

Constitution, Objects, Rules and By-Laws  
of  
Settlers Green Home Owners Association Incorporated

ABN 33638396138  
Incorporation Number Y0562629

November 2020

# Table of Contents

Part 1 Preliminary.....	4
1 Definitions.....	4
Part 2 Objects.....	5
2 Objects.....	5
Part 3 Membership.....	6
3 Membership generally.....	6
4 Membership entitlements not transferable.....	6
5 Register of members.....	6
6 Fees and Subscriptions.....	7
7 Members' liabilities.....	7
8 Resolution of disputes.....	8
9 Disciplining of members.....	8
10 Right of appeal of disciplined member.....	9
11 Associate Member.....	10
12 Occupiers and Guests.....	10
13 Mortgagees.....	10
Part 3 The committee.....	12
14 Powers of the committee.....	12
15 Composition and membership of committee.....	12
16 Election of committee members.....	12
17 Secretary.....	13
18 Treasurer.....	13
19 Casual vacancies.....	14
20 Removal of committee members.....	14
21 Committee meetings and quorum.....	14
22 Appointment of Association members as committee members to constitute quorum.....	15
23 Use of technology at committee meetings.....	15
24 Delegation by committee to sub-committee.....	16
25 Voting and decisions.....	16
26 Register of Committee members.....	16
Part 4 General meetings.....	18
27 Annual general meetings - holding of.....	18
28 Annual general meetings - calling of and business at.....	18
29 Special general meetings - calling of.....	18
30 Notice.....	19
31 Quorum for general meetings.....	19
32 Presiding member.....	19
33 Adjournment.....	20
34 Making of decisions.....	20
35 Special resolutions.....	20
36 Voting.....	20
37 Proxy votes permitted.....	21
38 Postal or electronic ballots.....	21
39 Use of technology at general meetings.....	21
Part 5 Miscellaneous.....	22
40 Insurance.....	22
41 Funds - source.....	22
42 Funds - management.....	22
43 Association is non-profit.....	22

44 Distribution of property on winding up of Association.....	22
45 Change of name, objects and constitution.....	22
46 Common Seal.....	22
47 Custody of books etc.....	23
48 Inspection of books etc.....	23
49 Service of notices.....	23
50 Financial year.....	23
51 Boundary Adjustments.....	24
52 Land of the Association.....	24
53 Managing Agent.....	24
Part 6 By-Laws.....	25
54 Application of By-Laws.....	25
55 Swimming Pool By-Laws.....	26
56 Tennis Court Rules.....	27
57 Clubhouse Rules.....	27
58 Parking and Traffic.....	28
59 Signage.....	29
60 Conveyancing Act Compliance (Section 88B).....	29

# Part 1 Preliminary

## 1 Definitions

(1) In this constitution:

**ordinary committee member** means a member of the committee who is not an office-bearer of the Association.

**secretary means:**

(a) the person holding office under this constitution as secretary of the Association, or

(b) if no person holds that office - the public officer of the Association.

**special general meeting** means a general meeting of the Association other than an annual general meeting.

**the Act** means the Associations Incorporation Act 2009 (NSW).

**the Regulation** means the Associations Incorporation Regulation 2016 (NSW).

**Association** means Settlers Green Homeowners Association Incorporated

**member** means a member of the Association who is qualified for membership under clause 3.1.

**associate member** means a person referred to in Clause 11.

**occupier** means a person referred to in Clause 12.

**committee** means the body as referred to in Part 3

**common areas** means that part of the land comprising the area which is known as "The Village Green - Settlers Green Country Club" and upon which sporting, recreation, parking, gardens and leisure facilities have been erected.

**financial member** means a member of the Association who is not in arrears with contributions levied by the Association on that member, interest or legal or other costs incurred by the Association in relation to the recovery of outstanding contributions and interest;;

**the land** means lot 5 on deposited plan 776652 and the easement for access and services on lots 54, 55 and 71 on deposited plan 788767.

**the parcel** means the land in Deposited Plan DP776652, DP776653, DP776654, and DP788767.

**residential lot** means a current plan lot which has been subdivided out of the parcel and intended to be used for the erection of a dwelling without further subdivision being effected.

**managing agent** means that organization that the Association has employed for the purposes of managing the property and affairs and who shall act as the Public Officer as contained in Clause 53

(2) In this constitution:

(a) a reference to a function includes a reference to a power, authority and duty, and

(b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

(3) The provisions of the Interpretation Act 1987 apply to and in respect of this constitution in the same manner as those provisions would so apply if this constitution were an instrument made under the Act.

## **Part 2 Objects**

### **2 Objects**

The objects of the Association shall be:

- (1) To manage, care and control the land for the benefit of all members and to operate without profit for the benefit of its members
- (2) The maintenance, repair and replacement of all fixtures, fittings, improvements, landscaping and gardens upon and within the land and the purchase or other acquisition of such personal property, structures and improvements as may be considered desirable or necessary in the care, management and enjoyment of the land.
- (3) The promulgation and enforcement of by-laws and restrictive covenants affecting and benefiting the land and to recover by levies or other lawful means the costs and expenses incurred therein.
- (4) The levying of assessments against members to cover the costs and expenses incurred in connection with the foregoing.
- (5) To fix assessments which will be levied against members to defray expenses and the costs of giving effect to the objects and purposes of the Association and to create reasonable reserves for such expenditures and to authorise the committee to take all necessary action to recover the assessments which are levied.
- (6) To promote sporting and social activities for and within the community for residents and their guests.
- (7) To pay any charges imposed on the land and on the Association by government or statutory authorities.
- (8) To establish and maintain a 10 year Capital Works Fund (Sinking Fund) to be reviewed every year and discussed and implemented annually at each AGM.

## **Part 3 Membership**

### **3 Membership generally**

- (1) Members shall be those persons who become registered as proprietors of an estate in fee simple of any lot created by subdivision of the Parcel after the date of incorporation of the Association. A member shall become a member by virtue of registration as a proprietor of an estate in fee simple pursuant to the Real Property Act, 1900 to a lot in the parcel and shall remain a member until registration under that Act creates another member or until death or bankruptcy or, in the case of a corporation, until the company is dissolved. Where a member ceases to be entitled to be registered under the Real Property Act, 1900 the legal personal representative of that member shall represent the member.

### **4 Membership entitlements not transferable**

A right, privilege or obligation which a person has by reason of being a member of the Association:

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

### **5 Register of members**

- (1) The managing agent must establish and maintain a register of members of the Association (whether in written or electronic form) specifying the name and postal, residential or email address of each person who is a member of the Association together with the date on which the person became a member.
- (2) The register of members must be kept in New South Wales:
  - (a) at the main premises of the managing agent, or
  - (b) at the Association's official address.
- (3) The register of members must be open for inspection, free of charge, by any member of the Association at any reasonable hour.
- (4) A member of the Association may obtain a copy of any part of the register on payment of a fee as set by the managing agent
- (5) If a member requests that any information contained on the register about the member (other than the member's name) not be available for inspection, that information must not be made available for inspection.
- (6) A member must not use information about a person obtained from the register to contact or send material to the person, other than for:
  - (a) the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to the Association or other material relating to the Association, or
  - (b) any other purpose necessary to comply with a requirement of the Act or the Regulation.
- (7) If the register of members is kept in electronic form:
  - (a) it must be convertible into hard copy, and
  - (b) the requirements in subclauses (2) and (3) apply as if a reference to the register of members is a reference to a current hard copy of the register of members.

## **6 Fees and Subscriptions**

- (1) No amounts shall be required to be paid to the Association for entrance fees or subscriptions, but there shall be levied against members the amounts determined by the committee as being necessary to meet the actual and expected liabilities of the Association in the manner hereinafter referred to.
- (2) Levies which are not paid within one month of its due date, interest on outstanding levies will be charged at a rate of 10% per annum, and all legal and other costs of action taken to recover outstanding levies and interest may be recovered as a debt against members by an action in a Court of competent jurisdiction.
- (3) The levy recovery procedure approved at the AGM of 15 October 2015 is as follows:
  - (a) Levy Recovery Step 1: issue a reminder levy notice 35 days after the levy due date;
  - (b) Levy Recovery Step 2: issue 1<sup>st</sup> levy recovery letter 60 days after the levy due date;
  - (c) Levy Recovery Step 3: issue 2<sup>nd</sup> levy recovery letter 75 days after the levy due date;
  - (d) Levy Recovery Step 4: 96 days after the original date the levy was due, and where the debt is in excess of an amount equivalent to 2 unpaid levies, appoint the services of a debt collection agency, obtain legal advice and/or retain legal representation of solicitors barristers and/or experts on behalf of the Association, to issue a letter of demand and/or to commence, pursue, continue or defend any court, tribunal or any other proceedings against any lot owner, mortgagee in possession and/or former lot owner in relation to all matters arising out of recovery of levy contributions and recovery of other debts, including penalties, interest, legal and other costs;
  - (e) Enforce any judgement obtained in the collection of levy contributions including commencing and maintaining bankruptcy or winding up proceedings;
  - (f) Filing an appeal or defending and appeal against any judgement concerning the collection of levy contributions; and,
  - (g) Liaise, instruct and prepare all matters with the Association's debt collection agents, lawyers and/or experts in relation to any levy recovery proceedings.
  - (f) Levy recovery procedure may also be used to recover other costs and debts incurred by the member, including damage to communal property by the member, occupier or guest.

## **7 Members' liabilities**

- (1) The liability of a member of the Association to contribute towards the payment of the debts and liabilities of the Association or the costs, charges and expenses of the winding up of the Association is limited to the amount, if any, unpaid by the member in respect of membership of the Association as required by clause 6.
- (2) The Association may levy the contributions determined by it under these rules by serving on members notice in writing of the contributions payable by the members who are proprietors or by corporate proprietors represented by members who are nominees.

- (3) Contributions levied by the Association shall be levied equally between members so that each member shall be liable to one seventieth of the total contributions determined by the Association as being payable in respect of each residential lot owned by that member. Where a member is registered as a co-proprietor with other members of a residential lot, the contribution shall be levied jointly and severally upon each proprietor. Contributions levied by the Association become due and payable in accordance with the decision of the Association in raising the levy.
- (4) A certificate from the public officer or the Managing Agent as to whether any levies remain outstanding by a member in respect of the residential lot of the member shall be conclusive evidence as between a purchaser and/or mortgagee and the Association as to the payment or otherwise of levies made by the Association as at the date of the certificate and if unpaid as to the amount and date of the levy and any interest thereon and legal and other costs payable by the member.
- (5) The Association shall, upon application made to it in writing in respect of a particular member and a particular residential lot by a proprietor or mortgagee of that residential lot or by a person authorised in writing by such a proprietor or mortgagee and upon payment of a fee as determined by the Managing Agent, furnish to the applicant within fourteen (14) days of receipt the certificate referred to in clause 7.4.

## **8 Resolution of disputes**

- (1) A dispute between a member and another member (in their capacity as members) of the Association, or a dispute between a member or members and the Association, are to be referred to a Community Justice Centre for mediation under the Community Justice Centres Act 1983.
- (2) If a dispute is not resolved by mediation within three (3) months of the referral to a Community Justice Centre, the dispute is to be referred to arbitration.
- (3) The Commercial Arbitration Act 2010 applies to a dispute referred to arbitration.

## **9 Disciplining of members**

- (1) A complaint may be made to the committee by any person that a member of the Association:
  - (a) has refused or neglected to comply with a provision or provisions of this constitution, or
  - (b) has willfully acted in a manner prejudicial to the interests of the Association.
- (2) The committee may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- (3) If the committee decides to deal with the complaint, the committee:
  - (a) must cause notice of the complaint to be served on the member concerned, and
  - (b) must give the member at least fourteen (14) days from the time the notice is served within which to make submissions to the committee in connection with the complaint, and
  - (c) must take into consideration any submissions made by the member in connection with the complaint.



- (4) The committee may, by resolution, suspend the member from voting at meetings or attending meetings if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and suspension is warranted in the circumstances.
- (5) If the committee suspends a member, the secretary must, within seven (7) days after the action is taken, cause written notice to be given to the member of the action taken, of the reasons given by the committee for having taken that action and of the member's right of appeal under clause 10.
- (6) The suspension does not take effect:
  - (a) until the expiration of the period within which the member is entitled to appeal against the resolution concerned, or
  - (b) if within that period the member exercises the right of appeal, unless and until the Association confirms the resolution under clause 10, whichever is the later.
- (7) Having regard to the fact that membership of the Association is designed to regulate the legal obligations which arise between members in maintaining the common property which is to be used by members to gain access to lots owned by them any purported resignation or any suspension of membership shall not release the member from the obligations to pay levies and interest thereon as and when assessed by the Association.

### ***10 Right of appeal of disciplined member***

- (1) A member may appeal to the Association in general meeting against a resolution of the committee under clause 9, within seven (7) days after notice of the resolution is served on the member, by lodging with the secretary a notice to that effect.
- (2) The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- (3) On receipt of a notice from a member under subclause (1), the secretary must notify the committee, which is to convene a general meeting of the Association to be held within twenty-eight (28) days after the date on which the secretary received the notice.
- (4) At a general meeting of the Association convened under subclause (3):
  - (a) no business other than the question of the appeal is to be transacted, and
  - (b) the committee and the member must be given the opportunity to state their respective cases orally or in writing, or both, and

- (c) the members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (5) The appeal is to be determined by a simple majority of votes cast by members of the Association.

## **11 Associate Member**

- (1) Where a person is the lessee of the residential lot of a member and the name and address of that person have been given to the secretary, that person may be classified as an associate of that member and shall be known as an "associate member".
- (2) An associate member shall, unless the right to do so has been suspended by the committee under these rules, be entitled to use the common areas in accordance with the rules and by-laws including the right to invite guests onto the common areas.
- (3) A member who grants a lease of a residential lot shall furnish the lessee with a copy of the by-laws of the Association and shall include a covenant on the part of the lessee to observe those by-laws.
- (4) Associate members are subject to clauses 8, 9 and 10 aforementioned.

## **12 Occupiers and Guests**

- (1) A person who usually resides on the parcel who is not a member or an associate member shall be termed an occupier. An occupier shall be deemed to be the guest of the member or associate member with whom the occupant usually resides and may, subject to these rules, be upon and use the land.
- (2) A member and an associate member has the duty to ensure that an occupier usually residing with that member or associate member complies with all of the by-laws of the Association while the occupier is upon the land.
- (3) A member and an associate member has the duty to ensure that a guest of the member or associate member complies with all of the by-laws of the Association when the guest or invitee is upon the land.
- (4) A breach of the by-laws by a guest or occupier shall be regarded as a breach of the by-laws by the member or by the associate member who is the inviter of the guest.

## **13 Mortgagees**

- (1) A first mortgagee of an estate or interest in a residential lot may, where the mortgagor is in default under the mortgage, elect to vote either personally or by proxy in place of the purchaser member at any general meeting of the Association where not less than twenty-four (24) hours before the time of the meeting in respect of which the mortgagee intends to vote notice of default and proxy, if any, is given to the secretary. Where notice has been given by a mortgagee of an election to vote under this clause, any vote cast by or on

behalf of a purchaser member other than by the mortgagee or the proxy of the mortgagee shall not be counted.

## **Part 3 The committee**

### **14 Powers of the committee**

Subject to the Act, the Regulation, this constitution and any resolution passed by the Association in general meeting, the committee:

- (a) is to control and manage the affairs of the Association, and
- (b) may exercise all the functions that may be exercised by the Association, other than those functions that are required by this constitution to be exercised by a general meeting of members of the Association, and
- (c) has power to perform all the acts and do all things that appear to the committee to be necessary or desirable for the proper management of the affairs of the Association.

### **15 Composition and membership of committee**

- (1) The committee is to consist of:
  - (a) the office-bearers of the Association, and
  - (b) at least three (3) ordinary committee members, each of whom is to be elected at the annual general meeting of the Association under clause 16.
- (2) The total number of committee members is to be a maximum of nine (9)
- (3) The office-bearers of the Association are as follows:
  - (a) the president,
  - (b) the vice-president,
  - (c) the treasurer,
  - (d) the secretary.
- (4) A committee member may hold up to two (2) offices (other than both the offices of president and vice-president).
- (5) There is no maximum number of consecutive terms for which a committee member may hold office.
- (6) Each member of the committee is, subject to this constitution, to hold office until immediately before the election of committee members at the annual general meeting next following the date of the member's election, and is eligible for re-election.

### **16 Election of committee members**

- (1) Nominations of candidates for election as office-bearers of the Association or as ordinary committee members:
  - (a) must be made in writing, signed by two (2) members of the Association and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination), and
  - (b) must be delivered to the secretary of the Association at least seven (7) days before the date fixed for the holding of the annual general meeting at which the election is to take place.
- (2) If insufficient nominations are received to fill all vacancies on the committee, the candidates nominated are taken to be elected and further nominations are to be received at the annual general meeting.

- (3) If insufficient further nominations are received, any vacant positions remaining on the committee are taken to be casual vacancies.
- (4) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- (5) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
- (6) The ballot for the election of office-bearers and ordinary committee members of the committee is to be conducted at the annual general meeting in any usual and proper manner that the committee directs.
- (7) A person nominated as a candidate for election as an office-bearer or as an ordinary committee member of the Association must be a financial member of the Association.

## **17 Secretary**

- (1) The secretary of the Association must, as soon as practicable after being appointed as secretary, lodge notice with the Association of his or her address.
- (2) It is the duty of the secretary to keep minutes (whether in written or electronic form) of:
  - (a) all appointments of office-bearers and members of the committee, and
  - (b) the names of members of the committee present at a committee meeting or a general meeting, and
  - (c) all proceedings at committee meetings and general meetings.
- (3) Minutes of proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.
- (4) The signature of the chairperson may be transmitted by electronic means for the purposes of subclause (3).

## **18 Treasurer**

It is the duty of the treasurer of the Association to ensure:

- (a) that all money due to the Association is collected and received and that all payments authorised by the Association are made, and
- (b) that correct books and accounts are kept showing the financial affairs of the Association, including full details of all receipts and expenditure connected with the activities of the Association.

## **19 Casual vacancies**

- (1) In the event of a casual vacancy occurring in the membership of the committee, the committee may appoint a financial member of the Association to fill the vacancy and the financial member so appointed is to hold office, subject to this constitution, until the annual general meeting next following the date of the appointment.
- (2) A casual vacancy in the office of a member of the committee occurs if the member:
  - (a) dies, or
  - (b) ceases to be a member of the Association, or
  - (c) is or becomes an insolvent under administration within the meaning of the Corporations Act 2001 of the Commonwealth, or
  - (d) resigns office by notice in writing given to the secretary, or
  - (e) is removed from office under clause 20, or
  - (f) becomes a mentally incapacitated person, or
  - (g) is absent without the consent of the committee from 3 consecutive meetings of the committee, or
  - (h) is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months, or
  - (i) is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the Corporations 2001 of the Commonwealth.

## **20 Removal of committee members**

- (1) The Association in general meeting may by resolution remove any member of the committee from the office of member before the expiration of the member's term of office and may by resolution appoint another person to hold office until the expiration of the term of office of the member so removed.
- (2) If a member of the committee to whom a proposed resolution referred to in subclause (1) relates makes representations in writing to the secretary or president (not exceeding a reasonable length) and requests that the representations be notified to the members of the Association, the secretary or the president may send a copy of the representations to each member of the Association or, if the representations are not so sent, the member is entitled to require that the representations be read out at the meeting at which the resolution is considered.

## **21 Committee meetings and quorum**

- (1) The committee must meet at least 3 times in each period of 12 months at the place and time that the committee may determine.
- (2) Additional meetings of the committee may be convened by the president or by any member of the committee.
- (3) Oral or written notice of a meeting of the committee must be given by the secretary to each member of the committee at least seventy-two (72) hours (or any other period that may be unanimously agreed on by the members of the committee) before the time appointed for the holding of the meeting.

- (4) Notice of a meeting given under subclause (3) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the committee members present at the meeting unanimously agree to treat as urgent business.
- (5) Any three (3) members of the committee constitute a quorum for the transaction of the business of a meeting of the committee.
- (6) No business is to be transacted by the committee unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week.
- (7) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- (8) At a meeting of the committee:
  - (a) the president or, in the president's absence, the vice-president is to preside, or
  - (b) if the president and the vice-president are absent or unwilling to act, one of the remaining members of the committee chosen by the members present at the meeting is to preside.

## ***22 Appointment of Association members as committee members to constitute quorum***

- (1) If at any time the number of committee members is less than the number required to constitute a quorum for a committee meeting, the existing committee members may appoint a sufficient number of financial members of the Association as committee members to enable the quorum to be constituted.
- (2) A member of the committee so appointed is to hold office, subject to this constitution, until the annual general meeting next following the date of the appointment.
- (3) This clause does not apply to the filling of a casual vacancy to which clause 19 applies.

## ***23 Use of technology at committee meetings***

- (1) A committee meeting may be held at two (2) or more venues using any technology approved by the committee that gives each of the committee's members a reasonable opportunity to participate.
- (2) A committee member who participates in a committee meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

## **24 Delegation by committee to sub-committee**

- (1) The committee may, by instrument in writing, delegate to one or more sub-committees (consisting of the member or members of the Association that the committee thinks fit) the exercise of any of the functions of the committee that are specified in the instrument, other than:
  - (a) this power of delegation, and
  - (b) a function which is a duty imposed on the committee by the Act or by any other law.
- (2) A function the exercise of which has been delegated to a sub-committee under this clause may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.
- (3) A delegation under this clause may be made subject to any conditions or limitations as to the exercise of any function, or as to time or circumstances, that may be specified in the instrument of delegation.
- (4) Despite any delegation under this clause, the committee may continue to exercise any function delegated.
- (5) Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this clause has the same force and effect as it would have if it had been done or suffered by the committee.
- (6) The committee may, by instrument in writing, revoke wholly or in part any delegation under this clause.
- (7) A sub-committee may meet and adjourn as it thinks proper.

## **25 Voting and decisions**

- (1) Questions arising at a meeting of the committee or of any sub-committee appointed by the committee are to be determined by a majority of the votes of members of the committee or sub-committee present at the meeting.
- (2) Each member present at a meeting of the committee or of any sub-committee appointed by the committee (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
- (3) Subject to clause 21 (5), the committee may act despite any vacancy on the committee.
- (4) Any act or thing done or suffered, or purporting to have been done or suffered, by the committee or by a sub-committee appointed by the committee, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the committee or sub-committee.

## **26 Register of Committee members**

- (1) The public officer of the Association shall establish and maintain a register of members of the Committee of the Association.
- (2) The register must contain the following particulars in relation to each Committee member:
  - (a) the Committee member's name and residential address;
  - (b) the Committee member's date of birth;
  - (b) the date on which the Committee member took office; and
  - (c) the date on which the Committee member vacates office.



- (3) Any change in the Committee's membership must be recorded in the register within one month after the change occurs.
- (4) The register of Committee members shall be kept at the principal place of administration of the Association and shall be open for inspection free of charge by any person by arrangement with the public officer. A member of the Association may obtain a copy of any part of the register on payment of a fee of not more than \$1 for each page copied or such other fee as may be prescribed from time to time by the Act.

## **Part 4      General meetings**

### ***27 Annual general meetings - holding of***

- (1) The Association must hold its annual general meetings:
  - (a) within six (6) months after the close of the Association's financial year,  
or
  - (b) within any later time that may be allowed or prescribed under section 37  
(2) (b) of the Act.

### ***28 Annual general meetings - calling of and business at***

- (1) The annual general meeting of the Association is, subject to the Act and to clause 27, to be convened on the date and at the place and time that the committee thinks fit.
- (2) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
  - (a) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting,
  - (b) to receive from the committee reports on the activities of the Association during the last preceding financial year,
  - (c) to elect office-bearers of the Association and ordinary committee members,
  - (d) to receive and consider any financial statement or report required to be submitted to members under the Act.
- (3) An annual general meeting must be specified as that type of meeting in the notice convening it.

### ***29 Special general meetings - calling of***

- (1) The committee may, whenever it thinks fit, convene a special general meeting of the Association.
- (2) The committee must, on the requisition of at least 5% of the total number of members, convene a special general meeting of the Association.
- (3) A requisition of members for a special general meeting:
  - (a) must be in writing, and
  - (b) must state the purpose or purposes of the meeting, and
  - (c) must be signed by the members making the requisition, and
  - (d) must be lodged with the secretary, and
  - (e) may consist of several documents in a similar form, each signed by one or more of the members making the requisition.
- (4) If the committee fails to convene a special general meeting to be held within 1 month after the date on which a requisition of members for the meeting is lodged with the secretary, any one or more of the members who made the requisition may convene a special general meeting to be held not later than 3 months after that date.
- (5) A special general meeting convened by a member or members as referred to in subclause (4) must be convened as nearly as is practicable in the same manner as general meetings are convened by the committee.

- (6) For the purposes of subclause (3):
  - (a) a requisition may be in electronic form, and
  - (b) a signature may be transmitted, and a requisition may be lodged, by electronic means.

### **30 Notice**

- (1) Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the Association, the secretary must, at least fourteen (14) days before the date fixed for the holding of the general meeting, give a notice to each member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- (2) If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the Association, the secretary must, at least twenty-one (21) days before the date fixed for the holding of the general meeting, cause notice to be given to each member specifying, in addition to the matter required under subclause (1), the intention to propose the resolution as a special resolution.

Note. A special resolution must be passed in accordance with section 39 of the Act.

- (3) No business other than that specified in the notice convening a general meeting is to be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted under clause 28 (2).
- (4) A member desiring to bring any business before a general meeting may give notice in writing of that business to the secretary who must include that business in the next notice calling a general meeting given after receipt of the notice from the member.

### **31 Quorum for general meetings**

- (1) No item of business is to be transacted at a general meeting unless a quorum of members entitled under this constitution to vote is present during the time the meeting is considering that item.
- (2) Ten (10) members present (being members entitled under this constitution to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.
- (3) If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting:
  - (a) if convened on the requisition of members—is to be dissolved, and
  - (b) in any other case—is to stand adjourned to the same day in the following week at the same time and (unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to members given before the day to which the meeting is adjourned) at the same place.
- (4) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (being at least 3) are to constitute a quorum.

### **32 Presiding member**

- (1) The president or, in the president's absence, the vice-president, is to preside as chairperson at each general meeting of the Association.

- (2) If the president and the vice-president are absent or unwilling to act, the members present must elect one of their number to preside as chairperson at the meeting.

### **33 Adjournment**

- (1) The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (2) If a general meeting is adjourned for fourteen (14) days or more, the secretary must give written or oral notice of the adjourned meeting to each member of the Association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (3) Except as provided in subclauses (1) and (2), notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

### **34 Making of decisions**

- (1) A question arising at a general meeting of the Association is to be determined by:
  - (a) a show of hands or, if the meeting is one to which clause 39 applies, any appropriate corresponding method that the committee may determine, or
  - (b) by written ballot if so motioned by the chairperson or if decided by 5 or more members present at the meeting.
- (2) If the question is to be determined by a show of hands, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the Association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (3) Subclause (2) applies to a method determined by the committee under subclause (1) (a) in the same way as it applies to a show of hands.
- (4) If the question is to be determined by a written ballot, the ballot is to be conducted in accordance with the directions of the chairperson.

### **35 Special resolutions**

A special resolution may only be passed by the Association in accordance with section 39 of the Act.

### **36 Voting**

- (1) On any question arising at a meeting of the Association a member has one vote only for each residential lot, but only if that member is a financial member not under suspension.
- (2) In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.
- (3) A member is not entitled to vote at any general meeting of the Association unless all money due and payable by the member to the Association has been paid.

- (4) A member is not entitled to vote at any general meeting of the Association if the member is under 18 years of age.
- (5) Where the proprietors' estate in the residential lot is subject to a registered mortgage, the mortgagee may elect to exercise the voting rights of that proprietor, in accordance with these rules, in place of that proprietor
- (6) the totality of votes shall be seventy (70), one for each residential lot in the parcel. Co-proprietors of a lot may only cast one vote between them.

### ***37 Proxy votes permitted***

All votes shall be given personally or by proxy but no member may hold more than three (3) proxies. Notice of appointment as a proxy must be given to the secretary before the commencement of the meeting at which the vote is cast.

### ***38 Postal or electronic ballots***

- (1) The Association may hold a postal or electronic ballot (as the committee determines) to determine any issue or proposal (other than an appeal under clause 10).
- (2) A postal or electronic ballot is to be conducted in accordance with Schedule 3 to the Regulation.

### ***39 Use of technology at general meetings***

- (1) A general meeting may be held at 2 or more venues using any technology approved by the committee that gives each of the Association's members a reasonable opportunity to participate.
- (2) A member of an Association who participates in a general meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

## **Part 5      Miscellaneous**

### **40 Insurance**

The Association must effect and maintain insurance for all improvements contained on Lot 5 on deposited plan 776652.

### **41 Funds - source**

- (1) The funds of the Association shall be derived from levies paid by members.
- (2) All money received by the managing agent must be deposited as soon as practicable and without deduction to the credit of the Association's bank or other authorised deposit-taking institution account.
- (3) The association must, as soon as practicable after receiving any money, issue an appropriate receipt

### **42 Funds - management**

- (1) Subject to any resolution passed by the Association in general or other meeting, the funds of the Association are to be used solely in pursuance of the objects of the Association in the manner that the committee determines.
- (2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by 2 authorised signatories or, where a Managing Agent has been appointed, by the Managing Agent and such other person or persons (if any) as the committee may determine.

### **43 Association is non-profit**

Subject to the Act and the Regulation, the Association must apply its funds and assets solely in pursuance of the objects of the Association and must not conduct its affairs so as to provide a pecuniary gain for any of its members.

### **44 Distribution of property on winding up of Association**

- (1) Subject to the Act and the Regulations, in a winding up of the Association, any surplus property of the Association is to be transferred to another organisation with similar objects and which is not carried on for the profit or gain of its individual members.
- (2) In this clause, a reference to the surplus property of an Association is a reference to that property of the Association remaining after satisfaction of the debts and liabilities of the Association and the costs, charges and expenses of the winding up of the Association.

### **45 Change of name, objects and constitution**

- (1) The statement of objects and these rules may be altered, rescinded, amended or added to only by a special resolution of the Association.
- (2) An application for registration of a change in the Association's name, objects or constitution in accordance with section 10 of the Act is to be made by the public officer or a committee member.

### **46 Common Seal**

The common seal of the Association shall be kept in the custody of the Managing Agent or public officer. The common seal shall not be affixed to any instrument except by the authority of the committee and the affixing of the common seal be attested in such manner as the committee may determine from

time to time and in default of any determination to the contrary by the President and the Managing Agent where appointed.

#### **47 Custody of books etc**

Except as otherwise provided by this constitution, all records, books and other documents relating to the Association must be kept in New South Wales:

- (a) at the main premises of the Association, in the custody of the Public Officer or a member of the Association (as the committee determines), or
- (b) if the Association has no premises, at the Association's official address, in the custody of the Public Officer.

#### **48 Inspection of books etc**

- (1) The following documents must be open to inspection, free of charge, by a member of the Association at any reasonable hour:
  - (a) records, books and other financial documents of the Association,
  - (b) this constitution,
  - (c) minutes of all committee meetings and general meetings of the Association.
- (2) A member of the Association may obtain a copy of any of the documents referred to in subclause (1) on payment of a fee as prescribed from time to time by the Strata Managers.
- (3) Despite subclauses (1) and (2), the committee may refuse to permit a member of the Association to inspect or obtain a copy of records of the Association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Association.

#### **49 Service of notices**

- (1) For the purpose of this constitution, a notice may be served on or given to a person:
  - (a) by delivering it to the person personally, or
  - (b) by sending it by pre-paid post to the address of the person, or
  - (c) by sending it by facsimile transmission or some other form of electronic transmission to an address specified by the person for giving or serving the notice.
- (2) For the purpose of this constitution, a notice is taken, unless the contrary is proved, to have been given or served:
  - (a) in the case of a notice given or served personally, on the date on which it is received by the addressee, and
  - (b) in the case of a notice sent by pre-paid post, on the date when it would have been delivered in the ordinary course of post, and
  - (c) in the case of a notice sent by facsimile transmission or some other form of electronic transmission, on the date it was sent or, if the machine from which the transmission was sent produces a report indicating that the notice was sent on a later date, on that date.

#### **50 Financial year**

The financial year of the Association is:

- (a) the period of time commencing on the date of incorporation of the Association and ending on the following 31 August, and
- (b) each period of 12 months after the expiration of the previous financial year of the Association, commencing on 1 September and ending on the following 31 August.

### **51 Boundary Adjustments**

- (1) Notwithstanding any other provision of these rules it is acknowledged that it may be necessary for minor boundary adjustments to be made to the land from time to time which may increase or decrease the area of the land and the shape and location of its boundaries. The references herein to "the land" shall include the land as so altered from time to time.

### **52 Land of the Association**

- (1) Members acknowledge that they may use the common areas comprising The Village Green and the access roads to the land pursuant to easements for use and access and for use and recreation set out in an instrument under Section 88B of the Conveyancing Act but subject in all respects to the condition that the member be a financial member of the Association and in compliance with the by-laws of the Association.

### **53 Managing Agent**

- (1) The Association may in general meeting and by a subsequent instrument in writing appoint a person to be an agent of the Association for the purposes of exercising all or some of its power, duties, authorities or functions except:
  - (a) those relating to the determination of levies;
  - (b) the power to further delegate any authorised powers, duties, authorities or functions; and
  - (c) any other matter which may be determined by the Association from time to time.
- (2) The power of delegation shall, unless reserved in the delegation, or subsequently withdrawn, include the power to hold and maintain the register of members, the books, records and other documents of the Association, and the Common Seal.
- (3) The Managing Agent or it's nominee will be appointed as the Public Officer for the Association and provide the address of the Managing Agent as the registered address of the Association to the required legislative authorities. The committee may also choose to appoint its own Public Officer from the committee members.



## Part 6 By-Laws

### 54 Application of By-Laws

- (1) These by-laws apply to all users of the common areas used and operated by the Association.
- (2) Unless the context otherwise indicates a reference in these by-laws to a member shall include a reference to an associate member and to occupiers and a reference to rules shall include a reference to by-laws.
- (3) Members shall ensure that their guests and occupiers observe all by-laws of the Association. Where there is any continuing breach by a guest, the member shall require the guest to forthwith leave the land of the Association (hereinafter referred to as "the premises"). Where there is a continuing breach by an occupier, that occupiers rights to be upon the common areas may be suspended or regulated by the committee.
- (5) No interference, interruption, hindrance, nuisance or annoyance shall be caused to persons lawfully using the common areas.
- (6) No damage shall be caused to any of the facilities equipment or to the surface of the grounds or playing areas. Should a member, associate member, occupier or guest of a member cause damage to property belonging to the Association such member shall be responsible to reimburse the Association as to the cost of requisite repair or replacement of said damage. Such reimbursement is payable on demand. The committee may enforce levy recovery procedure in clause 6.3 to recover costs.
- (7) Guests other than occupiers shall at all times be accompanied by the inviting member. A member of the committee or other person authorised by the committee may in the name of the Association as owner request a person upon common areas to specify that persons name and place of abode and the name and address of the inviting member, if any. Where the committee member or other person authorised by the committee is satisfied that the person on the common area is not a duly invited guest, an occupier, a member or an associate member, the committee member may, in the name of the Association as owner, request the person to leave the common areas and thereafter to take such action as is necessary to obtain the removal, apprehension or prosecution of the person as a trespasser.
- (8) The committee may take all reasonable steps to ensure the security of the common area and the property of the Association and the observance of these by-laws and without limiting the generality of the foregoing may:-
  - (a) close off any part of the common area on a temporary or permanent basis for the purpose of storage of property of the Association and without limiting the generality of the foregoing may restrict the access to or use by members in accordance these by-laws;
  - (b) permit any designated part of the common area to be used by any security person, firm or company as a means of monitoring the security and general safety of the common areas; and
  - (c) obtain, install and maintain locks, alarms, communication systems and other security devices.
- (9) If the committee in the exercise of any of its powers under these by-laws restricts the access of members to any part of the common area by means of a lock or similar security device it may make such number of keys or operating systems as it determines available to members free of charge and thereafter may at its discretion make additional numbers thereof available to

members upon payment of such reasonable charge therefore by way of security deposit or otherwise as may be determined from time to time by the committee.

- (10) A member to whom any key or operating system is given pursuant to these by-laws shall exercise a high degree of caution and responsibility with regard to the same and shall take reasonable precautions to ensure its use only by members, associate members or occupiers. A member who has possession of any key or any operating system shall not without the prior approval in writing of the Association duplicate the same or cause or permit the same to be duplicated and shall take all reasonable precautions to ensure that the same is not lost or handed to any person other than another member or to the associate member or occupier of that member and is not disposed of otherwise than by returning it to the Association. A member who is issued with a key or operating system shall immediately notify the Association if the same is lost or misplaced.
- (11) A member shall as soon as practicable after becoming aware of any defect in the common areas or in any personal property vested in the Association or of any accident associated therewith give notice to the secretary or to other office-bearer of the Association or to the managing agent if any.
- (12) Dogs are only permitted on the Associations property whilst controlled on a leash.
- (13) Use of the common areas must comply with the *Protection of the Environment Operations (Noise Control) Regulation NSW 2017* (or subsequent legislation).
- (14) Use of the common land for the purposes of permanent memorials is prohibited, unless agreed to by the Committee through special resolution
- (15) Use of the common land is subject to the *Smoke-Free Environment Act NSW 2000* (or subsequent legislation). No smoking is permitted within 4 metres of any of the entrances to the clubhouse, pool area, BBQ area or tennis courts. Smoking is also not permitted within the Clubhouse, pool area, BBQ area, tennis courts, or within 4 metres of the entrance to any of these areas.
- (16) Security camera are currently in use around the clubhouse and pool area, and coverage may be extended to cover additional communal areas. Usage of the equipment is detailed in the *CCTV Procedures and Operations Reference* document.

## **55 Swimming Pool By-Laws**

- (1) The **pool area** is defined as the pool, spa, gazebo and sun lounging area. The **BBQ area** is deemed to be part of the clubhouse for application of rules and by-laws.
- (2) Guests other than occupiers may not use the swimming pool unless accompanied by the members, associate members or occupiers.
- (3) Glass containers or receptacles of any type are not to be taken to or allowed to remain in or around the pool area.
- (4) No person without proper authority shall operate, adjust or interfere with the operation of any equipment associated with the swimming pool or add any chemical or other substance to the same.
- (5) No use is to be made of the swimming pool or spa between the hours of 10pm and 6am
- (6) No child under the age of twelve (12) years of age shall use the swimming pool unless accompanied at all times by an adult member, associate member or occupier exercising effective control of that child.

- (7) Persons using the swimming pool shall exercise caution at all times and shall not behave in any manner that is likely to interfere with the use and enjoyment of the pool by another person.
- (8) Sun Umbrellas must be folded up after use.
- (9) The Pool area cannot be booked for exclusive use.
- (10) No pets or hard balls are allowed in the pool area.
- (11) Consideration must be shown for neighbouring houses and therefore noise must be kept to an acceptable level at all times.

## **56 Tennis Court Rules**

- (1) The tennis courts which include the Tennis hut are to be vacated by 10.30pm each evening.
- (2) Consideration must be shown for neighbouring houses and therefore noise must be kept to an acceptable level at all times.
- (3) The courts are for members, associate members, occupiers and Guests only.
- (4) No Glass containers are allowed in the tennis courts.
- (5) It is a condition that adequate adult supervision be provided for children under twelve (12) years.
- (6) No pets or hard balls allowed in the courts.
- (7) Guests must be accompanied by a members, associate members or occupiers.
- (8) There is a no smoking policy in place on the courts.
- (9) For safety and security reasons please lock the gates at all times.
- (10) The courts can be booked for exclusive use by filling in the sheets provided in the club house, or via an online booking system if available.
- (11) Interference or tampering with fitted equipment including lights and the timers is not allowed (except adjusting the nets)
- (12) Lock the gates and turn off the court and the hut lights when you leave.

## **57 Clubhouse Rules**

The Clubhouse (hereinafter called "the premises") shall not be used except in accordance with the following by-laws-

- (1) The premises shall not be used for any illegal or immoral purpose nor for any purpose that may endanger the safety or good reputation of members of the Association nor which may cause a nuisance, annoyance or hazard to members and without limiting the generality of the foregoing other than for the purposes of:-
  - (a) meeting and associating with fellow members, associate members, occupiers and their invited guests for social and leisure pursuits;
  - (b) meetings of the committee and of the Association;
  - (c) storage of records and equipment of the Association;
  - (d) private functions for members or associate members upon appropriate reservations being made as hereinafter provided.
- (2) A member or associate member may, by prior arrangement with the committee or an office-bearer or other person designated by the committee

and upon payment of a security deposit and/or fee as may be determined from time to time by the committee, reserve the use of the clubhouse for a private function in the nature of a family or neighbourhood nature but not for office parties or functions having a commercial association.

- (3) The following limitations apply to the booking of the clubhouse -
  - (a) Members, associate member, occupiers and guests using the pool and BBQ facilities must be allowed reasonable access to toilets, kitchen, ice machine and first aid kit.
- (4) The number of persons invited to the function shall not exceed 50.
- (5) All functions must have at least one member or associate member in attendance at all times during the booking.
- (6) The booking shall apply solely to the interior of the clubhouse and adjoining verandah area.
- (7) No smoking shall be permitted within the clubhouse (including on the front and rear verandah) or within the confines of the fenced pool area.
- (8) In addition to the noise restrictions in clause 54(13), the following restrictions also apply:
  - (a) On Friday and Saturday nights, and on nights preceding a public holiday, noise is to be curtailed by 11pm.
  - (b) On other nights, noise is to be curtailed by 10pm.
  - (c) Consideration must be made for neighbouring houses and therefore noise must be kept to an acceptable level at all times.
- (9) The clubhouse is to be vacated by 12am
- (10) It is a condition that adequate supervision be provided at teenage parties with a minimum of two adults being present at all times; one of which must be a member of the Association. A security guard may be requested by the booking officer.
- (11) Guests must be instructed not to park on the roadways within Settlers Green. The only parking is in the restricted number of visitors parking spaces, on your driveway or outside the estate. Parking is available on Eucalyptus Drive, Westleigh. Alternatively, cars may park on Quarter Session Road.
- (12) The clubhouse and BBQ area if applicable is to be restored to its previous condition prior to the booking by 9am the following morning. This includes emptying the dishwasher and fridge of all contents.
- (13) Sandwich boards indicating a private function can be placed at the front and rear entrances of the clubhouse and these are available on request from the booking manager.
- (14) The booking does not include exclusive use of BBQ, Pergola and pool area.

## **58 Parking and Traffic**

- (1) The access roads on the land are to be shared safely by vehicles and pedestrians, where pedestrian priority and quality of life take precedence over ease of vehicle movement
- (2) A member, associate member, occupier or guest shall not:-

- (a) drive or propel any motor or other vehicle upon the land at a speed in excess of 10 kilometres per hour;
  - (b) drive or propel any motor or other vehicle upon the land which is not registered for use upon public roads in accordance with the laws of any State or Territory of Australia;
  - (c) drive or propel any motor or other vehicle upon the land if the driver is not licensed to drive a vehicle upon a public road in accordance with the laws of any State or Territory of Australia;
  - (d) drive or propel or start up or allow to operate any motor or other vehicle upon the land which is excessively noisy or which emits an excessive level of exhaust or other fumes;
  - (e) sleep or allow any other person to sleep in any motor or other vehicle while it is parked upon the land;
  - (f) park or allow to stand any motor vehicle, caravan, boat or trailer upon the private access roads constructed upon the land, except for the purpose of immediate loading or unloading. Parking of motor vehicles is only permitted on driveways, but not on any of the private roads which includes the bricked edging area of the roads.
  - (g) park or allow to stand any motor vehicle, caravan, boat or trailer or other vehicle upon areas of the land set aside for visitor car parking.
  - (h) drive, propel or allow to stand any motor or other vehicle upon any part of the land which is unpaved;
- (3) A member, associate member, occupier or guest shall:-
- (a) observe any signs placed upon the land by the Association which relates to the use of the roadways including but without limiting the generality of the foregoing any "STOP", "GIVE WAY" or "ONE WAY" signs; and
  - (a) when using such roadways shall do so generally in accordance with the by-laws for use of public roads made pursuant to the provisions of the New South Wales Road Transport Act 2013 or any superseding Act, so far as the same are reasonably capable of being applied and so far as they are not otherwise inconsistent with these by-laws.

## **59 Signage**

- (1) No advertising hoarding sign shall be erected or displayed on any burdened lot.
- (2) Property agent signs can only be erected on communal areas with permission from the committee.
- (3) Property agent signs can only be erected on individual lots with the permission of the lot owner.
- (4) Signage will be allowed within the boundaries of Lot 5 for the purposes of wayfinding and identification. No signage will be permitted to be placed by a member within Lot 5 unless approved by the Committee

## **60 Conveyancing Act Compliance (Section 88B)**

- (1) In addition to the rules and by-laws aforementioned, for the purposes of restrictions as to user applying to the parcel by virtue of instruments recorded under Section 88B of the Conveyancing Act, 1919, members are reminded of their obligations to comply with all Section 88B clauses.

