



Report to General Manager

Attachments:

- 1.Executive Summary: JMV Specified Review of Organisation Governance Dec 2016
- 2.NSRT Constitution
- 3.EOI for Council Representatives on the Board

SUBJECT: James Milson Village – Governance Review Outcomes & Constitution

AUTHOR: Martin Ellis, Director, Community and Library Services

ENDORSED BY: Ross McCreanor, Acting General Manager

EXECUTIVE SUMMARY:

North Sydney Council and the North Sydney Retirement Trust (NSRT) have partnered in commissioning a Governance Review of the James Milson Village operations. This was in response to several issues arising in 2016:

- The provision of a new NSRT Constitution for Council approval.
- The departure of Uniting Care Ageing from the Board of NSRT.
- How best to have Council's interests in this community service represented on the Board.
- Council's wish to place a value on its peppercorn lease of land to the NSRT (to 2087), reflecting the social objectives of the Constitution.

The purpose of the Review was to (i) provide independent assessment of JMV's fit for the Aged Care Reform Agenda and (ii) guide Council in considering the above issues.

The Review finds that the proposed constitution meets Council's objectives and that JMV forgoes \$1.256 million annually for Social Justice Activities. Council's provision of a lease to the NSRT for a peppercorn rent makes possible approximately 53.5% of these social justice outcomes.

The Review recommends that "those organisations who may appoint Directors under the Constitution undertake a process to identify suitable candidates through seeking expressions of interest from within the community it represents rather than Council itself, to match the Director skills and attributes required with particular reference to:

- Aged Care experience (operation, context, policy and strategy).
- Clinical governance (medical, nursing and allied health).
- Pastoral care.
- Accounting & Finance.

The Review further recommends that a subcommittee of the Board be established to consider the issues of "non-executive Director remuneration". "Should this Committee agree that Director remuneration is feasible and desired it is expected that the North Sydney Retirement Trust, operating as James Milson Village, would be responsible for payment of remuneration to any Director."

FINANCIAL IMPLICATIONS:

Nil

Local Government Act 1993: Section 23A Guidelines - Council Decision Making During Merger Proposal Period

The Guidelines have been considered in the preparation of this report and are not applicable.

RECOMMENDATION:

1. **THAT** the Governance Review be received.
2. **THAT** Council approve the North Sydney Retirement Trust Constitution dated 6 February 2017.
3. **THAT** Council call for Expressions of Interest from qualified community members to represent Council in two positions on the Board of the North Sydney Retirement Trust.

LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

Direction: 4. Our Social Vitality

Outcome: 4.8 Enhanced community facilities, information and services
4.10 Improved affordable housing and accommodation

BACKGROUND

In 1967 North Sydney Council set up the *North Sydney Homes for the Aged Association*, which later incorporated as the *North Sydney Retirement Trust* (NSRT), in 1975. Council remains part owner of the land on which the independent living Tower (45 units) and the Hostel are built. The Nursing Home was developed as a joint venture between the Trust and Uniting Care in 1980. Ownership of the land other than Council's and of the adjacent Camaraigal House (also independent living - 58 units) now lies with the Trust. Council's land is leased to the Trust until 2087. Since the Trust was formed Council has long been represented on its Board by three Councillors. This was revised down to two in 2015 via an amendment to the Constitution that was approved by Council. Council has deferred appointing Councillors to the Board since that time, following concerns about workload, expertise and potential conflicts of interest.

CONSULTATION REQUIREMENTS

Community engagement will be undertaken in accordance with Council's Community Engagement Protocol.

SUSTAINABILITY STATEMENT

The sustainability implications were considered and reported on during the initiation phase of this project.

DETAIL

In May 2016 Council received a briefing from *Stewart Brown*, Chartered Accountants on the challenges to James Milson Village (JMV) arising from the current Aged Care Reform agenda. *Stewart Brown* is widely regarded as being a leading specialist within the aged care, community and disability sectors. Their client base includes many large national providers in addition to independent stand-alone providers, faith-based and community providers, culturally specific providers, as well as government and statutory bodies. They have a particular knowledge of JMV having undertaken several reviews previously.

Also in 2016 Council considered several issues concerning JMV:

- The provision of a new NSRT Constitution (not yet approved)
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- The departure from the North Sydney Retirement Trust of Uniting Care Ageing
- How best to have Council's interest in the service represented on the Board

In October 2016 Council and NSRT agreed to share the costs of a governance review that would (i) provide independent assessment of JMV's fit for the Aged Care Reform Agenda and (ii) guide Council in considering the latest NSRT constitution and on the question of Board representation

The Review finds that the proposed constitution meets Council's objectives and that JMV forgoes \$1.256 million annually for Social Justice Activities. The Review recommends that "those organisations who may appoint Directors under the Constitution undertake a process to identify suitable candidates through seeking expressions of interest from within the community it represents rather than Council itself, to match the Director skills and attributes required with particular reference to:

- Aged Care experience (operation, context, policy and strategy)
- Clinical governance (medical, nursing and allied health); and
- Pastoral care
- Accounting and Finance

The Review further recommends that a subcommittee of the Board be established to consider the issues of "non-executive Director remuneration". "Should this Committee agree that Director remuneration is feasible and desired it is expected that the North Sydney Retirement Trust, operating as James Milson Village, would be responsible for payment of remuneration to any Director given its status as a going concern. Level of remuneration should be determined by a remuneration committee on reasonable commercial terms."

The Review advises Council can reasonably expect of its appointed delegates once selected that their due diligence can be met by advise Council on an annual basis of their views on the following checklist:

1. Is the North Sydney Retirement Trust registered as an approved provider with the Commonwealth to provide aged care services, accredited and receiving Commonwealth Government subsidies? <https://goo.gl/t6OqNX> [My Aged Care website]
2. Do the objects of the organisation still meet the social justice interests of the council?
 - a) Deliver care and wellbeing for the frail and aged, particularly in the local government areas of North Sydney, Lane Cove, Mosman and Willoughby;
 - b) Conduct the aged care facilities within the James Milson Village on the corner of Clark Road and High Street, North Sydney and/or such other place or places as the Board determines;
 - c) Relieve poverty experienced by persons who are aged;
 - d) Relieve aged persons who are in necessitous circumstances;
 - e) In each case with commitment, integrity and respect for each individual.
3. Is the organisation operating and solvent?

Other Matters

The Review also makes some significant and valuable recommendations that don't directly address Council's identified concerns but will improve the performance and accountability of JMV. They include:

- Spiritual Care in Aged Care
- Risk Management
- Improved reporting and benchmarking

Conclusions

- The provision of a new NSRT Constitution for Council approval.
Yes. This can be approved.
 - The departure of Uniting Care Ageing from the Board of NSRT.
Despite this significant loss of expertise JMV is exceptionally well managed and its performance will be improved by adoption of the Governance Review Recommendations.
 - How best to have Council's interests in this community service represented on the Board.
The recommendation to seek expressions of interest for the community delegates is considered to have real merit. A precedent exists in Consumer Health Advocacy where in July 2014 local resident and former senior officer with NSW Health Carlie Spencer had her work as North Sydney Council representative on the Hospital Board subcommittee recognized by Council resolution. A report was presented by Ms Spencer to the then Community Services Reference Group.
 - Council's wish to place a value on its peppercorn lease of land to the NSRT (to 2087), reflecting the social objectives of the Constitution
The Stewart Browne estimates that \$1,265,441 is annually foregone in recognition of Social Justice objectives. This more than meets Council's expectations: the annual market rent for Aged Care services on this site has been estimated by Colliers International at considerably less than this amount.
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1. Executive Summary

The James Milson Village (JMV) was founded 2 June 1974, just two days short of six years after North Sydney Council first decided to involve itself in the housing of the municipality's aged. Sir Roden Cutler, the Governor of NSW, opened James Milson Village, the biggest project of its kind in North Sydney Council's history and the first retirement village built by a local government in the state.

The aged care sector is currently undergoing generational and transformational change.

As a result of these changes residential care will be directed (from a funding perspective) toward providing acute, palliative and end-of-life care with occupancy between 3 - 9 months duration and dementia specific care which has a greater occupancy duration of upwards of 2 years on average.

Consumer Directed Care which has been applied to Home Care is expected to be applied to Residential Care in the future and this will see residents and their families become more involved in developing their care and lifestyle plans including when and where they receive their care and other services. It is also very likely that residential care licences will be deregulated within the next 5 years.

This review establishes that JMV as an independent Not-For-Profit entity has substantial governance protocols in place compared to other similar sized NFP entities in the industry. Currently, JMV is well structured in that it possesses:

- A Board of suitably experienced Directors being the fiduciary Board responsible for governance
- Additional panel of sector/subject matter/sector specialists taking on an advisory role to the Board and allowing those individuals to offer their expertise without being concerned about taking on a Directors' formal duties and responsibilities.

This governance review has a number of specified questions to be considered:

- Process by which NSC will identify and nominate Directors to the JMV Board;
- Review of JMV's Board skills matrix
 - Using skills matrix to determine skills and experience required by NSC nominees
 - How best for NSC's voice and values be reflected via these nominations?
- Is it appropriate or indeed allowable to remunerate Directors?
- How best to enshrine the NSC goals of social inclusion and justice?

This report recommends that those organisations who may appoint Directors under the constitution, particularly North Sydney Council, may undertake a process to identify suitable candidates through seeking Expressions of Interest from within the community it represents rather than the Council itself, to match the Director skills and attributes required with particular reference to:

- Aged care experience (operation, context, policy and strategy)
- Clinical governance (medical, nursing and allied health); and
- Pastoral Care

StewartBrown understands that there is existing precedent within the North Sydney Council for this type of nomination approach. Furthermore, in order to provide comfort to NSC (and St Mary's Parish) JMV consider the formation of a nominations and remuneration sub-committee with stakeholder involvement. A Nominations and Remuneration Committee often performs the details of this task and would enable the North Sydney Council and Parish of St Mary's to be active participants in crafting the skill, age, gender, attributes and cultural diversity of the JMV Board. One of the roles for this sub-committee would be to provide the Board with a Director Recruitment Policy for consideration. An example of the areas to be considered is in Appendix E. North Sydney Council may consider that the Council General Manager would be the most appropriate delegate for this committee.

This committee would also be charged with considering the issues of non-executive Director remuneration in the context of the complexity of its operations and issues pertaining to the attraction, recruitment and retention of

appropriately skilled Directors to the Board. Should this committee agree that Director remuneration is feasible and desired (quite apart from current constitutional limitations) it is expected that the North Sydney Retirement Trust, operating as James Milson Village would be responsible for payment of remuneration to any Director given its status as a going concern. Level of remuneration should be determined by the Nominations and Remuneration Committee on reasonable commercial terms.

Both the current and proposed Constitution of JMV outlines that it must service the following objectives:

- Deliver care and wellbeing for the frail and aged, particularly in the local government areas of North Sydney, Lane Cove, Mosman and Willoughby;
- Conduct the aged care facilities within the James Milson Village on the corner of Clark Road and High Street, North Sydney and/or such other place or places as the Board determines;
- Relieve poverty experienced by persons who are aged;
- Relieve aged persons who are in necessitous circumstances;

In each case with commitment, integrity and respect for each individual.

JMV currently provides a range of social justice activities that re-inforce its community based ethos and objects under the Constitution. Against its NFP counterparts in aged care it is both commendable and advisable that JMV continue to cost its contribution to the local community of Greater North Sydney. The organisation currently outperforms the proxy for social justice – the Government mandated Supported Resident Ratio – by almost 10% and as such should be taken as a strong indicator of organisational commitment. JMV contributes more than \$1,265,441 annually in revenue foregone for Social Justice Activities.

Currently there are a range of both statutory and process remedies available to North Sydney Council to provide comfort in JMV continuing to perform the ethos of social justice:

- Re-entry rights for North Sydney Council
- Allocation of places under the Aged Care Act 1997
- Winding up, transfer or sale of the lease
- Australian Charities and Not-For-Profits Commission (ACNC)

In terms of creating a Memorandum Of Understanding (MOU), and precluding any legal advice, the North Sydney Council may obtain comfort around social justice through a process that assures that their lease provisions are well executed, appropriate with diligent Directors appointed. These practises in concert with other processes inherent in the current and proposed Constitution and Aged Care Act, should provide sufficient security and comfort in absentia of a further formal agreement.

It is noted that North Sydney Council has the right to approve the JMV constitution under its lease covenants. It is explained within the lease that NSC will not reasonably withhold approval of the constitution in writing, so pending any additional changes to the existing draft (such as amendment to remuneration of Directors) it is suggested that North Sydney Council satisfy themselves that the constitution meets its expectations, particularly with regards to the Objects to enshrine the social justice principles (see section 4.8), and consent to JMV formally adopting the new constitution.



**NORTH SYDNEY RETIREMENT TRUST
ACN 001 259 294**

A Public Company Limited by Guarantee

CONSTITUTION

Adopted by Members on

[Insert date]

Current Draft as of February 6, 2017

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Corporations Act 2001 Constitution

North Sydney Retirement Trust
ACN 001 259 294

1. Definitions and interpretation

1.1 Definitions

In the construction of this Constitution, unless the contrary intention appears:

Acts means the *Corporations Act* and the *ACNC Act* as it applies to the Company for the time being.

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) as it applies to the Company for the time being.

Annual General Meeting means an annual General Meeting of the Company required to be held at least once in each calendar year and within 5 months after the end of its financial year.

Annual Subscription means the amount determined by the Board from time to time.

Application Fee means the amount (if any) determined by the Board from time to time which is payable by a Member upon his or her application to become a Member of the Company.

Board means the Board of Directors of the Company from time to time.

Chairperson means the chairperson of the Board appointed at clause 18.1 from time to time.

Chief Executive Officer means the chief executive officer of the Company appointed at clause 18.4 from time to time, and **CEO** has a corresponding meaning.

Company means North Sydney Retirement Trust ACN 001 259 294.

Constitution means this constitution.

Corporate Representative means a natural person that represents a Member that is a body corporate in any matters connected with the Company, who may exercise all or any of the powers of the Member that appointed him or her.

Corporations Act means the *Corporations Act 2001* (Cth) as it applies to the Company for the time being.

Directors means the directors of the Company in office for the time being.

General Meeting means a meeting of Members duly called and constituted in accordance with this Constitution and any adjourned holding of it.

Gift Fund means a fund that is maintained for the furtherance of the Objects of the Company in accordance with clause 7.

ITAA means the *Income Tax Assessment Act 1997* (Cth) as amended from time to time.

Member means any person entered in the Register as a member for the time being of the Company.

Membership means membership of the Company.

Objects of the Company means the objects set out in clause 3.2.

Office means the registered office for the time being of the Company.

Officer means:

- (a) a Director or Secretary of the Company; or
- (b) a person:
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company;
 - (ii) who has the capacity to affect significantly the corporation's financial standing; or
 - (iii) in accordance with whose instructions or wishes the Directors of the Company are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Directors or the Company).

Ordinary Resolution means a resolution of a general meeting where more than 50% of the total votes cast on the resolution are in favour of the resolution.

Register means the Register of Members kept by the Company.

Remuneration includes, without limitation, salaries, wages, commissions, fees, rewards, allowances, bonuses, incentive schemes or profit sharing schemes.

Resident means a resident of a residential care facility, retirement village or other seniors housing operated by the Company or a client or service user of any other service that the Company provides.

Secretary means any person appointed to perform the duties of secretary of the Company and includes an assistant secretary or any person appointed to act as the secretary or assistant secretary temporarily.

Special Resolution means a resolution of a general meeting where at least 75% of the votes cast on the resolution are in favour of the resolution and which is passed in accordance with sections 249H and 249L of the Corporations Act.

1.2 Interpretation

In the construction of this Constitution:

- (a) headings are disregarded;
- (b) words importing persons include partnerships, associations, corporations, companies unincorporated and incorporated whether by Act of Parliament or otherwise, as well as individuals;
- (c) singular includes plural and vice versa and words importing any gender include all other genders;

- (d) except for the definitions in the preceding clause, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act;
- (e) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force.

2. Replaceable rules

2.1 Replaceable rules

The operation of each of the sub-sections of the Corporations Act which are defined as replaceable rules are displaced by this Constitution and do not apply to the Company.

3. Objects

3.1 Pursuance of objectives

The Objects of the Company are to be pursued principally within Australia.

3.2 Objects

The objects for which the Company is established are to:

- (a) deliver care and wellbeing for the frail and aged, particularly in the local government areas of North Sydney, Lane Cove, Mosman and Willoughby, in a way that:
 - (i) relieves poverty experienced by persons who are aged; and
 - (ii) relieves aged persons who are in necessitous circumstances and/or suffering distress; and
- (b) to achieve the objects in paragraph (a), conduct the retirement and aged care facilities within the James Milson Village on the corner of Clark Road and High Street, North Sydney and/or such other place or places as the Board determines from time to time,

in each case with commitment, integrity and respect for each individual.

3.3 Activities in pursuance of objectives

For the attainment of its objects, the Company is permitted:

- (a) to purchase, construct, acquire, alter, lease, license, produce, or otherwise provide, procure or receive facilities, amenities and assets (or any interest in them) as is reasonable to achieve the Objects of the Company or to ensure the continuance of the Company and its commitment to these Objects;
- (b) to sell, trade, lease, license, assign, novate, grant an interest in or over, or otherwise reasonably deal with any interest, facility, amenity or asset as is reasonable to further the Objects and to ensure the continuance of the Company and its commitment to these Objects;
- (c) to subscribe to or affiliate with any companies, institutions, societies or associations having objects altogether or in part similar to those of the Company and which shall prohibit the distribution of their income and property among their members to an extent

at least as great as that imposed upon the Company under clause 5 of this Constitution;

- (d) to perform all such acts and things necessarily conducive to the benefit, advancement and promotion for the purposes of caring for and supporting elderly persons in all conditions of health; and
- (e) to cooperate with, encourage and provide assistance to any charitable institution, charitable body or charitable fund having objects similar to the Objects of the Company.

4. Limited liability

4.1 Members' liability

The liability of the Members is limited.

4.2 Members' contributions

Every Member of the Company undertakes to contribute to the assets of the Company if it is wound up while the Member is a Member, or within one year after the Member ceases to be a Member, for:

- (a) the payment of the debts and liabilities of the Company, contracted before the Member ceased to be a Member; and
- (b) the expenses of winding up the Company.

4.3 Amount of Members' contributions

The amount of the contribution under clause 4.2 must not exceed \$20 per member in any circumstances.

5. Use of the property by the Company

5.1 Conduit policy

Any allocation of funds or property to other institutions, bodies, entities, organisations, government departments or persons must be made in accordance with the established Objects of the Company and not be influenced by the expressed preference or interest of a particular donor to the Company.

5.2 Application of Company property

Subject to clauses 5.3 and 5.4 below, all income and property of the Company must be applied for the Objects of the Company. No portion of the income or property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit or return of capital to any Member.

5.3 Payments of Company expenses

Nothing in clause 5.2 prevents the payment in good faith of reasonable and proper:

- (a) remuneration to any of the officers (excluding the Directors) or employees of the Company or to any Member in return for any services actually rendered by them to the Company;
- (b) interest on money borrowed from any Member for any of the purposes of the Company (provided the interest rate does not exceed the rate charged by the Company's bank on similar borrowings);
- (c) rent for premises let by any Member to the Company (provided the rental rate charged by the Member does not exceed fair market rental rates for similar premises); or
- (d) payment for any goods supplied to the Company by any Member (provided the amount charged for the goods does not exceed fair market rates for similar goods).

5.4 Remuneration of Directors

No remuneration or other benefit may be paid or given by the Company to any Director except:

- (a) for the reimbursement of out-of-pocket expenses incurred on reasonable commercial terms in carrying out the duties of a Director; or
- (b) for any service rendered to the Company in a professional or technical capacity, where the terms of service are on reasonable commercial terms and have been previously approved by a resolution of the Directors.

5.5 Conflict of interest resolution

At any general meeting of the Members or the Directors at which a resolution is put for approval of a payment to be made pursuant to clause 5.4 (**conflict of interest resolution**) the Director who is the object of the conflict of interest resolution and any other Director or Member who is related to that Director is not entitled to:

- (a) be present or heard in discussions on the conflict of interest resolution other than with the permission of the other Members or Directors;
- (b) propose or second the conflict of interest resolution;
- (c) vote on the conflict of interest resolution; or
- (d) be present at the meeting when the conflict of interest resolution is put to the vote other than with the permission of the other Directors or Members.

6. Use of property on winding up and on revocation of endorsement

6.1 Surplus

If on the:

- (a) winding up or dissolution of the Company; or
- (b) the revocation of the Company's endorsement as a deductible gift recipient or an income tax exempt entity under the ITAA,

after the satisfaction of all its debts and liabilities, any property remains (**surplus**), the surplus must not be paid or distributed among the Members.

6.2 Transfer of surplus

The surplus must be given or transferred to an institution, body, entity, or organisation (**Transferee Entity**):

- (a) having objects similar to the Objects of the Company and which is endorsed as a deductible gift recipient under the ITAA;
- (b) is registered as a charity under the ACNC Act; and
- (c) whose constitution prohibits the distribution of its income and property among its Members to an extent at least as great as is imposed on the Company under clause 5.

6.3 Choice of transferee

The Transferee Entity must be chosen by the Directors (as the Directors were constituted at the commencement of the winding up). If the Directors do not choose a Transferee Entity within a reasonable time, any Member at the commencement of the winding up or the liquidator may apply to the Supreme Court of New South Wales to choose the Transferee Entity.

7. Gift Fund

7.1 Company to maintain a Gift Fund

The Company must maintain a Gift Fund in accordance with this clause 7 for so long as it has obtained endorsement as a deductible gift recipient from the Australian Taxation Office.

7.2 Rules applying to the Gift Fund

The following rules apply to any Gift Fund established and maintained by the Company:

- (a) the Gift Fund must have a name;
- (b) the Company must maintain sufficient documents to provide evidence of the Gift Fund's purpose and operations;
- (c) the Company must maintain a separate bank account for the Gift Fund;
- (d) the following must be credited to the Gift Fund:
 - (i) all gifts of money or property to the Company for the furtherance of its Objects; and
 - (ii) all money or property received by the Company because of those gifts;
- (e) no other money or property may be credited to the Gift Fund; and
- (f) the Company must use any gifts, money or property of the kind referred to in clause 7.2(d) only for the furtherance of the Objects of the Company.

7.3 Winding up of Gift Fund

- (a) At the first occurrence of:
 - (i) the winding up of the Gift Fund; or

- (ii) the revocation of the Company's deductible gift recipient endorsement under Division 30 of the ITAA,

any surplus assets of the Gift Fund must be transferred to another fund, authority, institution or organisation in Australia which is endorsed as a deductible gift recipient under the ITAA.

For the avoidance of doubt, if the Gift Fund is wound up but the Company remains endorsed as a deductible gift recipient and operates any other gift fund in accordance with this clause 7, any surplus assets of the Gift Fund that is being wound up may be transferred to any other gift fund operated by the Company.

8. Fundraising authority

If the Company holds an authority to fundraise from NSW Fair Trading (or such other government entity responsible for fundraising in NSW from time to time), no addition, alteration or amendment may be made to clauses 5 or 6 without the prior written approval of the Minister responsible for the administration of the *Charitable Fundraising Act 1991*.

9. Members

9.1 General

The Members consist of:

- (a) those persons registered as a Member at the date this Constitution is adopted as the Constitution of the Company, as set out in Schedule 1; and
- (b) all other persons after the date this Constitution is adopted, qualified to be a Member in accordance with this Constitution and have been admitted as a Member of the Company in accordance with this clause 9.

9.2 Number of Members

The maximum number of Members is 50.

9.3 Members' qualification

A person is qualified to be a Member of the Company who:

- (a) is at least 18 years of age;
- (b) is not a current Resident of the Company;
- (c) is not in receipt of any benefit provided by the Company of the kind contemplated in clause 3.2(a);
- (d) has applied for Membership of the Company as provided by clause 9.7; and
- (e) has been approved for Membership of the Company by the Board.

9.4 Rights of categories

The Board may determine additional categories of Members and rights attaching to each category of Members.

9.5 Categories of Members

As at the date of the adoption of this Constitution, the categories of Members are:

- (a) Ordinary Members; and
- (b) Non-Voting Members.

9.6 Rights of Members

Members are entitled to different rights, depending on their category of membership, as follows:

- (a) Members admitted as Ordinary Members are entitled to:
 - (i) receive notices of meetings of Members;
 - (ii) be counted towards a quorum of Members present at a General Meeting;
 - (iii) appoint a proxy to vote at a General Meeting;
 - (iv) vote at a General Meeting;
 - (v) attend all General Meetings of Members including any extraordinary or Annual General Meeting;
 - (vi) receive annual financial reports and statements of the Company; and
 - (vii) be eligible for election to the Board; and
- (b) Members admitted as Non-Voting Members are entitled to:
 - (i) receive notices of meetings of Members;
 - (ii) attend all General Meetings of Members including any extraordinary or Annual General Meeting; and
 - (iii) receive annual financial reports and statements of the Company.

9.7 Application for Membership

- (a) An application of a person for Membership of the Company:
 - (i) must be in writing in the form approved by the Board from time to time, and such an application must:
 - (A) state the applicant's name and address and be signed by the applicant;
 - (B) affirm that the applicant meets the requirements of clause 9.3;
 - (C) be accompanied by the Application Fee determined in accordance with clause 10.1; and
 - (D) state that the applicant has reviewed this Constitution and agrees to be bound by its provisions; and
 - (ii) must be lodged at the Company's Office.

- (b) For the avoidance of doubt, the Members referenced in clause 9.1(a) will be deemed to have complied with clause 9.7(a).

9.8 Admitting Members

The Board must:

- (a) immediately admit to membership a Director who applies for membership in accordance with clause 9.7;
- (b) in the case of other applicants, as soon as practicable after receiving an application for Membership, determine whether to approve or to reject the application;
- (c) where it determines to reject an application for Membership, refund any Application Fee and any Annual Subscription paid by the applicant; and
- (d) where it determines to approve an application for Membership, instruct the Secretary to, as soon as practicable after that determination, notify the applicant of admission in the form of a receipt for the Application Fee and:
 - (i) upon payment of the applicant's Annual Subscription, the Secretary must enter the applicant's name and details in the Register and, upon the name being so entered, the applicant becomes a Member of the Company; or
 - (ii) if payment of the applicant's Annual Subscription is not made within two calendar months after receipt of this written notice, the Board may, in its discretion, cancel its approval of the application for Membership.

9.9 Discretion to admit

For the avoidance of doubt:

- (a) other than a Director applying under clause 9.8(a), the Board may refuse to admit any person as a Member in its absolute discretion and is not obliged to give reasons for so refusing;
- (b) no applicant may be admitted to Membership and have their name entered in the Register unless the applicant agrees in writing to be bound by this Constitution; and
- (c) the Members referenced in clause 9.1(a) will be deemed to have complied with clause 9.9(b).

10. Fees to be paid by Members

10.1 Application Fee

The Application Fee payable by Members is such amount as determined by the Directors from time to time.

10.2 Annual Subscription

The Annual Subscription payable by a Member:

- (a) is such amount as determined by the Directors from time to time;
- (b) must be paid in advance for the period beginning on 1 July in every year or such other date determined by the Directors from time to time; and

- (c) where the person is admitted as a Member after 1 July, may be reduced by the Directors in such manner as they see fit.

10.3 Waiver

The Board may at any time suspend or waive, in whole or in part, payment of the Application Fee or Annual Subscription in favour of any Member.

10.4 Annual Subscription in arrears

If any Member fails to pay his or her Annual Subscription within two months after it becomes due and payable and a notice of default is given to the Member by the Board, that Member is not entitled to any of his or her rights under clause 9.6 while the subscription remains due and unpaid. Upon payment of all arrears, that Member may have his or her rights reinstated if the Board, in its absolute discretion, so resolves.

11. Cessation of Membership

11.1 Cessation

A Member ceases to be a member of the Company if the Member:

- (a) dies;
- (b) becomes of unsound mind;
- (c) becomes bankrupt;
- (d) in the case of a body corporate:
 - (i) becomes insolvent or otherwise comes under external administration;
 - (ii) is wound up, dissolved, amalgamated or deregistered; or
 - (iii) has a change in control in its management by reason of a change of directors, shareholders or members of more than 50%;
- (e) resigns that Membership;
- (f) became a Member pursuant to clause 9.8(a) and subsequently ceases to be a Director;
- (g) has refused or neglected to comply with a provision of the Constitution;
- (h) has acted in a manner prejudicial to the reputation or interests of the Company;
- (i) is expelled from the Company under this Constitution;
- (j) is a person whose actions in the opinion of the Directors brings the Company into serious disrepute; or
- (k) no longer meets the criteria of being a Member under clause 9.3.

11.2 Appointment as Member 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 upon cessation of the person's Membership.

11.3 Resignation

Subject at all times to clause 4 of this Constitution, a Member of the Company may resign their Membership by giving written notice to the Secretary (**Notice**). The resignation is deemed to take effect from the date of receipt of the Notice, or such later date as is provided in the Notice. A Member remains liable to pay all amounts due to the Company up to the date of resignation.

11.4 Failure to pay

If a Member has not paid all arrears under clause 10.4 or, if paid, the Member's rights are not reinstated:

- (a) the Member remains liable for all obligations and liabilities of Membership for 12 months after the date of the notice of default under clause 10.4; and
- (b) at the end of the 12 month period, the Register must show that the member has ceased to be a member.

12. Discipline of Members

12.1 Initial resolution of Directors

Where the Directors, in their absolute discretion, are of the opinion that a Member:

- (a) is no longer suitable to be a member of the Company;
- (b) has refused or neglected to comply with a provision of the Constitution; or
- (c) has acted in a manner prejudicial to the reputation or interests of the Company,

the Directors may, by Special Resolution (**Initial Resolution**):

- (d) reprimand the Member;
- (e) suspend the Member for a specified period; or
- (f) expel the Member from the Company if any paragraph under clause 11.1 has not been met,

and are not required to give reasons for proposing the Initial Resolution.

12.2 Suspended operation

An Initial Resolution is of no effect unless it is confirmed at a subsequent meeting of the Directors in accordance with the following clauses. For that purpose, the subsequent meeting of Directors must be held not earlier than 7 days and not later than 21 days after service on the Member of a notice under clause 12.3.

12.3 Notice to Member

The Secretary must, within 3 days following the passing of the Initial Resolution, cause a notice in writing to be served on the Member. The notice must:

- (a) set out the Initial Resolution and the grounds on which it is based (if considered necessary);
- (b) state that the Member may personally address the Directors in relation to the Initial Resolution at a meeting of the Directors to be held in accordance with clause 12.2;
- (c) state the date, place and time of that meeting of the Directors; and
- (d) inform the Member that the Member may submit to the Directors at or before the date of that meeting a written representation relating to that resolution and speak to the representation.

12.4 Confirming resolution of Directors

At a meeting of the Directors held and convened in accordance with the preceding clause, the Directors must:

- (a) give to the Member an opportunity to speak to the written representation;
- (b) give due consideration to any written and spoken representation submitted to the Directors by the Member at or before the meeting; and
- (c) by Special Resolution (**Confirming Resolution**) confirm, vary or revoke the Initial Resolution.

12.5 Immediate or suspended effect

The Confirming Resolution may take effect immediately, after any period of time or only on conditions specified in the Confirming Resolution.

12.6 Right of appeal

- (a) A Member or former Member may request in writing, within 21 days of a Confirming Resolution, that an appeal of the Confirming Resolution be heard at a General Meeting of the Members convened for the purpose of considering, affirming or rejecting the Confirming Resolution.
- (b) The Directors will convene a General Meeting of the Members for the purposes of considering an appeal requested by a Member or former Member under clause 12.6(a) within 30 days of the date of written notice issued pursuant to clause 12.6(a).
- (c) The Directors may determine the process for the hearing and consideration of any such appeal at the General Meeting but must provide the Member or former Member an opportunity to be heard.
- (d) An Ordinary Resolution of Members at the General Meeting is required to pass the necessary resolution affirming or rejecting the Confirming Resolution.

12.7 Notice to a Member

The Secretary must, within 3 days of the Members considering an appeal of a Confirming Resolution pursuant to clause 12.6, inform the Member in writing of the decision and that there is no further right of appeal under the Constitution.

13. Register of Members

13.1 Register to be kept

The Secretary must maintain at the Company's Office a Register of Members containing the following details of each Member:

- (a) full name;
- (b) mailing address;
- (c) telephone numbers;
- (d) electronic mail address;
- (e) date on which the entry of the Member's name in the Register is made; and
- (f) date of all payments of the Member's Annual Subscription.

13.2 Record of past members

The Secretary must maintain at the Company's Office a record of past members of the Company including:

- (a) details set out at clause 13.1 of each person who ceased to be a Member within the last 7 years; and
- (b) the date on which each such person ceased to be a Member.

13.3 Notices in writing or electronic means

Any notice required to be issued to a Member under this Constitution may be issued in writing or by electronic mail or facsimile to the last nominated email address or facsimile number held by the Company in its records. Each Member is required to notify the Company of a change of address or contact details. The last notified address will be deemed to be the proper address for all future correspondence. The receipt by the Company of an acknowledgment of correspondence sent by electronic mail or facsimile to the last nominated email address or facsimile held by the Company in its records will be deemed to have been properly received by the Member at the time of transmission.

14. Meetings of Members

14.1 Act to apply

A general meeting of the Company and an Annual General Meeting must be held in accordance with the provisions of the Corporations Act or the ACNC Act as applicable unless the provisions of this Constitution provide otherwise.

14.2 Calling of meetings

- (a) Any three Directors may call a General Meeting.
- (b) General Meetings will be convened on such requisition by Members as provided by the Corporations Act.

14.3 Notice of meeting

- (a) Notice of a General Meeting may be given by post, facsimile or by electronic mail.
- (b) Every notice of a General Meeting must:
 - (i) set out the place, date and time of meeting;
 - (ii) in the case of special business, state the general nature of the business;
 - (iii) if a Special Resolution is to be proposed, set out an intention to propose the Special Resolution and state the resolution;
 - (iv) in the case of an election of Directors, give the names of the candidates for election;
 - (v) contain a statement setting out the following in relation to proxy voting:
 - (A) that the Member has a right to appoint a proxy; and
 - (B) that a proxy need not be a Member.

14.4 Entitlement to notice

Notice of a General Meeting must be given to:

- (a) each Member, apart from any Member who under this Constitution or by the terms of issue of any category of Membership is not entitled to the notice;
- (b) the auditor of the Company; and
- (c)
- (d) each Director.

14.5 Notice period

Notice of a General Meeting must be given in accordance with section 249H of the Corporations Act and where those provisions no longer apply to the Company, must be given in writing upon no less than 21 days' notice unless Members with at least 95% of the votes that may be cast at the meeting agree to a shorter period beforehand.

14.6 Proxy voting by Members

A Member may appoint a proxy who need not be a Member to attend and vote at any General Meeting at which the Member is entitled to attend and vote. To be valid, a proxy appointment must be in writing in the form prescribed by the Company from time to time (**Form**). The Form must be delivered to the place nominated by the Directors in the notice of General Meeting (or, if no place is nominated, the Office) at least 48 hours before the scheduled commencement of the General Meeting. A proxy appointment may be delivered by post, electronic mail or facsimile transmission.

14.7 Omission to give notice

The accidental omission to give notice of a General Meeting to, or the non-receipt of any such notice by, a person entitled to receive it, or the accidental omission to advertise (if necessary) such General Meeting, does not invalidate the proceedings at, or any resolution passed at, any such General Meeting.

14.8 Consent to short notice for Annual General Meeting

With the consent in writing of all the Members entitled to vote at an Annual General Meeting, an Annual General Meeting may be called on short notice and in any manner they think fit and all provisions of this Constitution are modified accordingly.

14.9 Notice of cancellation or postponement

The Directors may notify the Members of a cancellation or postponement of a General Meeting by such means as they see fit, but must provide notice of the cancellation or postponement at least two business days prior to the time of the meeting as specified in the notice of meeting. If any General Meeting is postponed for 28 days or more, then no less than 5 days' notice must be sent to the Members of the postponed General Meeting. It is not necessary to specify in such notice the nature of the business to be transacted at the postponed General Meeting.

14.10 Venue

Despite any other rule, the Company may hold a General Meeting of Members at two or more venues using technology that gives each Member a reasonable opportunity to participate in the General Meeting.

15. Proceedings at meetings of Members

15.1 Quorum

No business may be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Except as provided in clause 15.2, four Members entitled to vote at the meeting present in person or by representative, proxy or attorney are a quorum.

15.2 Failure of quorum

- (a) If a quorum is not present within 30 minutes from the time appointed for a General Meeting:
 - (i) where the meeting was called by, or in response to, the requisition of Members made under the Corporations Act, the meeting is dissolved; or
 - (ii) in any other case the meeting stands adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Directors may determine. If a meeting has been adjourned to another time and place determined by the Directors, not less than five business days' notice must be given in the same manner as in the case of the original meeting.
- (b) If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting the meeting is dissolved.

15.3 Business of Annual General Meeting

The business of an Annual General Meeting is:

- (a) to receive the Company's financial report, the Director's report and the auditor's report on the financial statements;
- (b) to elect Directors;

- (c) to transact any other business which under this Constitution, the Corporations Act or the ACNC Act ought to be transacted at an Annual General Meeting; and
- (d) consider any matters referred by Members to the Company at least 21 days before the meeting, to be included in the agenda.

The chairperson of the Annual General Meeting may allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about, or make comments on, the management of the Company.

15.4 Report on Company's activities

The Board must at each Annual General Meeting in addition to the matters in clause 15.3, submit to the Members a report on the activities of the Company, including any payments made to Directors, in the period since the previous General Meeting.

15.5 Frequency of Annual General Meeting

The Company must hold an Annual General Meeting at least once every calendar year and within 5 months after the end of its financial year.

15.6 Special business

No special business may be transacted at any Annual General Meeting or General Meeting other than that stated in the notice calling the meeting unless:

- (a) it is a matter that is required by this Constitution, the Corporations Act or the ACNC Act to be transacted at the meeting; or
- (b) notice in writing of the agenda items is provided to the Board at least 21 days before the Annual General Meeting or General Meeting.

15.7 Chairperson of meeting

- (a) The Chairperson is entitled to take the chair at each General Meeting.
- (b) If the Chairperson is not present at the meeting within 15 minutes after the time appointed for holding the meeting, or is unwilling to take the chair, the Directors present at the meeting must elect one of their number to chair that meeting.
- (c) If there are no Directors present at the meeting within 15 minutes after the time appointed for holding the meeting or all directors present are unwilling to chair the meeting, the Members present that are entitled to vote must elect one of those Members to be chairperson of the meeting.

15.8 Passing the chair

If the Chairperson of a General Meeting is unwilling or unable to be the chairperson for any part of the business of the meeting:

- (a) that chairperson may withdraw as chairperson for that part of the business and may nominate any person who would be entitled under the preceding clause to chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the person so nominated must cease to chair the meeting upon the request of the prior chairperson. The prior chairperson is then entitled to resume as the chairperson of the meeting.

15.9 Responsibilities of chairperson

The chairperson of a General Meeting is responsible for the general conduct of the meeting and to ascertain the sense of the meeting concerning any item of business which is properly before the meeting. For these purposes the chairperson of the meeting may, without limitation:

- (a) delay the commencement of the meeting if that person determines it is desirable for the better conduct of the meeting;
- (b) make, vary or rescind rulings;
- (c) prescribe, vary or revoke procedures;
- (d) in addition to other powers to adjourn, adjourn the meeting, or any item of business of the meeting, without the consent of the meeting if that person determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and
- (e) determine conclusively any dispute concerning the admission, validity or rejection of a vote.

15.10 Person entitled to attend

Only the following persons may attend a General Meeting:

- (a) each Member, apart from any Member who under the Constitution or by the terms of issue of any Membership is not entitled to attend;
- (b) each Director, Secretary and auditor of the Company;
- (c) each person, whether a Member or not, who is a proxy, Corporate Representative or attorney of a Member;
- (d) other persons only with leave of the meeting or its chairperson and then only while the leave has not been revoked in accordance with the terms of the leave.

15.11 Admission to meetings

The chairperson of a General Meeting may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the chairperson to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (f) who is not entitled under this Constitution to attend the meeting.

15.12 Adjournment of meeting

The Chairperson may with the consent of any meeting at which a quorum is present (and must if so directed by the meeting) adjourn the meeting from time to time and from place to place as the Chairperson determines.

15.13 Business at adjourned meeting

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place and no notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting. However, when a meeting is adjourned for 20 business days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

16. Voting at meetings of Members

16.1 Entitlement to vote

Subject to this Constitution and the terms of issue of any category of Membership, each Member who is present at a General Meeting may vote if he or she is a Member having the right to vote at the meeting or a proxy of a Member having the right to vote at the meeting.

16.2 Number of votes

Each Member who is, under the preceding clause, entitled to vote has:

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

16.3 Voting restrictions

If permitted or contemplated by the Corporations Act, the ACNC Act or this Constitution, the Directors may direct that particular persons (whether specified by name or description) do not cast a vote on particular business of a meeting. In relation to that business, votes cast by the prohibited persons are to be disregarded.

16.4 Method of voting

Every resolution put to a vote at a General Meeting (except where there is an election of Directors by ballot) must be determined by the voices or a show of hands (as determined by the chairperson of the meeting) unless a poll is properly demanded either before or on the declaration of the result of the voices or the show of hands.

16.5 Demand for poll

A demand for a poll under the preceding clause may be made by:

- (a) the chairperson of the meeting;
- (b) at least two Members entitled to vote on the resolution, or if the quorum is less than four, one Member entitled to vote; or
- (c) at least 10% of the Members present having the right to vote at the meeting.

16.6 Declaring result of vote on show of hands

In respect of any General Meeting (unless a poll is so demanded):

- (a) a declaration by the chairperson of the meeting that a resolution has been carried, or carried by a particular majority, or lost, or has not been carried by a particular majority; and
- (b) an entry made in the book containing the minutes of proceedings of the Company,

is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

16.7 Conduct of poll

The demand for a poll may be withdrawn. If a poll is duly demanded (and the demand not withdrawn) it must be taken in such manner and at such time (either at once or after an interval or adjournment or otherwise) as the chairperson of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded. A poll demanded on the election of a chairperson or on any question of adjournment must be taken at the meeting and without an adjournment. The demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.

16.8 Casting vote of chairperson

In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting is entitled to a second or casting vote.

16.9 Objections

No objection may be made to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered. Every vote allowed at any such meeting or poll is treated as valid. In recording votes the latest copy of the Register held in the Office must be adopted and acted on as the voting roll.

16.10 Ruling on votes

The chairperson of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the chairperson is final and conclusive.

17. Appointment and removal of Board of Directors

17.1 Board of Directors

The Board comprises:

- (a) at least 3 and not more than 9 Directors, or such other number as the Board may determine from time to time; and
- (b) as at the date this Constitution is adopted as the constitution of the Company, those individuals listed in Schedule 2, who will continue their current term in office with their retirement determined under clauses 17.4 and 17.6.

17.2 Directors qualification

- (a) A Director must:

- (i) be a natural person;
 - (ii) be over the age of 18 years;
 - (iii) not be a person disqualified from managing a corporation, within the meaning of the Corporations Act;
 - (iv) not be a person disqualified by the Australian Charities and Not-for-profit Commissioner at any time during the preceding 12 months from being a Director of a Company under the ACNC Act;
 - (v) not be a current employee of the Company or current Resident; and
 - (vi) if a former employee of the Company, have ceased to be an employee of the Company for a period of 3 years from the date of applying to become a Director.
- (b) The Board may from time to time identify the skills requirements and the needs of the Board Members to establish a skills-based Board in accordance with good governance structure to give effect to the Company's objects, subject at all times to clause 17.9 and the necessary Member approval at a General Meeting at which nominations and election of Directors are being voted upon.

17.3 Appointment of Directors

Each of the following, whether they are members of the Company or not, may appoint two Directors each (four Directors in total) and may remove any or both of its nominated directors and replace them by notice in writing delivered to the Company:

- (a) the parish priest, or acting parish priest or administrator, for the time being of the Catholic parish of St Mary's North Sydney in the State of New South Wales; and
- (b) the North Sydney Council constituted under the *Local Government Act 1993* (NSW) or its successor.

Where a Director is appointed under this clause 17.3 and there is no vacancy in the number of Directors permitted under clause 17.1(a), the Director last appointed (other than a Director appointed under this clause 17.3) will immediately resign and cease to be a Director.

17.4 Retirement by rotation

- (a) The maximum aggregate term of office of any Director shall be 9 years in total, after which the Director must retire from office for at least one year.
- (b) At each Annual General Meeting of the Company, one third of the Directors (other than those Directors appointed under clause 17.3), or, if their number is not 3 or a multiple of 3, then the number nearest one-third, shall retire from office but shall be eligible for re-election.
- (c) A Director who is required to retire under this clause 17.4 retains office until conclusion of the meeting at which the retiring Director retires.
- (d) A retiring Director is eligible for re-election, subject to clause 17.4(a).
- (e) The Directors to retire at the Annual General Meeting are those who have been longest in the office since their last election. If two or more persons became Directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.

- (f) For the purposes of clause 17.4(a), those individuals listed in Schedule 2 as the Directors at the date this Constitution is adopted will have their election into office under the preceding constitution of the Company continue as though they were appointed under this Constitution.

17.5 Casual appointment

The Directors may at any time appoint any person as a Director, either to fill a casual vacancy or as an addition to the Directors. Until that person is re-elected at a General Meeting, that Director is a 'casual appointee' but otherwise has the same powers and duties as other Directors.

17.6 Retirement of casual appointee

A casual appointee, following his or her appointment by the Directors, holds office only until the conclusion of the next Annual General Meeting. The casual appointee is eligible for re-election at that Annual General Meeting.

17.7 Deemed re-appointment

If there are fewer persons standing for election or re-election than vacancies, all persons are deemed to be elected without the need for an actual election.

17.8 Candidates requiring nomination

No person is eligible for election to the office of Director at any General Meeting unless duly nominated under clause 17.9, except for:

- (a) a casual appointee; or
- (b) a person recommended by the Directors for election.

17.9 Valid nominations

- (a) Excluding nominations and appointments made under clause 17.3, nominations must be made to the Secretary at the Office prior to 5.00 pm local time on the day which is 20 business days before the date for the holding of the meeting.
- (b) For a nomination to be valid:
 - (i) the nomination must name the candidate and be signed by not less than 2 other Members;
 - (ii) the person nominated must consent to act if elected;
 - (iii) the nomination and consent must be received before the close of nominations;
 - (iv) the nomination must provide information as to how the nominee meets the skill requirements of the Board (if any); and
 - (v) at least 10 business days before the holding of the meeting, the nomination must be reviewed by the Board and the Board must confirm the nominee satisfies the skill requirements and needs of the Company from time to time, and in doing so:
 - (A) the Board must formally provide its consent to a nomination and confirm if the nomination satisfies the skills requirements and needs of the Company; and

- (B) no nominee may appeal against any determination by the Board in relation to any nomination.
- (c) The Board by resolution may nominate a person to be a Director, but such person must satisfy the requirements in clause 17.2 and that person must consent to the nomination.
- (d) A consent is sufficient if the person signs a form of consent on the nomination paper. The Secretary may accept any other form of consent, including consent conveyed by electronic mail, whether or not accompanied by the nomination paper, that the Secretary deems satisfactory, and such acceptance is final.
- (e) The Board must indicate on the voting ballot of a nomination whether and how the nominee satisfies the skills requirements of the Company as described in clause 17.9(b)(iv) and clause 17.9(b)(v).
- (f) The Secretary must provide information to any prospective nominee of the skills requirement of the Board from time to time.

17.10 Resignation of Director

Any Director may retire from office by giving notice in writing to the Company of the Director's intention to do so. A Director must resign if they are identified as the Director required to resign pursuant to clause 17.3. Such resignation takes effect immediately unless the resignation is stated in the notice to take effect at some future time.

17.11 Vacation of office

A Director will cease to be a Director if the Director:

- (a) ceases to be a Director by virtue of a provision or any order under the Corporations Act or the ACNC Act;
- (b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (c) becomes a Resident;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (e) resigns his or her office by notice in writing to the Company;
- (f) for two consecutive Board meetings or at least four Board meetings over a consecutive 12 month period, is absent without permission of the Board;
- (g) is disqualified from managing a corporation, within the meaning of the Corporations Act; or
- (h) is disqualified by the Australian Charities and Not-for-profit Commissioner at any time during the preceding 12 months from being a Director of the Company under the ACNC Act.

17.12 Less than minimum number of Directors

The continuing Directors may act despite any vacancy in their body. If the number falls below the minimum number fixed in accordance with this Constitution, the Directors may act only:

- (a) to appoint Directors up to that minimum number;

- (b) to call a general meeting; or
- (c) in emergencies.

18. Appointment and removal of office bearers

18.1 Election of Chairperson

The Directors must elect from among their number a Chairperson of their meetings and may determine the period for which each is to hold office.

18.2 Election of other officers

The Directors may elect from among their number such other officers as determined by the Directors from time to time and may determine the period for which each is to hold office.

18.3 Secretary

The Secretary will be appointed by the Board for such term, at such remuneration and upon such conditions as it thinks fit. Any Secretary so appointed may be removed by the Board.

18.4 Chief Executive Officer

- (a) The Board may from time to time appoint a person to the position of CEO for the period and on the terms (including as to remuneration) as the Board see fit, provided always that the CEO:
 - (i) must be appointed on a full-time basis; and
 - (ii) cannot be a Director for for a period of 3 years in accordance with clause 17.2(a)(vi),

but, where the CEO is absent from duty or from Australia or is (in the Board's determination) incapable of acting as the CEO, the Board may appoint another person to act temporarily as CEO.
- (b) Subject to the law, the Board may terminate the appointment of the CEO and, for the avoidance of doubt, the Company in General Meeting has no power to terminate the appointment of the CEO or to appoint a person to the position of CEO.
- (c) A person's appointment as a Director automatically terminates if he or she is appointed as CEO.

19. Proceedings of Directors

19.1 Mode of meeting

- (a) The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.
- (b) Without limiting the general power conferred on the Directors by the provisions of this clause, a meeting of Directors may be held using any means of audio or audio-visual communication, by which each Director participating can hear and be heard by each other Director participating or in any other means using any technology consented to by all the Directors. Such consent to the use of technology may be a standing consent

and a Director may only withdraw their consent within a reasonable period before a meeting.

- (c) A meeting of the Directors held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the Chairperson of the meeting is located.

19.2 Quorum

A quorum of the Board comprises four Directors or such other number determined by the Directors from time to time.

19.3 Directors or Secretary calling a meeting

A Director may at any time, and a Secretary must on the requisition of a Director, call a meeting of the Directors to be held at such time and place as the Director chooses.

19.4 Notice of meeting

Notice of each meeting of the Directors:

- (a) may be given by such means as is convenient, including by email or electronic transmission; and
- (b) must be given to all Directors.

19.5 Recipients of notice

For the purposes of the preceding clause, the accidental omission to give notice of any meeting of the Directors to, or the non-receipt of any such notice by, a person entitled to receive that notice does not invalidate the calling of the meeting or any resolution passed at any such meeting.

19.6 Appointment of chairperson

Where a Directors' meeting is held and a chairperson has not been elected in accordance with clause 18.1 or the Chairperson is not present within 15 minutes after the time appointed for holding of the Directors' meeting or is unwilling to act, the Directors present must elect one of their number to be a chairperson of the Directors' meeting.

19.7 Votes of Directors

- (a) Subject to this Constitution, questions arising at any meeting of the Board will be decided by a majority of votes. Each Director has one vote. A determination by a majority of the Directors will for all purposes be deemed a determination of the Board. In case of an equality of votes, the chairperson of the meeting will have a second or casting vote.
- (b) Despite anything in this clause, a Director's entitlement to vote, or be present, at a meeting of the Directors, where a Director who has a material personal interest in a matter that is being considered at the meeting, is restricted in accordance with section 195 of the Corporations Act (and every other mandatory law) as may apply from time to time to the Company.

19.8 Circular resolution of Directors

If all the Directors entitled to receive notice of a meeting of the Directors and to vote on a resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a resolution of the Directors in those terms is passed at the time when the last Director signs. If the Directors sign the documents on different days, then a resolution is treated as having been passed on the day on which the document was last signed by a Director. A resolution is not treated as passed on that day if the document, by its terms, is said to take effect from an earlier date. Two or more separate copies of a document may be used for signing by the directors if the wording of the resolution and statement is identical in each copy. A facsimile or electronic message containing the text of the document expressed to have been signed or agreed by a Director that is sent to the Company is deemed to be a document signed by that Director at the time of its receipt by the Company.

19.9 Deemed minute

The document or documents referred to in clauses 19.7 and 19.8 are treated as constituting a minute of that meeting and must be entered in books kept for that purpose.

19.10 Validity of acts of Directors

All acts done in respect of any meeting of:

- (a) the Directors;
- (b) a committee of Directors;
- (c) other persons or by any person acting as a Director; or
- (d) any person purporting to act as an attorney under power of the Company,

are, despite the fact that it may later be discovered that there was some defect in the appointment or continuance in office of such Director, person or attorney so acting or that they or any of them were disqualified or were not entitled to vote, as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Director or attorney and was entitled to vote.

20. Director's contracts with Company

20.1 Director's contracts and conflicts of interest

In relation to Director's contracts and conflicts of interest, but subject at all times to clause 5:

- (a) despite any rule of law or equity to the contrary, no Director is disqualified by that office from contracting with the Company;
- (b) any such contract, or any contract entered into by or on behalf of the Company in which any Director is in any way interested, is not avoided;
- (c) any Director so contracting or being so interested is not liable to account to the Company for any profit realised by any such contract by reason only of such Director holding that office or of the fiduciary relationship thereby established;
- (d) the nature of the Director's interests must be disclosed by that Director at the meeting of the Directors at which the contract is decided on if that interest then exists and has not previously been disclosed. In any other case it must be disclosed at the first meeting of the Directors after the acquisition of those interests; and

- (e) a Director may not vote in that capacity in respect of any contract or arrangements in which the Director is interested if prohibited by either of the Acts from doing so. However, such Director may, despite that interest, participate in the execution of any instrument by or on behalf of the Company, whether through signing or sealing it or otherwise.

20.2 Notice of interest

A general notice given to the Directors by any Director in accordance with the Corporations Act and to the effect that he or she:

- (a) is an officer or a member of, or interested in, any specified firm or body corporate; and
- (b) is to be regarded as interested in all transactions with such firm or body,

is sufficient disclosure as required by the Corporations Act as regards such Director and those transactions. After such general notice it is not necessary for such Director to give any special notice relating to any transaction with such firm or body.

21. Powers and duties of Directors

21.1 Powers generally

Subject to the Acts and to any other provisions of this Constitution, the management and control of the Company and of the business and affairs of the Company is vested in the Board who may exercise all such powers of the Company and do all such acts or things not expressly required by this Constitution or by the Acts to be exercised or done by a General Meeting. No resolution passed by a General Meeting invalidates any prior act of the Directors which would have been valid if that resolution had not been adopted or passed.

21.2 Borrowing

The Directors have the power to raise or borrow any sum of money and to secure the payment or repayment of such money and any other obligation or liability of the Company in such manner and on such terms as they think fit. This includes upon the security of any mortgage.

21.3 Execution of negotiable instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company may be signed, drawn, accepted, endorsed or otherwise executed as the case may be, in such manner as the Directors at any time determine.

21.4 Delegation

- (a) The Directors may at any time confer upon any Director, or such other person as they may select, such of the powers exercisable under the Constitution by the Directors for such time as they may think fit and to be exercised for such objects and purposes as they think expedient.
- (b) They may confer such powers whether collaterally with, or to the exclusion of and in substitution for, all or any of the powers of the Directors in that respect.
- (c) They may at any time revoke, withdraw, alter or vary all or any of such powers.
- (d) Such powers may be granted by power of attorney or by any other lawful means but must be in writing and must be recorded in the Company's minute book.

- (e) Such powers may be granted upon such terms and with such restrictions as the Directors think appropriate.

21.5 Validity of acts

Despite anything contained in this Constitution, if it is found that some formality required by this Constitution to be done has been inadvertently omitted or has not been carried out, such omission does not invalidate any resolution, act, matter or thing which but for such omission would have been valid.

22. Committees

22.1 Delegation to committee

- (a) The Board may from time to time establish such committees as it sees fit to assist it in carrying out its functions.
- (b) The Directors may:
 - (i) delegate in writing any of their powers to committees consisting of such one or more persons, whether Directors or not, as they think fit; or
 - (ii) establish advisory committees (or other similar committees) not having delegated authority or powers.
- (c) At least one Director must be a member of any committee established by the Board.

22.2 Committee powers

- (a) The Directors may determine from time to time the functions, purpose and objectives of each committee.
- (b) Any committee so formed or persons appointed to those committees must, in the exercise of the powers so delegated, or functions entrusted, conform to any regulations that may at any time be imposed by the Directors.

22.3 Committee meetings

A chairperson must be nominated for any committee established and that chairperson must be a Director. The meetings and proceedings of any committee must, to the extent possible, be conducted in accordance with the rules of meetings of Directors.

23. Minutes

The Board will cause minutes to be made:

- (a) of all appointments of statutory officers;
- (b) of all delegations;
- (c) of names of Directors present at all meetings of the Company and of the Board; and
- (d) of all proceedings at all meetings of the Company and of the Board and its committees.

Such minutes must be signed by the chairperson of the relevant meeting or the chairperson of the next meeting of the relevant body.

24. Accounts and audit

24.1 Distribution of documents

The Board will cause proper accounting and other books of account to be kept and will distribute to the Members with the notice of the Annual General Meeting all accounts and other documents required by law to be so distributed in accordance with relevant legislation and the Board will table at each Annual General Meeting all accounts and other documents required by law to be tabled. Accounts may be distributed by post, electronic mail or be made available on the Company's website.

24.2 Inspection

The Board will determine in accordance with this clause at what times and places, under what conditions or regulations the accounting and other records of the Company will be open to the inspection of Members of the Company and no Member (not being a Director) will have any right of inspecting any accounts or documents of the Company, except as conferred by law or authorised by the Board or by the Company in general meeting.

24.3 Audit

The Company must in accordance with the Acts and any State or Territory legislation applicable to registration of charities, or charitable fundraising arrange for the accounts to be audited in accordance with the Acts and the applicable State or Territory legislation.

25. Notices

25.1 Service of notices

Where this Constitution, the Acts or other legislation require or permit a document to be served on, given or sent to any person, whether any such expression or any other expression is used (in this clause referred to as **served**), the document may be served on the person:

- (a) by delivering it to the person personally;
- (b) by sending it, whether by post, contractor, agent, electronic means or otherwise, to:
 - (i) the address of the place of residence last notified and recorded by the Company as entered on the Register; or
 - (ii) the facsimile or email address of the Member as entered in the Register.

25.2 Date of deemed service

A document served under clause 25.1 is treated as having been duly served, regardless of whether it is actually received:

- (a) where delivered personally – on the day of delivery; and
- (b) where sent by post or electronic means - on the day following the day when dispatch occurred.

25.3 Signature

The signature to any document to be given by the Company may be written, printed or stamped personally or electronically.

26. Indemnity

26.1 Indemnity for officers

To the extent that the Acts allow it, each Officer of the Company and each Officer of a related body corporate of the Company, must be indemnified by the Company against any liability incurred by that person in that capacity.

26.2 Insurance premiums

- (a) The Company may at any time pay premiums in respect of a contract insuring a person (whether with others or not) who is an Officer of the Company against a liability incurred by the person.
- (b) The liability insured against may not include that which the Acts prohibit.
- (c) Any such premium in relation to a Director is not to be regarded as any remuneration under this Constitution or otherwise.

27. Alteration of Constitution

This Constitution may only be amended, added to, or rescinded by a Special Resolution of the Company.

Schedule 1 – Members

1. Ordinary Members

- (a) Michael O'Dea
- (b) Rhonda Eileen Bell
- (c) Keith Addington Symonds
- (d) Anthony John Borger
- (e) Michael Gill
- (f) Peter Michael Antaw
- (g) William Odillo Maher
- (h) Stephen Barbour
- (i) Elisabeth Hall
- (j) Paul David McPherson
- (k) David John Rothery
- (l) Therese Adami

2. Non-Voting Members

- (a) The Parish Priest, or acting Parish Priest or administrator, for the time being of the Catholic Parish of St Mary's North Sydney, in the State of New South Wales; and
- (b) North Sydney Council, constituted under the *Local Government Act 1993 (NSW)*.

Schedule 2 – Directors

1. Rhonda Eileen Bell
2. Keith Addington Symonds
3. Peter Michael Antaw
4. Paul David McPherson
5. David John Rothery
6. Therese Adami



EXPRESSIONS OF INTEREST FOR NON-EXECUTIVE DIRECTORS – NORTH SYDNEY RETIREMENT TRUST

The North Sydney Retirement Trust (“NSRT”) Board oversees the operations of the James Milson Retirement Village (“JMV”) at North Sydney.

James Milson Village has been in operation for over 43 years and provides care for circa 250 residents across:

- Independent Living
- Ageing in Place (low care / hostel)
- Ageing in Place (acute/high care, Nursing Home)
- Special needs (Dementia specific, Dementia Secure)
- Respite Care
- Palliative care

The NSRT is a Not for Profit Company, Limited by Guarantee, a registered charity (ACNC) and Public Benevolent Institution. Our key Stakeholders are North Sydney Council, the Catholic Parish of North Sydney, and the Community.

Our vision is “To be, and be recognised as, a centre of excellence in the delivery of care for the frail and aged, treating each individual with integrity, commitment and respect.”

We are currently seeking expressions of interest from the Community for up to (4) four new Non-Executive Directors for our Board. We are looking for particular capabilities / experience in the following areas:

- Aged care experience – operations, policy and strategy
- Clinical governance – medical, nursing and allied health
- Pastoral care

It is envisaged, that the role will require at least 12 days (taking into account time for preparation for meetings) to be allocated to it per year, undertaking:

- i. Regular attendance of scheduled Board meetings either in person or by phone.
- ii. Attend special board meetings that may be called on an ad hoc basis to discuss strategy and special items.
- iii. Sitting on specially constituted committees which may be convened from time to time.

The positions are voluntary. Successful applicants will need to be able to supply a recent Police Criminal Record Check.

Please send your expression of interest – together with supporting credentials – to General Manager, North Sydney Council (council@northsydney.nsw.gov.au).

Enquiries can be made to Martin Ellis on 02 9936 8184 or Paul McPherson on 0411 428 734.

Ross McCreanor
Acting General Manager
North Sydney Council

Paul McPherson
Chairman
North Sydney Retirement Trust