

## Constitution of Brisbane Housing Company Limited

A company limited by shares

Incorporated in Queensland

Adopted: 04/07/2002

Amended: 21/05/2013 and 25/11/2014

Allens  
Riverside Centre  
123 Eagle Street  
Brisbane QLD 4000  
Tel +61 7 3334 3000  
Fax +61 7 3334 3444  
[www.allens.com.au](http://www.allens.com.au)

© Allens, Australia 2014

**Contents**

<b>1</b>	<b>Definitions</b>	<b>1</b>
<b>2</b>	<b>Interpretation</b>	<b>1</b>
<b>3</b>	<b>Replaceable Rules</b>	<b>2</b>
<b>4</b>	<b>Actions Authorised under the Corporations Act and Compliance with the Corporations Act</b>	<b>2</b>
<b>5</b>	<b>Objects</b>	<b>2</b>
<b>6</b>	<b>Application of income and property</b>	<b>3</b>
<b>7</b>	<b>Obligation of Directors to Issue Securities</b>	<b>4</b>
<b>8</b>	<b>Brokerage and Commission</b>	<b>4</b>
<b>9</b>	<b>Recognition of Third Party Interests</b>	<b>4</b>
<b>10</b>	<b>Register of Debenture Holders: Suspension</b>	<b>4</b>
<b>11</b>	<b>Share Certificates</b>	<b>4</b>
<b>12</b>	<b>Form of share certificates</b>	<b>5</b>
<b>13</b>	<b>Worn Out or Defaced Share Certificates</b>	<b>5</b>
<b>14</b>	<b>Lien on Shares</b>	<b>5</b>
<b>15</b>	<b>Exercise of Lien</b>	<b>5</b>
<b>16</b>	<b>Completion of Sale</b>	<b>6</b>
<b>17</b>	<b>Application of Proceeds of Sale</b>	<b>6</b>
<b>18</b>	<b>Directors' Power to Make Calls</b>	<b>6</b>
<b>19</b>	<b>Making calls</b>	<b>6</b>
<b>20</b>	<b>Liability of Joint Holders for Calls</b>	<b>6</b>
<b>21</b>	<b>Interest on Unpaid Amounts</b>	<b>6</b>
<b>22</b>	<b>Fixed Sums Taken to be Called</b>	<b>7</b>
<b>23</b>	<b>Differentiation Between Holders</b>	<b>7</b>
<b>24</b>	<b>Prepayments of Calls</b>	<b>7</b>
<b>25</b>	<b>Transferability of Certificated Shares</b>	<b>7</b>
<b>26</b>	<b>Registration of Transfers</b>	<b>7</b>
<b>27</b>	<b>Restriction on transferability</b>	<b>7</b>
<b>28</b>	<b>Suspension of Transfers</b>	<b>8</b>
<b>29</b>	<b>Liability to Forfeiture</b>	<b>8</b>
<b>30</b>	<b>Surrender of Shares</b>	<b>8</b>
<b>31</b>	<b>Power to Forfeit</b>	<b>8</b>
<b>32</b>	<b>Powers of Directors</b>	<b>8</b>
<b>33</b>	<b>Consequences of Forfeiture</b>	<b>9</b>
<b>34</b>	<b>Notice of Forfeiture</b>	<b>9</b>
<b>35</b>	<b>Evidentiary Matters</b>	<b>9</b>
<b>36</b>	<b>Transfers after Forfeiture and Sale</b>	<b>9</b>
<b>37</b>	<b>Fixed Amounts Taken to be Calls</b>	<b>10</b>
<b>38</b>	<b>Power of Directors to Convene</b>	<b>10</b>
<b>39</b>	<b>Notice of General Meetings</b>	<b>10</b>
<b>40</b>	<b>Business of General Meetings</b>	<b>10</b>
<b>41</b>	<b>Quorum</b>	<b>10</b>
<b>42</b>	<b>If Quorum not Present</b>	<b>10</b>
<b>43</b>	<b>Chair of Meetings</b>	<b>11</b>
<b>44</b>	<b>Adjournments</b>	<b>11</b>

<b>45</b>	<b>Voting at General Meetings</b>	<b>11</b>
<b>46</b>	<b>Procedure for Polls</b>	<b>11</b>
<b>47</b>	<b>Representation and Voting of Members</b>	<b>12</b>
<b>48</b>	<b>Joint Holders</b>	<b>12</b>
<b>49</b>	<b>Restriction on Voting Rights - Unpaid Amounts</b>	<b>12</b>
<b>50</b>	<b>Objections to Qualification to Vote</b>	<b>12</b>
<b>51</b>	<b>Appointment of Proxies</b>	<b>12</b>
<b>52</b>	<b>Form of Proxy</b>	<b>12</b>
<b>53</b>	<b>Lodgement of Proxies</b>	<b>13</b>
<b>54</b>	<b>Validity of Proxies</b>	<b>13</b>
<b>55</b>	<b>Where Proxy is Incomplete</b>	<b>13</b>
<b>56</b>	<b>Right of Officers and Advisers to Attend General Meeting</b>	<b>14</b>
<b>57</b>	<b>Appointment</b>	<b>14</b>
<b>58</b>	<b>No Share Qualification</b>	<b>14</b>
<b>59</b>	<b>Management</b>	<b>14</b>
<b>60</b>	<b>Appointment of Attorneys</b>	<b>14</b>
<b>61</b>	<b>Negotiable Instruments</b>	<b>14</b>
<b>62</b>	<b>Convening meetings</b>	<b>15</b>
<b>63</b>	<b>Interested Directors</b>	<b>15</b>
<b>64</b>	<b>Defects in appointment</b>	<b>16</b>
<b>65</b>	<b>Secretary</b>	<b>16</b>
<b>66</b>	<b>Other Officers</b>	<b>16</b>
<b>67</b>	<b>Seals and their use</b>	<b>16</b>
<b>68</b>	<b>Inspection of Records</b>	<b>17</b>
<b>69</b>	<b>Notices Generally</b>	<b>17</b>
<b>70</b>	<b>Notices of General Meeting</b>	<b>18</b>
<b>71</b>	<b>Joint Holders</b>	<b>18</b>
<b>72</b>	<b>Winding Up</b>	<b>19</b>
<b>73</b>	<b>Indemnity and Insurance</b>	<b>20</b>
<b>74</b>	<b>Transfer of Gifts on Revocation of Endorsement</b>	<b>21</b>

## GENERAL

### 1 Definitions

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

**Brisbane City** means the area within the boundaries of the City of Brisbane in the State of Queensland.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Brisbane City.

**Community Shareholder** has the same meaning as in the Shareholders' Agreement.

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

**Company** means Brisbane Housing Company Limited, the company to which this Constitution applies.

**Director** means a person appointed or elected to the office of director of the Company in accordance with the Shareholders' Agreement and includes any alternate director duly acting as a director.

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

**Independent Chair** has the same meaning as in the Shareholders' Agreement.

**Member Present** means, in connection with a meeting, the member present in person at the venue or venues for the meeting or by proxy, by attorney and, where the member is a body corporate, by representative.

**Ordinary Shareholder** has the same meaning as in the Shareholders' Agreement.

**Prescribed Rate** means, at a relevant time, the *Westpac Indicator Lending Rate* published by Westpac Banking Corporation or its successor (the **Bank**), or if such rate is no longer published, the rate which the principal officer of the Bank in the State of Queensland for the time being states to be the indicator rate most closely resembling that original indicator rate.

**Related Entity** has the same meaning as in the Shareholders' Agreement.

**Seal** means any common seal or duplicate common seal of the Company.

**Shareholders' Agreement** means the agreement so entitled, initially between The Queensland Housing Commission, a corporation sole under section 9(2) of the *State Housing Act 1945*, and Brisbane City Council and dated 4 July 2002, and to which the Company has acceded as a party, relating to certain rights and obligations of the parties, as that agreement may be varied from time to time (including by the addition of other parties).

**State** has the same meaning as in the Shareholders' Agreement.

### 2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

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

- (d) A reference to a paragraph or sub-paragraph is to a paragraph or sub-paragraph, as the case may be, of the clause or paragraph, respectively, in which the reference appears.
- (e) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (f) Deleted
- (g) Except in so far as a contrary intention appears in this constitution, an expression has, in a provision of this constitution which relates to a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.
- (h) The provisions of the Shareholders' Agreement are intended to be read in conjunction with, and form part of this constitution.
- (i) Subject to the Corporations Act, where there is an inconsistency between the Shareholders' Agreement and this constitution, the Shareholders' Agreement prevails.

### **3 Replaceable Rules**

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

### **4 Actions Authorised under the Corporations Act and Compliance with the Corporations Act**

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

## **OBJECTS**

### **5 Objects**

The objects for which the Company is established are:

- (a) to be a public benevolent institution;
- (b) to be a charitable institution;
- (c) to promote the relief of poverty by providing affordable Housing to people in the State of Queensland who are in need, including members of low income households;
- (d) to provide equitable, non-discriminatory access to Housing in the State of Queensland, on the basis of and with priority graded to meet identified need;
- (e) to offer secure rental tenure to tenants who meet their tenancy obligations;
- (f) to provide an alternative Housing option to other social, community and private sector Housing providers in the State of Queensland, and so develop, within a total asset management environment, a range of Housing models and services to meet the varying and changing needs of the Company, clients and the community generally;
- (g) to provide cost-effective and efficient Housing management in the State of Queensland, while providing well maintained Housing as part of the delivery of a timely, quality client service;
- (h) to promote and seek to provide quality living environments and Housing forms that reflect cultural and community values, energy efficiency and ecologically sustainable development, cost effectiveness, and access to community and retail services, transport and employment opportunities;

- (i) to develop and support a variety of consumer participation choices that offer meaningful involvement for the community and tenants in the management of the Company's rental Housing;
- (j) to work with existing local communities, other service providers, charities and all spheres of government to develop an integrated, co-ordinated and co-operative approach to Housing issues;
- (k) to become and remain financially self sufficient and managed prudently in accordance with good commercial practice;
- (l) to be accountable to government and the community for property assets and funds provided to the Company; and
- (m) to report regularly on the Company's policies and performance and make these reports readily available within the wider community.

The Company is established to fulfil the foregoing objects with an initial and continuing focus on Brisbane City. However, nothing precludes the Company from pursuing such objects in any other location in the State of Queensland provided that the Directors have determined in good faith that doing so will not adversely impact on the aggregate value or nature of or otherwise imperil the continued ownership by the Company of its assets in Brisbane City.

## INCOME AND PROPERTY

### 6 Application of income and property

- (a) Subject to paragraph (b), the profits (if any) or other income and property of the Company must be applied solely towards the promotion of the objects of the Company in clause 5, and no portion of it may be paid or transferred, directly or indirectly, to any member of the Company whether by way of dividend, bonus or otherwise.
- (b) Nothing in paragraph (a) prevents any payment in good faith by the Company of:
  - (i) reasonable and proper remuneration to any member for any services actually rendered or real property or goods supplied to the Company in the ordinary and usual course of business;
  - (ii) the payment or reimbursement of out-of-pocket expenses incurred by a member of the Company on behalf of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
  - (iii) reasonable and proper rent for premises leased by any member of the Company to the Company;
  - (iv) payment to any member, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Directors and where the amount payable is approved by the Directors and is not more than reasonable payment for the service; or
  - (v) interest on money borrowed from members of the Company in accordance with the Shareholders' Agreement.

## CAPITAL

### 7 Obligation of Directors to Issue Securities

- (a) The Directors must from time to time issue any share or option over a share or other security of the Company for such consideration and with such preferred, deferred or other special rights or such restrictions, whether with regard to dividends, voting, return of capital, payment of calls or otherwise, as required in the Shareholders' Agreement.
- (b) Paragraph (a) has effect without prejudice to any special rights conferred on the holders of any issued shares, options or other securities.

### 8 Brokerage and Commission

- (a) The Company may exercise the powers to pay brokerage or commission conferred by the Corporations Act in the manner provided by the Corporations Act.
- (b) The brokerage or commission may be satisfied by:
  - (i) the payment of cash;
  - (ii) the allotment of fully or partly paid shares; or
  - (iii) partly by the payment of cash and partly by the allotment of fully or partly paid shares.

### 9 Recognition of Third Party Interests

- (a) Except as required by law, the Company shall not recognise a person as holding a share on any trust.
- (b) Whether or not it has notice of the rights or interests concerned, the Company is not bound to recognise:
  - (i) any equitable, contingent, future or partial interest in any share or unit of a share; or
  - (ii) any other right in respect of a share,except an absolute right of ownership of the member or as otherwise provided by this constitution or by law.

### 10 Register of Debenture Holders: Suspension

If at any time the Company has issued debentures and keeps a register of debenture holders, the Company may close its register of debenture holders during a period or periods not exceeding in aggregate 30 days in any calendar year.

## CERTIFICATES FOR SHARES

### 11 Share Certificates

- (a) Unless the Directors otherwise determine, a person whose name is entered as a member in the register of members is entitled without payment to receive a certificate in respect of the member's shares.
- (b) The Company is not bound to issue more than one certificate in respect of a share or shares held jointly by several persons.
- (c) Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all of the joint holders.

**12 Form of share certificates**

Any certificate for shares shall be in a form that the Directors from time to time decide and must contain details of:

- (a) the name of the Company and the state in which it is registered;
- (b) the class of the shares; and
- (c) the amount paid and unpaid on the shares.

**13 Worn Out or Defaced Share Certificates**

- (a) Subject to paragraph (b) the provisions of the Corporations Act with respect to certificates which are lost or destroyed shall apply to certificates which are worn out or defaced. The Directors may exercise all the powers in relation to certificates, which are lost, destroyed, worn out or defaced as are exercisable by the Company or its Directors under the Corporations Act in relation to certificates that are lost or destroyed.
- (b) The Company:
  - (i) shall issue a certificate in replacement of a worn out or defaced certificate only if the Directors have not resolved not to issue further share certificates, and if certificate to be replaced is received by the Company for cancellation and is cancelled; and
  - (ii) may require the payment of any amount as the Directors determine in connection with the issue of a replacement certificate.

**LIEN ON SHARES****14 Lien on Shares**

- (a) The Company has a first and paramount lien on every share for:
  - (i) any amount due and unpaid in respect of the share which has been called or is payable at a fixed time (whether presently payable or not);
  - (ii) all amounts that the Company may be called on by law to pay in respect of the share.
- (b) The Directors may at any time exempt a share wholly or in part from the provisions of this clause.

**15 Exercise of Lien**

- (a) Subject to paragraph (b), the Company may sell any shares on which the Company has a lien, in the manner that the Directors think fit. However the sale can only be to a person who is or is entitled to be a Shareholder in accordance with the Shareholders' Agreement.
- (b) A share on which the Company has a lien shall not be sold unless:
  - (i) a sum in respect of which the lien exists is payable; and
  - (ii) at least 14 days before the date of the sale, the Company has given to the registered holder of the share a notice in writing demanding payment of the sum.

**16 Completion of Sale**

- (a) For the purpose of giving effect to a sale of shares under lien pursuant to clause 15, the Directors may authorise a person to do everything necessary to transfer the shares sold to the purchaser of the shares.
- (b) The Company must register the purchaser as the holder of the shares comprised in any transfer, after which the validity of the sale may not be impeached by any person, and the purchaser is not bound to see to the application of the purchase money.
- (c) The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.
- (d) The remedy of any person aggrieved by any sale shall be in damages only and against the Company exclusively.

**17 Application of Proceeds of Sale**

The proceeds of a sale made under a lien pursuant to clause 16 shall be applied by the Company in payment of the part of the amount in respect of which the lien exists as is presently payable. Any residue shall (subject to any like lien for sums not presently payable that existed on the shares before the sale) be paid to the person entitled to the shares immediately prior to the sale.

**CALL ON SHARES****18 Directors' Power to Make Calls**

- (a) The Directors may make calls on the members in respect of any money unpaid on the shares of the members (whether on account of the nominal value of the shares or by way of premium) which is not by the terms of issue of those shares made payable at fixed times.
- (b) Each member shall, on receiving at least 14 days' notice specifying the time or place of payment, pay to the Company at the time and place so specified the amount called on the member's shares.
- (c) The Directors may revoke or postpone a call.

**19 Making calls**

- (a) A call may be required to be paid by instalments.
- (b) A call is made at the time when the resolution of the Directors authorising the call is passed.
- (c) The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any member shall not invalidate the call.

**20 Liability of Joint Holders for Calls**

The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

**21 Interest on Unpaid Amounts**

If a sum called or otherwise payable to the Company in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at a rate determined by the Directors but not exceeding the Prescribed Rate together with

expenses incurred by the Company by reason of non-payment, but the Company may waive payment of that interest wholly or in part.

## **22 Fixed Sums Taken to be Called**

Any sum that, under the terms of issue of a share, becomes payable on allotment or at a fixed date (whether on account of the nominal value of the share or by way of premium) shall, for the purposes of this constitution, be taken to be a call duly made and payable on the date on which under the terms of issue the sum becomes payable and, if not paid when due, all the provisions of this constitution relating to payment of interest and expenses, forfeiture or otherwise apply as if that sum had become payable by virtue of a call duly made and notified.

## **23 Differentiation Between Holders**

The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

## **24 Prepayments of Calls**

- (a) The Directors may accept from a member the whole or a part of the amount unpaid on a share even if that amount has not been called.
- (b) The Directors may authorise payment by the Company of interest on the whole or any part of an amount accepted under paragraph (a) until the amount becomes payable, at a rate, not exceeding the Prescribed Rate, which is agreed between the Directors and the member paying the sum.

# **TRANSFER OF SHARES**

## **25 Transferability of Certificated Shares**

- (a) No share may be transferred except in accordance with the Shareholders' Agreement.
- (b) In respect of a share transfer permitted by the Shareholders' Agreement, subject to this constitution and the Corporations Act, the transfer must be by instrument in writing, in any form authorised by the Corporations Act or in any other form that the Directors approve.
- (c) A transferor of shares remains the holder of the shares transferred until the transfer is registered.

## **26 Registration of Transfers**

- (a) The following documents must be lodged for registration at the registered office of the Company or the location of the relevant share register:
  - (i) the instrument of transfer;
  - (ii) the certificate (if any) for the shares; and
  - (iii) any other information that the Directors may require to establish the transferor's right to transfer the shares, including compliance with clause 25(a).
- (b) The Directors may waive compliance with paragraph (a)(ii) on receipt of satisfactory evidence of loss or destruction of the certificate.

## **27 Restriction on transferability**

The Directors must decline to register any transfer of a share unless:

- (a) the requirements of clauses 25 and 26 have been complied with; and

- (b) the transferee has become a party to the Shareholders' Agreement, but otherwise the Directors must register a properly executed transfer.

## **28 Suspension of Transfers**

The registration of transfers of shares may be suspended at any time and for any period as the Directors from time to time decide. The aggregate of those periods shall not exceed 30 days in any calendar year.

## **FORFEITURE OF SHARES**

### **29 Liability to Forfeiture**

- (a) If a member fails to pay a call or instalment of a call on or before the day appointed for payment of the call or instalment, the Directors may, at any time afterwards while any part of the call or instalment remains unpaid, serve a notice on the member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all expenses of the Company incurred as a result of the non-payment.
- (b) The notice must:
  - (i) specify another day (not earlier than 14 days after the date of service of the notice) on or before which and a place at which the payment required by the notice is to be made; and
  - (ii) state that, if payment is not made at or before the time specified, the shares in respect of which the call was made are liable to be forfeited.

### **30 Surrender of Shares**

- (a) Subject to law, the Directors may accept the:
  - (i) surrender of any fully paid share by way of compromise of any question as to the proper registration of the holder or in satisfaction of any payment due to the Company; and
  - (ii) gratuitous surrender of any fully paid share.
- (b) Any share surrendered under paragraph (a) may be disposed of in the same manner as a forfeited share.

### **31 Power to Forfeit**

If the requirements of a notice served under clause 29 are not complied with, any share in respect of which the notice has been given may at any time afterwards, but before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.

### **32 Powers of Directors**

- (a) If the Directors so determine, a forfeited share may be sold or otherwise disposed of on the terms and in the manner that the Directors think fit but only to a person who is or is entitled to be a Shareholder in accordance with the Shareholders' Agreement and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the Directors think fit.
- (b) Any residue from the proceeds of sale of a forfeited share, after satisfaction of any calls or instalments due and unpaid and accrued interest and expenses in respect of that

share, shall be paid to the person entitled to that share at the time of the forfeiture, to the successors or assigns of the person or as the person directs.

### 33 Consequences of Forfeiture

A person whose shares have been forfeited:

- (a) ceases to be a member in respect of the forfeited shares at the time and on the date of the passing of the Directors' resolution approving the forfeiture;
- (b) has no claims or demands against the Company in respect of those shares;
- (c) has no other rights incident to the shares except the rights that are expressly provided by the Corporations Act or saved by this constitution; and
- (d) remains liable to pay to the Company all money that, at the date of forfeiture, was payable by the person to the Company in respect of the shares, including, if the Directors think fit, interest from the date of forfeiture at the Prescribed Rate on the money for the time being unpaid. The Directors may, but shall not be obliged to, enforce the payment of the money or any part of the money for which the member is liable as they think fit.

### 34 Notice of Forfeiture

- (a) Notice of the resolution of forfeiture shall be given to the member in whose name the share was registered immediately before the forfeiture and an entry of the forfeiture and its date shall be made immediately in the register.
- (b) The provisions of paragraph (a) are directory only and the validity of any forfeiture is not affected in any way by any omission to give the notice or to note the entry.

### 35 Evidentiary Matters

Without prejudice to clause 34, a statement in writing by a Director or a secretary of the Company to the effect that:

- (a) a share in the Company has been duly forfeited on a date specified in the statement; or
- (b) a particular sum is payable by a member or former member to the Company as at a particular date in respect of a call or instalment of a call (including interest),

is prima facie evidence of the facts set out in the statement as against all persons claiming to be entitled to the share and against the member or former member who remains liable to the Company under clause 33.

### 36 Transfers after Forfeiture and Sale

- (a) The Company may:
  - (i) receive the consideration (if any) given for a forfeited share on any sale or disposition of the share; and
  - (ii) effect a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (b) On the completion of the transfer, the transferee must be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.
- (c) The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

**37 Fixed Amounts Taken to be Calls**

The provisions of this constitution relating to forfeiture apply in the case of non-payment of any sum that, under the terms of issue of a share, becomes payable at a fixed time, as if that sum had become payable by virtue of a call duly made.

**GENERAL MEETINGS****38 Power of Directors to Convene**

- (a) Any 3 or more Directors may convene a general meeting.
- (b) The same 3 Directors who convene a general meeting may cancel that meeting by notice in writing to all members, except that a meeting convened on the requisition of a member or members shall not be cancelled without the consent of that member or those members.
- (c) The Directors may postpone a general meeting or change the place at which it is to be held by notice not later than 72 hours prior to the time of the meeting to all persons to whom the notice of meeting (the first notice) was given. The postponing notice shall specify the place, date and time of the meeting. The meeting shall be taken to be duly convened under the first notice.

**39 Notice of General Meetings**

- (a) Each notice convening a general meeting shall contain the information required by the Corporations Act and shall specify the place, the day and the hour of the meeting and state the general nature of the business to be transacted at the meeting.
- (b) The non-receipt of a notice convening a general meeting by, or the accidental omission to give notice to, any person entitled to receive notice does not invalidate the proceedings at or any resolution passed at the meeting.

**40 Business of General Meetings**

Unless all members are present as Members Present and agree otherwise, no business shall be transacted at any general meeting except as set out in the notice of meeting.

**41 Quorum**

- (a) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- (b) For a general meeting, a quorum is constituted by:
  - (i) at least one half of the Community Shareholders entitled to vote at the meeting, present as Members Present; and
  - (ii) Ordinary Shareholders entitled to vote at the meeting holding at least two thirds of the Ordinary Shares, present as Members Present.

**42 If Quorum not Present**

If a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) where the meeting is convened on the requisition of members, the proposed meeting shall be dissolved;
- (b) in any other case:

- (i) the meeting stands adjourned to a day and at a time and place as the Directors decide or, if no decision is made by the Directors, to the same day in the next week at the same time and place;
- (ii) notice of the day, the time and the place of the adjourned meeting must be given to all members not less than 2 Business Days before the day of the meeting; and
- (iii) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Members Present shall constitute a quorum and may transact the business for which the meeting was called.

#### **43 Chair of Meetings**

- (a) Subject to paragraph (b), the chair of Directors shall preside as chair at every general meeting.
- (b) Where a general meeting is held and:
  - (i) there is no chair of Directors; or
  - (ii) the chair of Directors is not present within 15 minutes after the time appointed for the meeting or does not wish to act as chair of the meeting,the Members Present shall elect one of their number to be chair of the meeting.
- (c) The chair may exercise a deliberative vote (if applicable) but has no casting vote at a meeting of members.

#### **44 Adjournments**

- (a) The chair of a meeting shall if so directed by any meeting at which a quorum is present adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (b) When a meeting is adjourned, notice of the adjourned meeting shall be given as in the case of an original meeting.

#### **45 Voting at General Meetings**

- (a) Any resolution to be considered at a general meeting shall be decided on a show of hands, unless a poll is demanded whether before or after the declaration of the result of the show of hands.
- (b) Unless a poll is so demanded, a declaration by the chair that a resolution has on a show of hands been carried or lost and an entry to that effect in the minutes of the meeting shall be taken as conclusive evidence of the fact without the need to show the number or proportion of the votes recorded in favour of or against the resolution.
- (c) A poll for a resolution may be demanded by at least 5% of Members Present and entitled to vote on the resolution. The demand for a poll may be withdrawn.
- (d) A poll may not be demanded on the election of a chair or on a resolution for adjournment.

#### **46 Procedure for Polls**

- (a) A poll when demanded shall be taken in the manner and at the time the chair directs.
- (b) The result of the poll shall be a resolution of the meeting at which the poll was demanded.
- (c) The demand for a poll shall not prevent a meeting from continuing for the transaction of any business other than that on which a poll has been demanded.

**47 Representation and Voting of Members**

Subject to any rights or restrictions for the time being attached to any class or classes of shares:

- (a) at meetings of members or classes of members each member entitled to attend and vote may attend and vote in person or by proxy, or attorney and (where the member is a body corporate) by representative;
- (b) on a show of hands, every Member Present having the right to vote at the meeting has one vote; and
- (c) on a poll, every Member Present having the right to vote at the meeting has one vote for each fully paid share.

**48 Joint Holders**

Where more than one joint holder votes, the vote of the holder whose name appears earliest in order in the register of members shall be accepted to the exclusion of the others whether the vote is given personally, by attorney or by proxy.

**49 Restriction on Voting Rights - Unpaid Amounts**

A member is not entitled to attend or vote at a general meeting unless all calls and other sums presently payable by the member in respect of shares in the Company have been paid.

**50 Objections to Qualification to Vote**

- (a) An objection to the qualification of a person to vote may be raised only at the meeting or adjourned meeting at which the vote objected to is tendered.
- (b) Any objection shall be referred to the chair of the meeting, whose decision shall be final.
- (c) A vote allowed after an objection shall be valid for all purposes.

**51 Appointment of Proxies**

- (a) A member entitled to cast 1 vote may appoint 1 proxy. A member entitled to cast 2 or more votes may appoint not more than 2 proxies. A proxy need not be a member.
- (b) If a member appoints 2 proxies, neither proxy is entitled to vote on a show of hands.
- (c) A member may not appoint an Independent Chair (whether acting as chair of the meeting or not) as a proxy.

**52 Form of Proxy**

- (a) An instrument appointing a proxy must:
  - (i) be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing; or
  - (ii) if the appointor is a corporation, be either under seal or under the hand of a duly authorised officer or attorney.
- (b) A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- (c) An instrument appointing a proxy may be in any form that the Directors may accept or stipulate.
- (d) If an instrument appointing 2 proxies does not specify the proportion of the member's voting rights each proxy is entitled to represent, each proxy shall exercise the proportion of voting rights specified by the Corporations Act.

- (e) Despite clause 48, where an instrument of proxy is signed by all of the joint holders of any shares, the votes of the proxy so appointed must be accepted in respect of those shares to the exclusion of any votes tendered by a proxy for any one of those joint holders.

### **53 Lodgement of Proxies**

- (a) For an instrument appointing an attorney to act on behalf of a member at all meetings of the Company (or at all meetings for a specified period) to be effective the following documents must be received by the Company not less than 48 hours (or any shorter period as the Directors may permit) before the commencement of the meeting or adjourned meeting at which the attorney proposes to vote:
  - (i) the power of attorney or a certified copy of that power of attorney; and
  - (ii) any evidence that the Directors may require of the validity and non-revocation of that power of attorney.
- (b) For the purposes of this paragraph, the Company receives these documents when they are received at any of the following:
  - (i) the Company's registered office;
  - (ii) a fax number at the Company's registered office; or
  - (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting.

### **54 Validity of Proxies**

- (a) A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:
  - (i) the previous death, unsoundness of mind, liquidation, administration or incapacity of the principal;
  - (ii) the revocation of the instrument (or of the authority under which the instrument was executed) or the power; or
  - (iii) the transfer of the share in respect of which the instrument or power is given, if no notice in writing of the death, unsoundness of mind, liquidation, administration or incapacity, revocation or transfer has been received by the Company at its registered office not less than 48 hours (or any shorter period as the Directors may permit) before the commencement of the meeting, or adjourned meeting at which the instrument is used or the power is exercised.
- (b) A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.
- (c) A proxy is revoked if the proxy becomes an Independent Chair.

### **55 Where Proxy is Incomplete**

- (a) Subject to paragraph (b), no instrument appointing a proxy is treated as invalid merely because it does not contain:
  - (i) the address of the appointor or of a proxy;
  - (ii) the proxy's name or the name of the office held by the proxy; or

- (iii) in relation to any or all resolutions, an indication of the manner in which the proxy is to vote.
- (b) Where the instrument does not specify the name of a proxy, the instrument is taken to be given in favour of the chair of the meeting unless the chair is an Independent Chair in which case the proxy is treated as invalid.

## **56 Right of Officers and Advisers to Attend General Meeting**

- (a) A Director who is not a member shall be entitled to be present and to speak at any general meeting.
- (b) A secretary who is not a member shall be entitled to be present and, at the request of the chair, to speak at any general meeting.
- (c) Any other person (whether a member or not) requested by the Directors to attend any general meeting shall be entitled to be present and, at the request of the chair, to speak at that general meeting.

## **DIRECTORS**

### **57 Appointment**

The number, method of appointment and removal, powers and remuneration of Directors shall be as specified in the Shareholders' Agreement.

### **58 No Share Qualification**

Directors are not required to hold shares in the capital of the Company.

## **POWERS OF DIRECTORS**

### **59 Management**

Subject to the Corporations Act, this constitution and the Shareholders' Agreement, the business of the Company shall be managed by the Directors.

### **60 Appointment of Attorneys**

- (a) The Directors may, by power of attorney, appoint any person to be the attorney of the Company for the purposes, with the powers, authorities and discretions vested in or exercisable by the Directors for any period and subject to any conditions as they think fit.
- (b) Any appointment under paragraph (a) may be made on terms for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

### **61 Negotiable Instruments**

All negotiable instruments of the Company shall be executed by the persons and in the manner the Directors decide from time to time.

## PROCEEDINGS OF DIRECTORS

### 62 Convening meetings

The Directors call and conduct meetings and otherwise regulate their procedures in accordance with the Shareholders' Agreement.

### 63 Interested Directors

- (a) A Director is not disqualified by the Director's office from contracting with the Company or any Related Entity in any capacity by reason of holding of the office of Director.
- (b) In relation to a contract or arrangement in which a Director has a material personal interest:
  - (i) the fact that the Director signed the document evidencing the contract or arrangement will not in any way affect its validity;
  - (ii) a contract or arrangement made by the Company or any Related Entity with a Director may not be avoided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and
  - (iii) the Director will not be liable to account to the Company for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.
- (c) Subject to paragraph (d), a Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of his or her interest.
- (d) A Director with a material personal interest in a matter that relates to the affairs of the Company is not required to give notice in the following circumstances:
  - (i) if all of the following conditions are met:
    - (A) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company;
    - (B) if a person who was not a Director at the time the notice was given is appointed as a Director, the notice is given to that person; and
    - (C) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
  - (ii) if the Director has given a standing notice of the nature and extent of the interest in accordance with the Corporations Act and that standing notice is still effective in relation to the interest; or
  - (iii) as otherwise permitted under the Corporations Act.
- (e) Notices of material personal interest given by Directors must:
  - (i) give details of the nature and extent of the Director's interest and the relation of the interest to the affairs of the Company;
  - (ii) be given at a Directors' meeting as soon as practicable after the Director becomes aware of their interest in the matter; and
  - (iii) be recorded in the minutes of the Directors' meeting at which the notice is given.
- (f) A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not be present while the matter is being considered at the meeting or vote on the matter, except in the following circumstances:

- (i) if the material personal interest is a matter that is not required to be disclosed under this clause or under the Corporations Act; or
- (ii) if the Directors who do not have a material personal interest in the matter have passed a resolution that:
  - (A) identified the Director, the nature and the extent of the Director's interest in the matter and its relation to the affairs of the Company; and
  - (B) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present; or
- (iii) as otherwise permitted under the Corporations Act.
- (g) Nothing in this clause affects the duty of a Director:
  - (i) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Director's duties or interests as a Director, to declare at a meeting of Directors, the fact and the nature, character and extent of the conflict; or
  - (ii) to comply with the Corporations Act.

#### **64 Defects in appointment**

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

### **OTHER OFFICERS**

#### **65 Secretary**

The Directors must appoint or remove a secretary to the Company in accordance with the Corporations Act and the Shareholders' Agreement.

#### **66 Other Officers**

- (a) Subject to the Shareholders' Agreement, the Directors may from time to time:
  - (i) create any other position or positions in the Company with the powers and responsibilities as the Directors may from time to time confer; and
  - (ii) appoint any person to any position or positions created under sub-paragraph (i).
- (b) The Directors at any time may terminate the appointment of a person holding a position created under paragraph (a)(i) and may abolish the position.

### **SEALS AND EXECUTING DOCUMENTS**

#### **67 Seals and their use**

- (a) The Company may have a common seal. If the Company has a common seal it may also have a duplicate common seal.

- (b) A Seal may be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal. Every document to which the Seal is affixed shall be signed by:
  - (i) 2 Directors;
  - (ii) a Director and a secretary (or another person appointed by the Directors to countersign that document or a class of documents in which that document is included).
- (c) This clause does not limit the ways in which the Company may execute a document.

## INSPECTION OF RECORDS

### 68 Inspection of Records

- (a) The Directors may authorise a member to inspect books of the Company to the extent, at the time and places and under the conditions, the Directors consider appropriate.
- (b) A member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or the Shareholders' Agreement or as authorised by the Directors.

## NOTICES

### 69 Notices Generally

- (a) Any member who has not left at or sent to the registered office, a place of address or an electronic mail address (for registration in the register) at or to which all notices and documents of the Company may be served or sent is not entitled to receive any notice.
- (b) A notice may be given by the Company to any member by:
  - (i) serving it on the member personally;
  - (ii) sending it by post to the member or leaving it at the member's address as shown in the register or the address supplied by the member to the Company for the giving of notices;
  - (iii) serving it in any manner contemplated in this paragraph (b) on a member's attorney as specified by the member in a notice given under paragraph (c);
  - (iv) fax to the fax number supplied by the member to the Company for the giving of notices; or
  - (v) transmitting it electronically to the electronic mail address given by the member to the Company for giving notices.
- (c) A member may, by written notice to the secretary left at or sent to the registered office, require that all notices to be given by the Company or the Directors be served on the member's attorney at an address specified in the notice.
- (d) Notice to a member whose address for notices is outside Australia shall be sent by airmail, fax or electronic mail.
- (e) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected:
  - (i) in the case of a notice of a meeting, on the day after the date of its posting; and

- (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (f) Where a notice is sent by fax or electronic transmission, service of the notice is taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on the day it is sent.
- (g) A notice may be given by the Company to a person entitled to a share in consequence of the death or bankruptcy of a member:
  - (i) by serving it on the person personally;
  - (ii) by sending it by post addressed to the person by name or by the title of representative of the deceased or assignee of the bankrupt or by any like description at the address (if any) within Australia supplied for the purpose by the person;
  - (iii) if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred;
  - (iv) by sending a fax to the fax number supplied by the person to the Company; or
  - (v) if such a fax number has not been supplied, to the fax number to which the notice might have been sent if the death or bankruptcy had not occurred; or
  - (vi) by transmitting it to the electronic mail address supplied by the person to the Company.

## **70 Notices of General Meeting**

- (a) Notice of every general meeting shall be given:
  - (i) in the manner authorised by clause 69(b):
  - (ii) subject to clause 71(a) to every member and to each Director;
  - (iii) to every person entitled to a share in consequence of the death or bankruptcy of a member who, but for death or bankruptcy, would be entitled to receive notice of the meeting; and
  - (iv) to the auditor to the Company.
- (b) No other person is entitled to receive notice of general meetings.

## **JOINT HOLDERS**

### **71 Joint Holders**

- (a) Joint holders of a share shall give to the Company notice of a single address for the purpose of all notices given by the Company under paragraph (c) in respect of that share.
- (b) Where the Company receives notice under paragraph (a), the giving of notice to the address so notified shall be deemed given to all joint holders of the relevant share.
- (c) Where joint holders of a share fail to give notice to the Company in accordance with paragraph (a), the Company may give notice to the address of the joint holder whose name first appears in the register.

## WINDING UP

### 72 Winding Up

- (a) On the winding up or dissolution of the Company by any means and for any reason, each remaining community housing asset of the Company must be transferred:
- (i) if the community housing asset is located in Queensland, under the Housing Act; or
  - (ii) if the community housing asset is located in another participating jurisdiction, under the corresponding law of that participating jurisdiction, and
- to the extent that the Housing Act or the corresponding law (as applicable) so permits, the housing agency, national provider, state provider or other entity to whom that community housing asset is to be transferred is to be nominated by the State.
- (b) In paragraph (a):
- (i) **Housing Act** means the *Housing Act 2003* (Qld); and
  - (ii) a word or expression that is defined in the Housing Act has the same meaning.
- (c) If, on the winding up or dissolution of the Company by any means and for any reason, there remains any property, after the satisfaction of all the Company's debts and liabilities and any transfer pursuant to paragraph (a), the property must not be paid to or distributed among the members but must be given or transferred as follows:
- (i) to one or more institutions (whether or not a member of the Company) nominated by the State:
    - (A) the objects of which are charitable and similar to the objects of the Company;
    - (B) whose constitution prohibits the distribution of its or their income and property to an extent at least as great as that imposed on the Company under clause 6; and
    - (C) which is endorsed as a deductible gift recipient under Division 30 of the *Income Tax Assessment Act 1997* (Cth); or
  - (ii) if there are no institutions meeting the requirements of sub-paragraph (i), to one or more other institutions (whether or not a member of the Company) nominated by the State:
    - (A) the objects of which are charitable;
    - (B) whose constitution prohibits the distribution of its or their income and property to an extent at least as great as that imposed on the Company under clause 6; and
    - (C) which is endorsed as a deductible gift recipient under Division 30 of the *Income Tax Assessment Act 1997* (Cth).
- (d) For clarification, nothing in this clause prohibits the transfer on winding up or dissolution of the Company of any property of the Company to a government, government department or other government body or agency (**Government Agency**) pursuant to the terms of a contract with that Government Agency.

## INDEMNITY

### 73 Indemnity and Insurance

- (a) To the extent permitted by law and without limiting the powers of the Company, the Company must indemnify each person who is, or has been, a Director or secretary of the Company against any liability which results from facts or circumstances relating to the person serving or having served as a Director, secretary in relation to the Company:
- (i) other than:
    - (A) a liability owed to the Company or a Related Entity;
    - (B) a liability for a pecuniary penalty order under section 1317G or a compensation order under sections 961M, 1317H, 1317HA or 1317HB; or
    - (C) a liability that is owed to someone (other than the Company or a Related Entity) and did not arise out of conduct in good faith; (this sub-paragraph (i) does not apply to a liability for legal costs)
  - (ii) other than for legal costs incurred in defending an action for liability if the costs are incurred:
    - (A) in defending or resisting civil proceedings in which the person is found to have a liability for which they could not be indemnified under paragraph (a)(i); or
    - (B) in defending or resisting criminal proceedings in which the person is found guilty; or
    - (C) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the Court to be established; or
    - (D) in connection with proceedings for relief to the person under the Corporations Act in which the Court denies the relief.
- Sub-paragraph (ii)(C) does not apply to costs incurred in responding to actions brought by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.
- (b) To the extent permitted by law and without limiting the powers of the Company, the Directors may authorise the Company to, and the Company may enter into any:
- (i) documentary indemnity in favour of; or
  - (ii) insurance policy for the benefit of,
- a person who is, or has been, a Director, secretary, auditor, employee or other officer of the Company or of a subsidiary of the Company, which indemnity or insurance policy may be in such terms as the Directors approve and, in particular, may apply to acts or omissions prior to or after the time of entering into the indemnity or the policy.
- (c) The benefit of each indemnity given in paragraph (a) continues, even after its terms or the terms of this clause are modified or deleted, in respect of a liability arising out of acts or omissions occurring prior to the modifications or deletion.

## GIFTS

### 74 Transfer of Gifts on Revocation of Endorsement

If the Company is endorsed as a deductible gift recipient under Subdivision 30-BA of the *Income Tax Assessment Act 1997* (Cth), upon the revocation of that endorsement, any surplus:

- (a) gifts of money or property for the principal purpose of the Company; and
- (b) contributions described in item 7 or 8 of the table in section 30-15 of the *Income Tax Assessment Act 1997* (Cth) in relation to a fund-raising event for that purpose; and
- (c) money received by the entity because of such gifts or contributions,

shall be applied in accordance with clause 72 as if the Company had been wound up or dissolved.

\* \* \* \*