

A Public Company Limited By Guarantee

# Constitution

of Strata Community Association (NSW) Limited



# SCA NSW – Constitution supporting a professional standards scheme

## GENERAL

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1. The name of the Company is **STRATA COMMUNITY ASSOCIATION (NSW) LIMITED** (ACN 001 767 997).
2. The objects of the Company include:
  - (a) The promotion of a high standard of expertise and integrity in the management of Group Title Properties and provision of services to Group Title Properties.
  - (b) The promotion of improvement of group title management practices throughout the state of New South Wales.
  - (c) The promotion of ethical, professional conduct, the repression of misconduct and the mediation of disputed points of practice between or among Voting Members of the Company.
  - (d) The promotion of good conduct in dealings by all non-Voting Members of the Company with their clients or the general public.
  - (e) The promotion of education, discourse and instruction about any matter relating to the management of Group Title Properties.
  - (f) The provision of assistance and information about management of Group Title Properties to its Members and the general public.
  - (g) The consideration of all questions affecting the interests of the strata profession in New South Wales.
  - (h) The performance of any regulatory, educational or supervisory function of the Company according to the requirements of government.
  - (i) The undertaking of commercial activities in order to assist in the attainment of any of the objects of the Company. For avoidance of doubt, the priority objects for this purpose are those above (identified as a-h).
  - (j) The enhancement of the recognition by the public of the Company and of its Members in their management of and provision of services to Group Title Properties, including representation of the views of the Company and its Members to government and other bodies.
  - (k) The development, adoption and promotion to Members of general conditions, forms, templates and guides relating to dealings and services in Group Title Properties for improved consumer benefit.

- (l) The promotion of professional relationships with persons practising group title management or providing other services to Group Title Properties in other states and territories of Australia and other countries.
  - (m) The promotion of a high standard of expertise and integrity in the executives (strata owners) of Group Title Properties.
  - (n) The performance of all such other things as are necessary, incidental or conducive to the attainment of these objects.
3. The Company can only exercise the powers in section 124(1) of the Act to:
- (a) carry out the objects of the Company; and
  - (b) do all things incidental or convenient in relation to the exercise of power under **clause 3(a)**.
4. The Company shall only apply its profits and other income to the promotion of the objects of the Company. The payment by the Company to its Members of any dividend or other part of its profits or income is prohibited
- 5.
- (a) If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another institution or corporation which has:
    - (i) objects which are similar to the objects of this Company;
    - (ii) a constitution which requires its income and property to be applied in promoting its objects; and
    - (iii) a constitution which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Company by **clause 4**.
  - (b) The identity of the corporation or institution is to be determined:
    - (i) by the Board; or
    - (ii) if the Board does not decide or does not wish to decide, then by the Members;in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of New South Wales for determination.
6. The making of any payment by the Company to any Director is prohibited, except:
- (a) for the payment of out-of-pocket expenses incurred by a Director in the performance of any duty as a Director of the Company where the amount payable does not exceed an amount previously approved by the Board;
  - (b) for payment of any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and is not more than an amount which would be a reasonable commercial payment for the service; or
  - (c) for payment of any salary or wage due to the Director where the terms of employment have been approved by the Board.
7. Nothing in this Constitution will prevent payment in good faith to a Member:
- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;

- (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or
  - (c) of reasonable and proper rent for premises leased by any Member to the Company.
8. The liability of the Members is limited.
9. Should the Company be wound up while they are a Member or within one year after they cease to be a Member, each Member of the Company shall contribute so much as is required, but not exceeding fifty dollars (\$50.00), for the following purposes:-
- (a) for the payment of debts and liabilities of the Company that were incurred before they ceased to be a Member;
  - (b) for payment of the costs, charges and expenses of winding-up; and
  - (c) for adjustment of the rights of contributories among themselves.
10. The Company shall keep true accounts of moneys received and spent by it, the purpose of any payment to or by the Company and of the assets, credits and liabilities of the Company. Where required by the Act, the accounts of the Company shall be examined by a properly qualified auditor who shall report to the Members in accordance with the provisions of the Act. The Members of the Company may examine its records, subject to reasonable restrictions as to the time and manner of inspection that may be imposed under the Constitution.
11. In this Constitution, unless the contrary intention appears:
- (a) "Act" means the *Corporations Act 2001* (Cth).
  - (b) "Advisory Panel" means the advisory panel of the Board appointed under **clause 108**.
  - (c) "Associate Member Chapter" means the Chapter referred to in **clause 15(e)**.
  - (d) "Board" means the board of Directors of the Company.
  - (e) "Business Day" means a day which is not a Saturday, Sunday, public holiday or bank holiday in New South Wales.
  - (f) "By-Laws" means the by-laws adopted and amended by the Board from time to time in accordance with **clause 44**.
  - (g) "Category 1 Chapter" means:
    - (i) the Professional Strata Managers Chapter; or
    - (ii) the Honorary Member Chapter.
  - (h) "Category 1 Voting Member" means a Member given that voting designation in accordance **clause 16(a)**.
  - (i) "Category 2 Voting Member" means a Member given that voting designation pursuant to **clause 16(b)**.
  - (j) "Chairperson" means the chairperson of a Board meeting, general meeting or Committee meeting, as the case may be.
  - (k) "Chapter" means a division of Membership within the Company Membership structure.
  - (l) "Chapter By-Laws" are the By-Laws for initial and continued Chapter Membership of each Chapter.
  - (m) "Chapter Member", in relation to a Chapter, means a Member who is a member of that Chapter, and "Chapter Membership" has the corresponding meaning.
  - (n) "Code of Conduct" means any principles and standards regarding ethical conduct and

professional standards as referred to in **clause 40**, which are in force from time to time, and which may be applied to different Chapters in specific ways, as stipulated in **Clause 41**.

- (o) "Committee" means a committee of the Board established in accordance with **clause 94** or **95**.
- (p) "Company" means Strata Community Association Limited (NSW) (ACN 001 767 997).
- (q) "Constitution" means this constitution as amended or supplemented from time to time.
- (r) "Director" means any person holding the position of a director of the Company and "Directors" means the directors for the time being of the Company or, as the context permits, such number of them as have authority to act for the Company.
- (s) "Executive Officer" means a person appointed by the Board to that role, being to manage the Company.
- (t) "Fellow" means a Chapter Member of the Honorary Member Chapter who has been designated that title under **clause 16(d)(i)**, and "Fellowship" has the corresponding meaning.
- (u) "Group A Director" means a Director referred to in **clause 69(a)**.
- (v) "Group B Directors" means a Director referred to in **clause 69(b)**.
- (w) "Group Title Property" means a property subject to the *Community Land Development Act 1989* (NSW) or the *Community Land Management Act (NSW) 1989* (NSW) (as those Acts may be amended from time to time), and also includes properties owned by home unit companies or by persons as tenants-in-common.
- (x) "Group Title Scheme" means the body corporate, owners' corporation or association constituted for a Group Title Property.
- (y) "Honorary Member Chapter" means the Chapter referred to in **clause 15(b)**.
- (z) "Life Member" means a Chapter Member of the Honorary Member Chapter who has been designated that title under **clause 16(d)(ii)**.
- (aa) "Material" when used in this Constitution shall include any copyright or other intellectual property vested in the Company.
- (bb) "Member" means a Member of the Company pursuant to **clause 21** (and includes Chapter Members of all of the Chapters), and "Membership" has the corresponding meaning.
- (cc) "Member Certification" means a certification of professional status of a Chapter Member of the Professional Strata Managers Chapter, issued by the Board under **clause 31**.
- (dd) "Member Certification" Types means the types of Member Certification, being:
  - (i) Licensee in Charge Professional Strata Manager (LPSM);
  - (ii) Professional Strata Manager (Licensed) (PSM);
  - (iii) Associate Professional Strata Manager (APSM);
  - (iv) Professional Strata Practice Principal (PSPP); or
  - (v) other Member Certification types as established by the Board in the future.
- (ee) "Office" means the registered office for the time being of the Company.
- (ff) "Officer" has the same meaning as given to that term in section 9 of the Act.
- (gg) "Panel" has the meaning given by **clause 45**.
- (hh) "President" means a Director appointed to that position pursuant to **clause 76(a)**.

- (ii) “Professional Strata Managers Chapter” means the Chapter referred to in **clause 15(a)**.
- (jj) “Professional Strata Practice Chapter” means the Chapter referred to in **clause 15(f)**.
- (kk) “PSM Certified Member” means a Chapter Member of the Professional Strata Managers Chapter, who holds the Professional Strata Manager (Licensed) (PSM) Member Certification.
- (ll) “Register” has the meaning given by **clause 13**.
- (mm) “Replaceable Rules” means the replaceable rules applicable to a public company limited by guarantee set out in the Act.
- (nn) “Representative” means a person authorised in accordance with section 250D of the Corporations Act to act as a representative of a body corporate Member, as described in **clause 26**.
- (oo) “Secretary” means the person appointed by the Board as the secretary of the Company and as defined in the Act.
- (pp) “Senior Vice President” means a Director appointed to that position pursuant to **clause 76(a)**.
- (qq) “Special Resolution” has the meaning given to it in the Act.
- (rr) “Strata Owners Chapter” means the Chapter referred to in **clause 15(d)**.
- (ss) “Strata Services Chapter” means the Chapter referred to in **clause 15(c)**.
- (tt) “Vice President” means a Director appointed to that position pursuant to **clause 76(b)**.
- (uu) “Voting Member” means a Category 1 Voting Member or a Category 2 Voting Member who has paid all moneys due by it to the Company by the timeframe referred to in **clause 52(b)**.

- 12.** In this Constitution, unless there is something in the subject or context which is inconsistent:
- (a) the singular includes the plural and vice versa;
  - (b) each gender includes the other two genders;
  - (c) the word **person** means a natural person and any partnership, association, body or entity whether incorporated or not;
  - (d) the words **writing** and **written** include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
  - (e) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
  - (f) a reference to any clause or schedule is to a clause or schedule of this Constitution;
  - (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
  - (h) an expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division;
  - (i) headings do not form part of or affect the construction or interpretation of this Constitution;
  - (j) this Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules; and
  - (k) examples are used for illustration purposes only and do not form part of this Constitution.

## MEMBERSHIP

13. The Company must keep and maintain a register of Members (the “Register”) which includes the following information regarding each Member, and each person who ceased to be a Member in the previous seven (7) years:
  - (a) full name;
  - (b) in the case of a natural person, that person’s residential or work address;
  - (c) in the case of a body corporate, that body corporate’s registered office or principal place of business;
  - (d) in the case of a Member which has appointed a Representative, the name and residential or work address of that Representative;
  - (d) the Chapter into which that Member has been admitted;
  - (f) if a Chapter Member of the Professional Strata Managers Chapter, any firm or corporate name under which the Member practises;
  - (g) the Member Certification given to that Member, if any;
  - (h) date of entry to the Register, date of admission to Membership and date of any change of Member Certification;
  - (i) if the Member is suspended or if the Member is disciplined for a breach of the Code of Conduct or any relevant Chapter By-Laws, the date on which any suspension took effect and the period of suspension; and
  - (j) the date of cessation of Membership.
14. The Register is taken as conclusive evidence of the eligibility of any Member to vote at general meetings, polls and elections of the Company.
15. As at the adoption of this Constitution in 2020, all Members belong to only one (1) of the Chapters listed below, the Chapters being the following:
  - (a) the Professional Strata Managers Chapter;
  - (b) the Honorary Member Chapter;
  - (c) the Strata Services Chapter;
  - (d) the Strata Owners Chapter;
  - (e) the Associate Member Chapter;
  - (f) the Professional Strata Practice Chapter; and
  - (g) other Chapters as established by the Board in the future.

### Natural Persons

16. A natural person:
  - (a) is a Category 1 Voting Member if the natural person:
    - (i)
      - (A) has been accepted as a Chapter Member of the Professional Strata Managers Chapter, in accordance with the relevant Chapter By-Laws; and
      - (B) has been granted at least one (1) of the following Member Certifications by the Board:

- (1) Licensee in Charge Professional Strata Manager (LPSM);
  - (2) Professional Strata Manager (Licensed) (PSM);
  - (3) Associate Professional Strata Manager (APSM); or
  - (4) Principal of a Professional Strata Practice (PSMP); or
- (ii) has been accepted as a Chapter Member of the Honorary Member Chapter, in accordance with **clause 16(d)** and the relevant Chapter By-Laws;
- (b) is a Category 2 Voting Member if the natural person is not eligible for Chapter Membership of a Category 1 Chapter, and has been accepted as a Chapter Member of:
- (i) the Strata Services Chapter; or
  - (ii) the Strata Owners Chapter,
- in accordance with the relevant Chapter By-Laws;
- (c) may be accepted as a Chapter Member of the Associate Member Chapter provided that they satisfy at least one (1) of the following subclauses:
- (i) they are not a Chapter Member of the Professional Strata Managers Chapter, but are an employee of a corporation which has taken out a strata managing agent's corporate licence according to the provisions of the *Property and Stock Agents Act 2002* (NSW) or are the holder of other qualification determined by the Board;
  - (ii) they have obtained the Assistant Agents Certificate from NSW Fair Trading, but are not eligible for Chapter Membership of the Professional Strata Managers Chapter;
  - (iii) they have retired from practice as a licensed strata managing agent but continue to hold a licence; or
  - (iv) they are a person who is not a Chapter Member of the Professional Strata Managers Chapter but who provides services as a strata or community title managing agent outside the state of New South Wales, and can demonstrate that they have attained a level of competence relevant to the practice of group title management.
- (d) may be accepted as a Chapter Member of the Honorary Member Chapter provided that:
- (i)
    - (A) the Board by secret vote recommend that they be offered Fellowship, in recognition of their contribution to the affairs of the Company or to the practice or advancement of the management of Group Title Properties; and
    - (B) the recommendation of the Board is approved by the Members at a general meeting of the Company; or
  - (ii) the Board appoints a Member as a Life Member, provided that they have been a Member for a continuous period of twenty (20) years, or such other period as the Board may determine in any particular case, and a Life Member shall not be liable to pay any annual subscription,

and a Chapter Member of the Honorary Member Chapter must agree to be bound to comply with the Code of Conduct and the By-Laws of the Honorary Member Chapter, as adopted or amended from time to time by the Company.

## Group Title Scheme

### 17.

- (a) A Group Title Scheme may be a Member of the Company by being accepted as a Chapter



Member of the Strata Owners Chapter provided that:

- (i) the Group Title Scheme has applied in writing for Membership of the Company, by completion of the form prescribed by the Board, and has provided the information required by the Board;
  - (ii) the application has been correctly signed for and on behalf of the Group Title Scheme; and
  - (iii) the Board has resolved to admit the Group Title Scheme to Membership.
- (b) Nothing in this **clause 17** confers any additional voting or decision rights or responsibilities on these Members.

## **Bodies Corporate**

### **18.**

- (a) A body corporate may be a Chapter Member of the Professional Strata Practice Chapter of the Company provided that:
- (i) it is a licensed strata managing agency that meets any requirements of this Chapter set by the Board;
  - (ii) its employee in charge of its principal place of business and each of its places of business is a Chapter Member of the Professional Strata Managers Chapter and has the Member Certification of a Principal of a Professional Strata Practice (PSMP);
  - (iii) it accepts membership of a scheme created according to the provisions of the *Professional Standards Act 1994* (NSW) for which scheme the Company is the 'occupational association', as discussed in that statute; and
  - (iv) it agrees to be bound to comply with the Code of Conduct and the relevant Chapter By-Laws, as adopted or amended from time to time by the Board.
- (b) Nothing in this **clause 18** confers any voting or decision rights on a Member in this class, despite the employee referred to in **clause 18(a)(ii)** being a Category 1 Voting Member.

### **19.**

- (a) A body corporate may be a Chapter Member of the Strata Services Chapter provided that:
- (i) it meets the requirements of this class of Membership set by the Board;
  - (ii) it is a body corporate that supplies services other than those supplied by a licensed strata managing agent to Group Title Properties, and at all times, it has at least one (1) employee who meets the relevant requirements specified in the relevant Chapter By-Laws; and
  - (iii) it agrees to be bound to comply with the Code of Conduct and the relevant Chapter By-Laws, as adopted or amended from time to time by the Board.
- (c) Nothing in this **clause 19** confers any voting or decision rights on a Member in this class, even if the employee referred to in **clause 19(a)(ii)** is a Category 2 Voting Member.

### **20.** A Member which is a body corporate:

- (a) may advertise that it is a Member of the Company; and
- (b) shall have the right to use, disseminate or otherwise promote the Material of the Company, as the Board may authorise from time to time. This right shall not extend to Members who are natural persons, except for a Member which is a licensed strata managing agent that is a sole proprietor, or a partner in a partnership.

21. A natural person under **clause 16**, a Group Title Scheme under **clause 17**, or a body corporate under **clause 18 or 19** may be admitted to Membership of the Company provided that:
  - (a) they have applied in writing for Membership of the Company, by completion of the form prescribed by the Board, and have provided any information required by the Board. The form must advise the applicant that as a Member of the Company, they shall be bound to comply with this Constitution, the Code of Conduct and the relevant Chapter By-Laws, as adopted or amended from time to time by the Board; and
  - (b) the application has been accepted by the Board for admission to Membership and Chapter Membership of the relevant Chapter.
22. The Board or the Executive Committee shall consider an application for admission to Membership of the Company at their meeting next following receipt of the application. The Board is not obliged in any case to give any reason for its decision.
23. The Executive Officer shall advise the applicant in writing of the decision of the Board or Executive Committee. If the Board approves the application, the Executive Officer shall require payment by the applicant of the entrance fee and first year annual subscription within twenty-one (21) days of the request for payment or such other period as the Board may determine.
24. Subject to **clause 25**, a certificate of Membership is available for Members who are Chapter Members of the following Chapters:
  - (a) the Strata Services Chapter; or
  - (b) the Strata Owners Chapter; or
  - (c) the Associate Member Chapter.
25. A certificate of Membership issued to Members under **clause 24** remains the property of the Company. The issuance of the certificate of Membership can be revoked by the Board at any time, and required to be returned or destroyed (even without cessation of the Member's Membership or Chapter Membership) if it has been determined by the Board, in its absolute discretion, that the Member has breached this Constitution, the Code of Conduct and/or the relevant Chapter By-Laws, as adopted or amended from time to time by the Company.

## Representatives

26.
  - (a) This **clause 26** only applies to Members which are bodies corporate.
  - (b) A Member which is a body corporate may appoint more than one (1) Representative, but only one (1) Representative may exercise the Member's powers at any one (1) time.
  - (c) A body corporate Member or an applicant for Membership as a body corporate must appoint as its Representative a natural person.
  - (d) The name and address of the Representative will be entered in the Register as the representative of the body corporate Member.
  - (e) All correspondence and notices from the Company will be served on that Representative and any notice served on a Representative will be deemed to be service on the Member which is represented by that particular Representative.
  - (f) If the appointment of a Representative by the body corporate Member is made by reference to a position held, the appointment must identify the position.
  - (g) A body corporate Member may remove and replace a Representative where the body corporate Member gives written notice to the Board in a form approved by the Board.

- (h) A signature by a Representative of a body corporate Member on behalf of that body corporate Member is taken to be the signature of that body corporate Member for the purposes of this Constitution.
- (i) Any power or right of a body corporate Member as granted by this Constitution can be exercised by the Representative of that particular Member.
- (j) Body corporate Members are represented at meetings of Members by their Representatives, subject to the right of a Representative to appoint a proxy pursuant to **clause 64**.
- (k) The actions of a Representative bind the Member which is represented by that particular Representative.
- (l) Each Representative will comply with the terms of this Constitution in all matters pertaining to the Company as if a Member himself or herself.

### **Subscriptions and Levies**

- 27. The Board may determine the entrance fee and annual subscription payable by Members.
- 28. The Company may levy on Members an extraordinary levy, in addition to any entrance fee and annual subscription under **clause 27**, pursuant to a resolution of the Members in general meeting.
- 29. Annual membership subscriptions may be levied and the membership year may be determined by the Board from time to time.
- 30. All entrance fees, annual subscriptions and extraordinary levies imposed on Members pursuant to **clause 27** or **28** shall be due and payable by each Member within thirty (30) days of the date of the notice stating that the fee is payable.

### **Certifications and Designations**

- 31. A current certification of professional status (“Member Certification”) is required for all Chapter Members of the Professional Strata Managers Chapter in order for them to retain Chapter Membership of that Chapter, as follows:
  - (a) Member Certification is required to be confirmed by the Board in relation to each Chapter Member of the Professional Strata Managers Chapter every twelve (12) months (or, in relation to any particular Chapter Member of the Professional Strata Managers Chapter, up to a period not exceeding thirty-six (36) months as determined by the Board) on the basis of:
    - (i) evidence of the Member meeting the obligations of the Professional Strata Managers Chapter, as stipulated in the Chapter By-Laws for that Chapter;
    - (ii) confirmation that the Member has not breached the Code of Conduct for the Professional Strata Managers Chapter;
    - (iii) demonstrated commitment by that Member to upholding their professional and consumer protection obligations as a professional strata manager in the future;
    - (iv) confirmation that they are covered by professional indemnity insurance held by the professional strata practice; and
    - (v) confirmation of payment of any Member Certification renewal fees determined by the Board.
- 32. A Chapter Member of the Professional Strata Managers Chapter may use postnominals, as determined by the Board from time to time, and may include such postnominals on printed Material such as business cards. A Chapter Member of the Professional Strata Managers Chapter

may also include the Company logo within the design of such Material.

33. Member Certification, with respect to a Member, may be revoked if it has been determined by the Board that the Member has breached the Constitution, the Code of Conduct and/or the Chapter By-Laws of the Professional Strata Managers Chapter, as adopted or amended from time to time by the Board. If the Company has issued any certificate to that Member, evidencing Member Certification, the Board can require that Member to destroy or return that certificate.
34. The Member Certification Types available to be awarded by the Board to Chapter Members of the Professional Strata Managers Chapter, and who meet the eligibility requirements for that Member Certification, as stipulated by the Board in By-Laws, are as follows:
  - (a) "Professional Strata Manager (Licensed) (PSM)";

*Example: this certification is generally appropriate for those Professionals who hold a strata managing agents licence, and are authorised to deal in the business of strata management.*
  - (b) "Associate Professional Strata Manager (APSM)";

*Example: this certification is generally appropriate for those professionals who are working in a professional strata practice and are identified by the principal of that practice as progressing toward achieving PSM certification within the next three (3) years.*
  - (c) "Professional Strata Practice Principal (PSPP)"; and

*Example: this certification is generally appropriate for those professionals who are formally identified and responsible as the principal of a professional strata practice.*
  - (d) "Licensee in Charge Professional Strata Manager (LPSM)".

*Example: this certification is generally appropriate for those professionals who hold a strata managing agents licence, are identified as responsible for oversight within a Professional Strata Practice and who have signing rights in that practice.*
35. The Board must establish a Committee to regularly review and provide advice on all criteria for awarding of Member Certifications and admission into the Professional Strata Managers Chapter, including any assessments that are involved.

### **Voting Rights**

36. Category 1 voting rights are only vested in Category 1 Voting Members.
37. Category 1 voting rights allow Category 1 Voting Members to vote on all matters requested or required by the Board, including but not limited to:
  - (a) the operation and authority of the Professional Strata Managers Chapter and the Honorary Member Chapter; and
  - (b) matters of policy, consumer protection or legislative changes relevant to the licensed or professional practice of strata managers.
38. Category 2 voting rights are only vested in Category 2 Voting Members.
39. Category 2 voting rights allow Category 2 Voting Members to vote on all matters requested or required by the Board, excluding those defined in **clauses 37(a) and (b)**.

### **Code of Conduct**

40. The Board has the power to adopt and implement a Code of Conduct setting out the standards of ethical conduct and professional practice for Members, to be promulgated by the Board and published to Members.
41. The Code of Conduct may have sections that apply differently to different Chapters.
42. The Code of Conduct may be amended by the Board from time to time and, as amended, be

promulgated by the Board and published to Members.

43. Every Member shall be bound to accept and, in the execution of its activities abide by, the standards of practice and conduct expressed in the Code of Conduct as amended from time to time.

#### **Regulation making powers and By-Laws**

44. The Board may from time to time by resolution make, amend and repeal By-Laws not inconsistent with the Constitution and the Code of Conduct in relation to matters including, but not limited to:
- (a) voting, procedure and conduct at meetings of the Board;
  - (b) the duties and responsibilities of the Officers and Directors;
  - (c) voting and conduct of the Board elections;
  - (d) regulation of the proceedings of Committees created by the Board;
  - (e) the professional practice and conduct of Members;
  - (f) the monitoring of professional indemnity insurance claims of the Members;
  - (g) the stipulation of an insurance standard that can be used by Members to purchase adequate professional indemnity insurance; and
  - (g) other professional practice matters including accreditation, continuing professional development, professional standards and quality practice standards across all respective Chapters.

#### **Disciplining of Members**

45. The Board has the power to appoint a panel or panels or individuals (hereinafter collectively referred to as the "Panel") to decide on matters related to the Code of Conduct, the By-Laws and/or the Chapter By-Laws, as follows:
- (a) The Panel is constituted of at least three (3) members and no more than five (5) members, including:
    - (i) A minimum of two (2) Chapter Members of the Professional Strata Managers Chapter (or at least a simple majority of the panel);
    - (ii) one (1) Chapter Member from the relevant Chapter; and
    - (iii) A minimum of one (1) independent person who is not a Member of the Company and is not employed by a Member of the Company.
  - (b) Current Officers and current Directors of the Company are excluded from participating in a Panel.
46. Each Member who is the subject of a matter brought before any such Panel agrees to abide by the decisions of the Panel, and acknowledges that it will not be entitled to bring any action or suit against the Company, the Board or the members of the Panel as a consequence of or arising out of any decision or action of the Panel.
47. Decisions available to the Panel include, but are not limited to:
- (a) warning and rectification;
  - (b) mandated education;
  - (c) mandated supervision;
  - (d) suspension of Membership (and Member Certification, if relevant) for a period;

- (e) termination of Membership (and Member Certification if relevant); and
  - (f) banning from future Membership, for a period to be ascertained.
48. Each Member acknowledges that the Panel is at liberty to publicly publish details of any matters heard by the Panel, including the:
- (a) name of the Member who is the subject of the matter being heard;
  - (b) decision of the panel; and
  - (c) reasons for any decisions made by the Panel.
49. Each Member acknowledges that no matter or thing done or omitted by the Panel (including the exercise of its powers as referred to in **clause 48**) subjects the Panel, Board or Company to any liability. Each Member hereby releases the Company, Board and members of the Panel from any such liability.

### Cessation of Membership

50. A Member may resign from Membership by notice in writing to the Executive Officer. The Member shall remain liable for any moneys due by the Member to the Company at the date of the Member's resignation. The Member shall also remain liable to contribute to the assets of the Company according to **clause 9** of the Constitution.
51. A Member shall cease to be a Member if:
- (a) it ceases to satisfy the eligibility criteria for its Chapter, unless transferred to another Chapter by the Board;
  - (b) in the case of a natural person, that Member dies, or becomes bankrupt or insolvent or makes an arrangement or composition with creditors of the person's joint or separate estate generally; or
  - (c) in the case of a body corporate, that Member is dissolved or ceases to exist, or has a receiver, a receiver or manager, a liquidator, an administrator, an administrator of a deed of company arrangement, or a trustee of other person administering a compromise or arrangement between the Member and someone else, appointed to it.
52. The Board may expel a Member if:
- (a) a Panel appointed under **clause 45** assessed and made a recommendation to the Board as to whether to expel a Member that is the subject of its decision (noting that the Board is not bound to follow that decision); or
  - (b)
    - (i) the Member has failed to pay to the Company monies due but unpaid for thirty (30) days;
    - (ii) the Company has served a demand notice on the Member specifying the amount owing and requiring payment of the monies owing within fourteen (14) days;
    - (iii) the Member has failed to comply with the demand notice;
    - (iv) the Board has served the Member with a notice of intention to expel at least fourteen (14) days' before the proposed expulsion; and
    - (v) the Member has failed to make payment of the monies owing to the Company within the fourteen (14) day period specified in **clause 52(b)(iv)**.

## GENERAL MEETINGS OF MEMBERS

### Convening of General Meetings

53. The Company shall hold annual general meetings in accordance with the provisions of the Act.
54. The business of the annual general meeting shall include the following:
- (a) the consideration of the accounts and balance sheets;
  - (b) the consideration of the report of the Directors;
  - (c) the consideration of the report of the auditors (if any);
  - (d) the appointment of Directors for the succeeding year; and
  - (e) the appointment of auditors (if any).
55. An extraordinary general meeting, being any meeting that is not an annual general meeting, shall be convened upon request by not less than three (3) Directors (and the request shall specify the business to be conducted at the extraordinary general meeting) or by requisition of the Members according to the Act.
56. Subject to the provisions of the Act relating to Special Resolutions, at least twenty one (21) days' notice of a general meeting shall be given to the persons entitled to receive notice of it (excluding the day on which the notice is deemed to be served and the day of the meeting). The notice shall specify the place, the day and hour of commencement of the general meeting, and the general nature of each item of business to be addressed at the meeting.
57. The Company shall give notice of a general meeting to:
- (a) every Member who has given written notice of the address within Australia for the giving of notices to them;
  - (b) the auditor (if any) for the time being of the Company; and
  - (c) every Director,
- and no other person shall be entitled to receive notice of a general meeting.

## PROCEEDINGS AT GENERAL MEETINGS OF MEMBERS

### Quorum

58. No matter shall be considered at a general meeting unless there is a quorum present at all times during the meeting. Voting Members present in person or by proxy and entitled to vote and constituting not less than ten (10) per centum of the number of Voting Members who would be entitled to vote if present in person or by proxy, shall be a quorum.
59. If a quorum is not present at the expiry of one half hour from the time the matter arises for consideration, fifty (50) Voting Members then present in person or by proxy and entitled to vote shall be a quorum.

### Chairperson

60. The President shall preside as Chairperson at every general meeting of the Company. In the absence of the President at a general meeting, the Senior Vice President shall preside as Chairperson. In the absence of the Senior Vice President, the Vice President who is a PSM Certified Member shall preside as Chairperson. In the absence of the Vice President who is a PSM Certified Member, the Members present shall elect one of their number to preside as Chairperson.

## Determination of Questions

61.

- (a) Subject to the rest of this Constitution, each Voting Member shall be entitled to one (1) vote at general meetings of the Company.
- (b) Chapter Members of the Associate Member Chapter and the Professional Strata Practice Chapter shall have no right to vote at general meetings of the Company.

## Polling

62. No person shall be entitled to vote at any general meeting if any payment of moneys due by him to the Company is in arrears by more than one (1) month at the date of the meeting.

63.

- (a) Unless a poll is demanded, a motion put to the meeting shall be decided upon a show of hands.
- (b) Unless a poll is demanded, a declaration by the Chairperson in respect of a show of hands that a motion has been carried or carried unanimously or carried by a particular majority or lost, and the entry of a minute of that declaration in the minute book of the Company, shall be conclusive evidence of the result of the vote without proof of the number or proportion of the votes cast in favour of or against the motion.
- (c) A poll may be demanded by the Chairperson or by at least three (3) Voting Members present in person or by proxy and entitled to vote.
- (d) A poll may be demanded before or after a declaration by the Chairperson of the result of voting on a show of hands.
- (e) A poll shall be taken immediately and in the manner directed by the Chairperson.
- (f) The result of the poll shall be the resolution of the meeting.

## Proxies

64. A Voting Member or a Representative or a Voting Member may do so in person or by proxy, providing that, in the case of a proxy:

- (a) the instrument appointing the proxy is deposited at the Office, or another place specified for that purpose in the notice of meeting, not less than forty-eight (48) hours before the time of commencement of the meeting according to the notice of meeting; and
- (b) the instrument appointing the proxy is in the form currently approved by the Board, or any other form, which the Chairperson considers express, a clear intention on the part of the Voting Member or Representative of the Voting Member, to appoint a nominated person to vote in their place at a specified meeting of the Company.

65. An instrument appointing a proxy confers authority on the proxy to demand and to join in demanding a poll.

66. A person who is entitled to vote and whose estate has been vested in a trustee or another representative because of unsoundness of mind may vote by that trustee or representative. The trustee or representative may themselves vote in person or by proxy.

67. Subject to **clause 62**, a vote cast by a properly appointed proxy shall be valid notwithstanding the death, disability, bankruptcy or liquidation of the appointing Voting Member or Representative of the Voting Member or the revocation of the appointment, unless notice is received by the Chairperson or the Executive Officer of the Company before the commencement of the meeting



or, in the case of a vote cast by the proxy after the resumption of an adjourned meeting, before the resumption of the meeting.

## THE BOARD

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### The Directors

- 68.** The Board of Directors shall consist of five (5) Group A and six (6) Group B Directors. Group A Directors vacate their office each even year and Group B Directors vacate their office each odd year.
- 69.** The Board of Directors shall comprise eleven (11) Voting Members of the Company as follows:
- (a) Group A
    - (i) Three (3) Directors who are PSM Certified Members; and
    - (ii) Two (2) Directors who are Chapter Members of the Strata Services Chapter.
  - (b) Group B
    - (i) Three (3) Directors who are PSM Certified Members;
    - (ii) One (1) Director who is a Chapter Member of the Strata Services Chapter;
    - (iii) One (1) Director who is a Chapter Member of the Strata Owners Chapter; and
    - (iv) One (1) Director who is a Chapter Member of the Associate Member Chapter.
- 70.** Director appointed at any succeeding annual general meeting shall hold office for a period of two (2) years.
- 71.** The Company by majority resolution of its general meeting may change the number of persons to be appointed to the Board of Directors.
- 72.** The procedure for nomination and election of Directors referred to in **clauses 69(a)(i) to (ii) and clauses 69(b)(i) to (iii)** shall be as follows:
- (a) any Voting Member of the Company may be nominated for election as a Director for the Chapter of which he or she is a Chapter Member by two other Voting Members who are entitled to vote and who are Chapter Members of the same Chapter as the candidate;
  - (b) the nomination must be in writing, signed by the candidate and the nominating persons and lodged with the Executive Officer at least fourteen (14) days before the general meeting. A list of candidates and the persons who nominated them shall be displayed at the Office for the three (3) Business Days immediately preceding the general meeting.
  - (c) if, when the time for nominating candidates ends, the number of candidates is less than the number of Directors to be elected, the Board shall appoint one (1) or more of their number from the applicable Chapter whose offices are to be vacated, to be candidates so that the number of candidates is equal to the number of Directors to be elected, and those candidates shall all be deemed to be elected; and
  - (d) if the number of candidates exceeds the number of Directors to be elected, each Voting Member who is a Chapter Member of the Chapter in relation to which the vacancy relates may vote for so many candidates as are required from that Chapter to constitute the Board, by indicating the names of those candidates appearing on a ballot-paper.

73. The Director referred to in **clause 69(b)(iv)** shall be appointed by resolution of the Board immediately following an annual general meeting at which that position has become vacant.
74. A person vacates their office as a Director of the Company upon the election of Directors at the second Annual General Meeting following their appointment, or if they:
- (a) resign their office by notice in writing to the Company;
  - (b) cease to be a voting member of the Company;
  - (c) are declared bankrupt or make any arrangement or composition with their creditors generally;
  - (d) pursuant to the Act, cease to be a Director or are prohibited from being a director of a company;
  - (e) become of unsound mind or are dealt with under the law relating to mental health;
  - (f) for more than six (6) months are absent from meetings of the Board without the permission of the Board;
  - (g) are directly or indirectly interested in any agreement or proposed agreement with the Company unless the fact and extent of their proposed interest is made known to the Board before it is resolved that the Company enter into the agreement; or
  - (h) are replaced as a Director by a majority resolution of the Company in general meeting in accordance with the Act.
75. The Board may appoint a Voting Member (or in the case of Chapter Member of the Associate Member Chapter, another Chapter Member from that Chapter) from the appropriate Chapter of the Company to replace a Director who has vacated his office as a Director. The person so appointed shall hold office for the balance of the period of office of the vacating Director.

#### Office Bearers

- 76.
- (a) At the conclusion of each annual general meeting, the Board must appoint Directors who are PSM Certified Members to be the President and Senior Vice President of the Company.
  - (b) At the conclusion of each annual general meeting, the Board must appoint a Director who is a PSM Certified Member and a Director who is a Chapter Member of the Strata Services Chapter to be Vice Presidents of the Company.
  - (c) Each of the office bearers referred to in this **clause 76** shall vacate their office on the earliest to occur of the following:
    - (i) after two (2) years;
    - (ii) by vacating their office as a Director;
    - (iii) by resigning from their office by notice in writing to the Company; or
    - (iv) by assuming another of the offices referred to in this **clause 76**.
77. If the President vacates their office, the Senior Vice President shall replace the President.
78. If the Senior Vice President vacates their office, the Vice President who is a PSM Certified Member shall replace the Senior Vice President.
79. If a Vice President vacates their office, the Directors must appoint one (1) of their number from their Chapter to replace the Vice President.

80. The President shall preside as Chairperson of the Board. In the absence of the President at the meeting, the Senior Vice President shall preside as Chairperson. In the absence of the President and Senior Vice President, the Vice President who is a PSM Certified Member will be Chairperson of the meeting. In the absence of the Vice President who is a PSM Certified Member, the Directors present shall elect one of their number to preside as Chairperson of the meeting.

#### **Proceedings of Directors**

81. The Board may meet and adjourn and regulate their meetings as it thinks fit.
82. A Director may convene a meeting of the Board at any time.
83. No business shall be conducted at a meeting of the Directors unless there is a quorum present. A quorum shall be six (6) Directors present (at least three (3) of whom must be PSM Certified Member), or a greater number determined by the Directors.
84. The Board may elect to hold meetings using any technology consented to by all Directors. For the purpose of this **clause 84**:
- (a) meetings using any technology, with a number of consenting Directors, not less than the quorum, whether or not any one (1) or more of the Directors is out of Australia, is deemed to constitute a meeting of the Board and all the provisions of the Constitution as to the Meetings of the Board shall apply to such meetings;
  - (b) all the Directors are entitled to be linked by the technology being used for the purposes of such a meeting. Notice of any such meeting may be given by the same technology or in any other manner permitted by this Constitution;
  - (c) at the commencement of the Board meeting, each of the Directors taking part in the meeting using the technology should be able to hear each of the other Directors taking part;
  - (d) at the commencement of the Board meeting, each Director shall acknowledge the Director's presence for the purpose of the Board meeting to all the other Directors taking part;
  - (e) a Director shall not leave the Board meeting by disconnecting the Director's technology device unless the Director has previously obtained the express consent of the Chairperson of the meeting. A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during the meeting by the technology being used, unless the Director has previously obtained the express consent of the Chairperson of the meeting to leave the meeting; and
  - (f) a minute of the proceedings of a meeting by use of technology is sufficient evidence of those proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson.
85. Questions arising at a meeting of the Board shall be decided by a majority of votes. In the event of an equality of votes, the Chairperson shall have a casting vote.
86. If a proposed resolution has been approved by a majority of votes in writing or other electronic means of communication, with the requirement that a quorum shall be six (6) Directors (at least three (3) of whom must be PSM Certified Members), or a greater number determined by all of the Directors, the resolution shall be as valid as if it had been passed at a duly convened meeting of the Board.

#### **POWERS AND DUTIES OF THE DIRECTORS**

87. The Board is responsible for the management of the Company and the development of policies.
88. The Board may exercise all the powers of the Company except those that may only be exercised by the Company in general meeting according to law or to the Constitution of the Company.

89. The Board shall cause minutes to be kept of general meeting of the Company and of meeting of the Board.
90. Cheques, promissory notes, drafts, bills of exchange and other negotiable instruments may be executed and endorsed on behalf of the Company in such manner as the Board may determine.
- 91.
- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Act, the Company may execute any agreement, deed or other document by:
- (i) two (2) Directors signing the same; or
- (ii) one (1) Director and one (1) Secretary signing the same.
- (b) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

## ACCOUNTS AND INSPECTION OF RECORDS

92. The Board shall cause proper accounting records to be kept. The Board shall cause to be prepared and presented to each annual general meeting a balance sheet and profit and loss statement current at a date not more than six (6) months before the date of the meeting.
93. The right of any Member to inspect the records of the Company are as conferred by statute or as determined by the Board or by the Company in general meeting in accordance with **clause 10** of the Constitution.

## COMMITTEES OF DIRECTORS

94. The Board may delegate any of its powers and functions to Committees consisting of Directors and/or other persons.
95. The Board may also appoint Committees, the members of each of which must include at least one (1) Director, to investigate and report to the Board about specific issues.
96. Subject to any rules or directions that may be imposed upon a Committee by the Board or this Constitution, a Committee may regulate its own affairs as it considers appropriate.
97. The Board may determine the Chapter By-Laws or sections of the Code of Conduct with respect to a Chapter, provided that they are not inconsistent with the Constitution.

## VALIDATION OF ACTS

98. Any act or resolution of the Board or of a Committee is valid although there subsequently be discovered the disqualification of or a defect in the appointment of any Director or member of the Committee.

## SECRETARY

### EXECUTIVE COMMITTEE

99. The Board will appoint the Secretary of the Company for such term, for such remuneration and upon such conditions as they consider appropriate. The Board may remove any Secretary appointed by them. The Board may appoint the Executive Officer to be the Secretary.

## CHAPTERS

### Meetings of Chapters

100. The members of a Chapter of the Company may meet to deal with issues specific to that Chapter.

101. The Senior Vice President shall preside as Chairperson of meetings of the Professional Strata Managers Chapter. In the absence of the Senior Vice President at the meeting, the Vice President who is a PSM Certified Member shall preside as Chairperson. In the absence of the Vice President who is a PSM Certified Member, the Chapter Members who are present shall appoint one of their number to preside as Chairperson of the meeting.
102. The Vice President who is a Chapter Member of the Strata Services Chapter shall preside as Chairperson of meetings of the Strata Services Chapter. In the absence of the Vice President at that meeting, the Group A Director who is a Chapter Member of the Strata Services Chapter (and is not Vice President) shall preside as Chairperson. In the absence of the Group A Director (who is not Vice President) at the meeting, the Group B Director (who is not Vice President) shall preside as Chairperson.
103. The Chapter Members of a Chapter may meet and adjourn and regulate their meetings as they think fit, subject to the Constitution.
104. Each Chapter shall appoint from its Chapter Membership a secretary who shall convene meetings of the Chapter at any time upon instruction from the person who performs the role of Chapter meeting Chairperson. The secretary shall prepare and distribute an agenda to the relevant Chapter Members and to the Executive Officer of the Company before a meeting of the Chapter, and shall prepare and distribute minutes of each Chapter meeting to the relevant Chapter Members and to the Executive Officer of the Company.
105. The Chapter Members of each Chapter shall be entitled to vote at meetings of their respective Chapters. Questions arising at meetings shall be decided by a majority of votes. The Chairperson shall have a casting vote in the event of a tie.
106. No matter shall be considered at a Chapter meeting unless there is a quorum present. Persons present in person or by proxy and entitled to vote and constituting the lesser of ten (10) per centum of the number of Chapter Members who would be entitled to vote if present in person or by proxy, or ten (10) Chapter Members present in person, shall be a quorum. The rules applicable to the conduct of general meetings shall apply to Chapter meetings.

## NOTICES

107. The business of meetings of the various Chapters shall be to debate and decide issues specific to that Chapter that are to be brought to the attention of the Board for its deliberation. The various Chapters shall have no administrative powers.
108. The Board may appoint suitably qualified and experienced persons to form an Advisory Panel to whom the Directors may refer matters for deliberation and advice. The Advisory Panel shall nominate a convenor who shall liaise with the President and Executive Officer regarding instructions to be given to the panel by the Board or the reporting of its findings to the Board.
109. No specific term applies to the appointment as an Advisory Panel member. The Board may from time to time and at its absolute discretion appoint or remove members of the Advisory Panel.
110. Where required by the Act, the Company shall appoint a properly qualified auditor. The auditor's duties shall be regulated in accordance with the Act and **clause 10** of the Constitution.
111. A notice may be given by the Company to any Member by:
  - (a) serving it on the Member personally;
  - (b) sending it by post to the Member or leaving it at the Members' address shown in the register of Members or otherwise the address supplied by the Member to the Company for the giving of notices;
  - (c) facsimile to the facsimile number supplied by the Member to the Company for the giving of

notices; or

- (d) sending it to the electronic address supplied by the Member to the Company for the giving of notices.

**112.** Subject to this Constitution, a notice may be given under this Constitution to any Director by:

- (a) serving it on the Director personally;
- (b) sending it by post to the Director or leaving it at the Director's usual residential or business address; or
- (c) sending it to the facsimile number supplied by the Director to the Company for the giving of notices; or
- (d) sending it to the electronic address supplied by the Director to the Company for the giving of notices.

**113.** Subject to this Constitution, a notice may be given by a Member or Director to the Company by:

- (a) serving it on the Company at the Office;
- (b) sending it by post to the Office;
- (c) facsimile to the Company's principal facsimile number; or
- (d) email to the Company's principal email address.

**114.** 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 shall be deemed to have been effected on the third (3<sup>rd</sup>) Business Day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of post.

**115.** Where a notice is sent by facsimile or other electronic means before 5:00pm (Sydney time) on any Business Day, services of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on that Business Day. Where a notice is sent after 5:00pm (Sydney time), it shall be taken to have been effected on the Business Day after it is sent.

## INDEMNITY & INSURANCE

**116.** Every Director, Executive Officer and other Officer or employee of the Company shall be indemnified out of the assets of the Company against any liability arising out of or in relation to any duties of their office, including costs incurred in defending legal proceedings against them, insofar as the indemnity is not limited by the Act and is not provided by an insurance company or companies.

## TRANSITIONAL PROVISIONS<sup>1</sup>

**117.** This Constitution is subject to the following clauses.

**118.** The individuals holding office on the Board as at the adoption of this Constitution in 2020 shall be entitled to complete their terms on the Board even if they are ineligible under **clause 69**.

**119.** The Board composition set out in **clause 69(b)** shall only apply from the annual general meeting in 2021, and the Board composition set out in **clause 69(a)** shall only apply from the annual general meeting in 2022.

**120.** Up until the annual general meeting in 2021, all references in **clauses 76 to 101** to PSM Certified Members shall not apply, and shall instead be interpreted as any Director.

*Example: In **clause 76(a)**, the Board may appoint any Director to be President and Senior Vice President, until the annual general meeting in 2021, after which the Board may only appoint PSM Certified Members to be the President and Senior Vice President.*

- 121.** Up until the annual general meeting in 2022, if a casual vacancy occurs in a Director position, then **clause 75** shall apply, with the Board being able to appoint any Voting Member from the Chapter of the vacating Director.

*Example: A Director was part of the now-defunct Strata Managers Chapter as at the adoption of this Constitution, and was transitioned to the newly created PSM Certified Members Chapter. If that Director vacates office before the annual general meeting in 2022, then the Board shall appoint any Voting Member from the PSM Certified Members Chapter to fill the vacancy.*

<sup>1</sup> This Constitution was adopted following the Board elections in 2020, meaning that the Board holding office as at the adoption of this Constitution in 2020 does not comply with the Board composition set out in clause 69 (which was changed when this Constitution was adopted in 2020). These transitional provisions are intended to clarify the provisos upon which the Board holding office as at the adoption of this Constitution in 2020 can complete their terms, as well as any consequential amendments, until the whole Board structure is consistent with what is set out in clause 69.