General Meeting that a member of the Company is entitled to receive.

24. Representatives of members

- 24.1 An incorporated member may appoint as a representative:
- (a) one individual to represent the member at meetings and to sign circular resolutions under rule 31; and
 - (b) the same individual or another individual for the purpose of being appointed or elected as a director.
- 24.2 The appointment of a representative by a member must:
- (a) be in writing;
 - (b) include the name of the representative;
 - (c) be signed on behalf of the member; and
 - (d) be given to the Company or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 24.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- 24.4 The appointment may be standing (ongoing).

25. Using technology to hold meetings

- 25.1 The Company may hold a General Meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 25.2 Anyone using this technology is taken to be present in person at the meeting.

26. Chairperson for General Meetings

- 26.1 The Elected Chairperson is entitled to chair General Meetings.
- 26.2 The Members Present and entitled to vote at a General Meeting may choose a director or member to be the chairperson for that meeting if:
- (a) there is no Elected Chairperson; or
 - (b) the Elected Chairperson is not present within 30 minutes after the starting time set for the meeting; or
 - (c) the Elected Chairperson is present but says they do not wish to act as chairperson of the meeting.

27. Role of the chairperson

- 27.1 The chairperson is responsible for the conduct of the General Meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 27.2 If the votes are equal on a proposed resolution, the chairperson of the meeting has a casting vote, in addition to their deliberative vote.

28. Adjournment of meetings

- 28.1 If a quorum is present, a General Meeting must be adjourned if a majority of Members Present direct the chairperson to adjourn it.
- 28.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' resolutions and statements

29. Members' resolutions and statements

- 29.1 Members with at least 25% of the votes that may be cast on a resolution may give:
- (a) written notice to the Company of a resolution they propose to move at a General Meeting (members' resolution); and/or
 - (b) a written request to the Company that the Company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting (members' statement).
- 29.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.

- 29.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 29.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 29.5 The percentage of votes that members have (as described in rule 29.1) is to be worked out as at midnight before the request or notice is given to the Company.
- 29.6 If the Company has been given notice of a members' resolution under rule 29.1(a), the resolution must be considered at the next General Meeting held more than two months after the notice is given.
- 29.7 This rule does not limit any other right that a member has to propose a resolution at a General Meeting.

30. Company must give notice of proposed resolution or distribute statement

- 30.1 If the Company has been given a notice or request under rule 29:
- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the Company's cost; or
 - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the Company in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a General Meeting, the members may pass a resolution that the Company will pay these expenses.
- 30.2 The Company does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
- (a) it is more than 1,000 words long;
 - (b) the directors consider it may be defamatory;
 - (c) rule 30.1(b) applies, and the members who proposed the resolution or made the request have not paid the Company enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members; or
 - (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a General Meeting or is otherwise not a valid resolution able to be put to the members.

31. Circular resolutions of members

- 31.1 Subject to rule 31.3, the directors may put a resolution to the members to pass a resolution without a General Meeting being held (a circular resolution), which (for the avoidance of doubt) may not be used:
- (a) for a resolution to remove an auditor, appoint a director or remove a director; or
 - (b) for passing a Special Resolution.
- 31.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- 31.3 Circular resolutions cannot be used where the Corporations Act (if applicable) or this constitution requires a meeting to be held.
- 31.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in rule 31.5 or rule 31.6.
- 31.5 Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 31.6 The Company may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Voting at General Meetings

32. How many votes a member has

Each member has one vote.

33. Challenge to member's right to vote

- 33.1 A member or the chairperson may only challenge a person's right to vote at a General Meeting at that meeting.
- 33.2 If a challenge is made under rule 33.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

34. How voting is carried out

- 34.1 Voting must be conducted and decided by:
 - (a) a show of hands;
 - (b) a vote in writing; or
 - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances (which may include electronic voting).
- 34.2 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.
- 34.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 34.4 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.

35. When and how a vote in writing must be held

- 35.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
 - (a) at least five Members Present;
 - (b) Members Present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
 - (c) the chairperson.
- 35.2 A vote in writing must be taken when and how the chairperson directs, unless rule 35.3 applies.
- 35.3 A vote in writing must be held immediately if it is demanded under rule 35.1:
 - (a) for the election of a chairperson under rule 26.2; or
 - (b) to decide whether to adjourn the meeting.
- 35.4 A demand for a vote in writing may be withdrawn.

36. Appointment of proxy

- 36.1 A member may appoint a proxy to attend and vote at a General Meeting on their behalf.
- 36.2 A proxy does not need to be a member.
- 36.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
 - (a) speak at the meeting;
 - (b) vote in a vote in writing (but only to the extent allowed by the appointment); and
 - (c) join in to demand a vote in writing under rule 35.1.
- 36.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
 - (a) the member's name and address;
 - (b) the Company's name;
 - (c) the proxy's name or the name of the office held by the proxy; and
 - (d) the meeting(s) at which the appointment may be used.
- 36.5 A proxy appointment may be standing (ongoing).
- 36.6 Proxy forms must be received by the Company at the address stated in the notice under rule 21.5(d) or at the Company's registered address at least 48 hours before a meeting.
- 36.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.

- 36.8 Unless the Company receives written notice before the start or resumption of a General Meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) if an individual, dies or if a body corporate, ceases to exist;
 - (b) is mentally incapacitated;
 - (c) revokes the proxy's appointment; or
 - (d) revokes the authority of a representative or agent who appointed the proxy.
- 36.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

37. Voting by proxy

- 37.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- 37.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
 - (b) if the way they must vote is specified on the proxy form, must vote that way; and
 - (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

Directors

38. Number of directors

- The Company must have at least three (3) and no more than twelve (12) directors, comprising:
- (a) up to three (3) Stakeholder Directors who are persons nominated and elected by the Class A Founding Members who are tenants at a meeting of the members;
 - (b) up to three (3) Stakeholders Directors who are persons nominated and elected by Class C Significant Contributor Members; and
 - (c) up to six (6) Independent Directors nominated by any Member or the Board and elected by the members at a general meeting.

39. Election and appointment of directors

- 39.1 The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the Company.
- 39.2 Each of the directors must be elected or appointed by a separate resolution under rule 38, unless:
- (a) the Members Present have first passed a resolution that the appointments may be voted on together; and
 - (b) no votes were cast against that resolution.
- 39.3 A person is eligible for election as a director of the Company if they:
- (a) have been first recommended by the Nominations Committee in accordance with the board's nominations policy and procedure;
 - (b) are not an employee of the Company;
 - (c) in the opinion of the board, be supportive of the objects of the Company;
 - (d) give the Company their signed consent to act as a director of the Company; and
 - (e) are not ineligible to be a director under the Corporations Act or the ACNC Act.
- 39.4 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
- (a) is a member of the Company, or a representative of a member of the Company (appointed under rule 24);
 - (b) gives the Company their signed consent to act as a director of the Company; and
 - (c) is not ineligible to be a director under the Corporations Act or the ACNC Act.
- 39.5 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a General Meeting, but for no other purpose.

- 39.6 The board must:
- (a) appoint a Nominations Committee determined by the board from time to time;
 - (b) determine the Terms of Reference for the Nominations Committee; and
 - (c) establish a policy for the Nominations Committee prescribing the criteria for a director, including the desirable qualities, skills, knowledge and experience and which sets out an appropriate recruitment strategy and training schedule.

40. Election of chairperson

The directors must elect a director as the Company's Elected Chairperson.

41. Term of office

- 41.1 At each AGM:
- (a) any director appointed by the directors to fill a casual vacancy or as an additional director must retire; and
 - (b) at least one-third of the remaining directors must retire.
- 41.2 The directors who must retire at each AGM under rule 41.1(b) will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by poll unless they agree otherwise.
- 41.3 Other than a director appointed under rule 39.4, a director's term of office starts at the end of the AGM at which they are elected and ends at the end of the AGM at which they retire.
- 41.4 Each director must retire at least once every three years.
- 41.5 A director who retires under rule 41.1 may nominate for election or re-election, subject to rule 41.6.
- 41.6 A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a Special Resolution.

42. 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 Company;
- (b) die;
- (c) are removed as a director by a resolution of the members;
- (d) stop being a member of the Company;
- (e) are a representative of a member, and that member stops being a member;
- (f) are a representative of a member, and the member notifies the Company that the representative is no longer a representative;
- (g) are absent for three consecutive directors' meetings without approval from the directors;
- (h) become ineligible to be a director of the Company under the Corporations Act or the ACNC Act; or
- (i) at any time, are an employee of the Company, or any subsidiary of the Company, and that person's employment ceases (so that the person concerned is no longer employed by the Company, or any subsidiary of the Company), but the person concerned is eligible for reappointment as a director of the Company in accordance with this constitution.

Powers of directors

43. Powers of directors

- 43.1 The directors are responsible for managing and directing the activities of the Company to achieve the purposes set out in rule 4.
- 43.2 The directors may use all the powers of the Company except for powers that, under the Corporations Act or this constitution, may only be used by members.
- 43.3 The directors must decide on the responsible financial management of the Company including:
- (a) any suitable written delegations of power under rule 44; and

- (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 43.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a General Meeting.

44. Delegation of directors' powers

- 44.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the Company (such as a chief executive officer) or any other person, as they consider appropriate.
- 44.2 The delegation must be recorded in the Company's minute book.

45. Payments to directors

- 45.1 The Company must not pay fees to a director for acting as a director.
- 45.2 The Company may:
- (a) pay a director for work they do for the Company, other than as a director, if the amount is no more than a reasonable fee for the work done; or
 - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the Company.
- 45.3 Any payment made under rule 45.2 must be approved by the directors.
- 45.4 The Company may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

46. Execution of documents

The Company may execute a document without using a common seal if the document is signed (including electronically if permitted by law) by:

- (a) two directors of the Company; or
- (b) a director and the secretary.

Duties of directors

47. Duties of directors

The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in Governance Standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;
- (b) to act in good faith in the best interests of the Company and to further the charitable purpose(s) of the Company set out in rule 4;
- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in rule 48;
- (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.

48. Conflicts of interest

- 48.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
- (a) to the other directors; or
 - (b) if all of the directors have the same conflict of interest, to the members at the next General Meeting, or at an earlier time if reasonable to do so.

- 48.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 48.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under rules 48.4:
- (a) be present at the meeting while the matter is being discussed, or
 - (b) vote on the matter.
- 48.4 A director may still be present and vote if:
- (a) their interest arises because they are a member of the Company, and the other members have the same interest;
 - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the Company (see rule 66);
 - (c) their interest relates to a payment by the Company under rule 65 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
 - (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter; or
 - (e) the directors who do not have a material personal interest in the matter pass a resolution that:
 - i. identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the Company; and
 - ii. says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors' meetings

49. When the directors meet

The directors may decide how often, where and when they meet.

50. Calling directors' meetings

- 50.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 50.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

51. Chairperson for directors' meetings

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

52. Quorum at directors' meetings

- 52.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a simple majority (more than 50%) of directors.
- 52.2 A quorum must be present for the whole directors' meeting.

53. Using technology to hold directors' meetings

- 53.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 53.2 The directors' agreement may be a standing (ongoing) one.
- 53.3 A director may only withdraw their consent within a reasonable period before the meeting.

54. Passing directors' resolutions

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

55. Circular resolutions of directors

- 55.1 The directors may pass a circular resolution without a directors' meeting being held.
- 55.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in rule 55.3 or rule 55.4.
- 55.3 Each director may sign:
 - (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 55.4 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.
- 55.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in rule 55.3 or rule 55.4.

Secretary

56. Appointment and role of secretary

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

Minutes and records

57. Minutes and records

- 57.1 The Company must, within one month, make and keep the following records:
 - (a) minutes of proceedings and resolutions of General Meetings;
 - (b) minutes of circular resolutions of members;
 - (c) a copy of a notice of each General Meeting; and
 - (d) a copy of a members' statement distributed to members under rule 30.
- 57.2 The Company must, within one month, make and keep the following records:
 - (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees of the Board); and
 - (b) minutes of circular resolutions of directors.
- 57.3 To allow members to inspect the Company's records:
 - (a) the Company must give a member access to the records set out in rule 57.1; and
 - (b) the directors may authorise a member to inspect other records of the Company, including records referred to in rule 57.2 and rule 58.1.
- 57.4 The directors must ensure that minutes of a General Meeting or a directors' meeting are signed within a reasonable time after the meeting by:
 - (a) the chairperson of the meeting; or
 - (b) the chairperson of the next meeting.
- 57.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.
- 57.6 Except as provided by law, this constitution or as authorised by a directors' resolution, a person who is not a director does not have the right to inspect any of the board papers, books, records or other similar documents of the Company.

58. Financial and related records

- 58.1 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.
- 58.2 The Company must also keep written records that correctly record its operations.
- 58.3 The Company must retain its records for at least 7 years.
- 58.4 The directors must take reasonable steps to ensure that the Company's records are kept safe.

By-laws

59. By-laws

- 59.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 59.2 Members and directors must comply with by-laws as if they were part of this constitution.

Notice

60. What is notice

- 60.1 Anything written to or from the Company under any rule in this constitution is written notice and is subject to rules 61 to 63, unless specified otherwise.
- 60.2 Rules 61 to 63 do not apply to a notice of proxy under rule 36.

61. Notice to the Company

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

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

62. Notice to members

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

63. When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by email, fax or other electronic method, is taken to be given on the Business Day after it is sent; and
- (d) given under rule 62.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

64. Company's financial year

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

Indemnity, insurance and access

65. Indemnity

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

66. Insurance

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

67. Access and inspection of documents and records

- 67.1 A director of the Company has a right of access to the financial records of the Company at all reasonable times.
- 67.2 The Company may enter into contracts, and (if applicable) may procure its subsidiaries to enter into contracts, on terms the directors think appropriate.
- 67.3 For a specified period, current or former directors shall be granted access to board papers, books, records and documents of the Company that relate to the period during which that relevant person is, or was, a director or former director.
- 67.4 Except as provided by law, this constitution, or as authorised by a director's resolution, a person who is not a director does not have the right to inspect any of the board papers, books, records or documents of the Company.

Definitions and interpretation

68. Definitions

In this constitution:

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

AGM means the Annual General Meeting of the Company;

Company means the Company referred to in rule 1;

Community Housing Asset has the same meaning as in the *Housing Act 2003* (Qld);

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

Class of Members means the particular class of members as the context provides and set out under rule 11;

Elected Chairperson means a person elected by the directors to be the Company's chairperson under rule 40;

General Meeting means a meeting of members and includes the AGM, under rule 20.1;

Housing means residential accommodation by way of a house, duplex, home unit, boarding house, retirement village, nursing home, hostel or other means.

Housing Agency has the same meaning as in the *Housing Act 2003* (Qld);

Housing Stress means the resultant hardship faced when an individual or family in the lowest 40% to 50% of the income distribution incurs housing and housing related costs in excess of 30% of their household income.

Independent Directors means persons nominated and elected by the Members who have declared any conflict of interest, or potential conflict of interest.

Member Present means, in connection with a General Meeting, a Member Present in person, by representative or by proxy at the venue or venues for the meeting;

Nominations Committee means a committee appointed by the sole discretion of the board to recommend director nominees pursuant to, and in accordance with, rule 39.6;

Participating Jurisdiction has the same meaning as in the *Housing Act 2003* (Qld);

Register of Foundation Members means a document that lists the names of persons who:

- i. on the date of registration of the Company, are properly recorded as members on the register of members of New Farm Housing Cooperative Limited, or
- ii. persons who have been approved as Founding Members by the Board under clause 11.7.

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

Registered Provider has the same meaning as in the *Housing Act 2003* (Qld);

Special Resolution means a resolution:

- i. of which notice has been given under rule 21.5(c); and
- ii. that has been passed by at least 75% of the votes cast by Members Present and entitled to vote on the resolution;

Stakeholder Directors means persons nominated and elected by a specific Class of Members under this constitution.

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

Underprivileged People means people affected by poverty, disability or other need requiring benevolent relief and which may include persons in Very Low Income Households and people experiencing Housing Stress.

Very Low Income Households means people receiving social security payments as their sole income source.

69. Reading this constitution with the Corporations Act

- 69.1 The replaceable rules set out in the Corporations Act do not apply to the Company.
- 69.2 While the Company is a Registered Charity, the ACNC Act and the Corporations Act override any rules in this constitution which are inconsistent with those Acts.
- 69.3 If the Company is not a Registered Charity (even if it remains a charity), the Corporations Act overrides any rule in this constitution which is inconsistent with that Act.
- 69.4 A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.

70. Interpretation

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression;
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations);
- (c) a reference to a member present at a General Meeting is a reference to a member present in person or by proxy, or attorney;
- (d) a reference to a person holding or occupying a particular office or position is a reference to any person who occupies or performs the duties of that office or position;
- (e) unless the contrary intention appears:
 - i. a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
 - ii. a reference to a person includes that person's successors, legal personal representatives, permitted substitutes and permitted assigns;
 - iii. if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - iv. a reference to a rule is a reference to a rule of this constitution;

- v. a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (f) headings are for convenience only and do not affect interpretation.