

Constitution

National Trust of Australia (Victoria)
ACN 004 356 192

gadens

Level 25, Bourke Place
600 Bourke Street
Melbourne VIC 3000
Australia

T +61 3 9252 2555
F +61 3 9252 2500

Ref DBC:21504452

Contents

1. National Trust Structure and Constitution	1
2. Preliminary	4
3. Members	6
4. Subscription	9
5. Proceedings of Members	10
6. Directors	17
7. Officers	21
8. Powers of the National Trust and Directors	22
9. Proceedings of Directors	24
10. Notices	27
11. National Trust distributions	29
Schedule 1 – Definitions and interpretation	30

National Trust of Australia (Victoria) ACN 004 356 192

Constitution

1. National Trust Structure and Constitution

1.1 English Antecedents

The English National Trust began in the 1890s when Octavia Hill, Sir Robert Hunter and Canon Hardwicke Rawnsley emerged as campaigners against what they saw as the wanton destruction of invaluable open spaces and historically significant buildings.

The trio decided to form a society along the lines of the powerful preservation organisations in the United States such as the Mount Vernon Ladies' Association, which pioneered the concept of house museums. Octavia Hill suggested a joint stock company in view of their aim not only to save but also to hold. "You will do better, I believe, to bring forward its benevolent rather than its commercial character," Sir Robert responded. "If they were to call it a trust rather than a company," she suggested, "people would be more likely to forgive its blunders." "National Trust" scribbled Sir Robert at the top of Hill's letter – and so it became.

1.2 Striking the Match

The first major public call for a National Trust in Victoria came from the Victorian Town Planning Association (later the Town and Country Planning Association of Victoria) a professional body founded in 1914, which lobbied for and achieved planning legislation in 1944. The Argus reported on 31 May 1954 that in the Annual Report of the Town Planners Association, Sir James Barrett complained that the Government was taking over parkland reserved for sport or recreation. "Victoria needs a National Trust such as the National Trust of England for Places of Historic Interest or National Beauty, on which nature-loving bodies and local committees could combine," he stated.

It was Robin Boyd, a popular writer and one of Melbourne's most noted architects, who did much to pave the way for a National Trust in Victoria. In 1952, the publication of his *Australia's Home* informed a wide audience of the existence and significance of Australian architecture. *Australia's Home* "was a major stimulus to research in architectural history at the University of Melbourne especially, and for all concerned with heritage matters."

The forthcoming sale of Werndew, a beautiful Toorak mansion standing in two hectares (five acres) of grounds, provided R. T. M. Pescott, Director of the National Museum of Victoria with the opportunity to launch a broadside in *The Age*. The idea behind his article in *The Age* was to explain what the National Trust in Great Britain was about and why something needed to be done in Victoria before it was too late.

The sale and demolition of Werndew in 1954 spurred the desire for action. At the 9 November meeting of the TCPAV, it was suggested that Como, the magnificent home of the Armytage family, would be an ideal rallying point. The house, built in stages between the 1840s and the 1870s, was the home of the sisters Miss Leila Armytage and Mrs Constance Fitzpatrick.

1.3 Prominent Preservers

In September 1955, the first meeting took place between the Armytage sisters and those negotiating on behalf of the future Trust: Daryl and Joan Lindsay, Robin Boyd, Stuart Calder, John Turner, Professor of Botany at the University of Melbourne, and Kenneth Myer, Chairman of the TCPAV. The Armytages were receptive and on Tuesday 4 October

Robin Boyd published an article in the Herald announcing that a meeting was to be held the following Monday afternoon "to discuss the formation of a society or trust for the preservation of historical and meritorious buildings in Victoria." The idea, wrote Boyd, was to "channel into useful directions the wealth of aimless public goodwill towards our historic relics which is stirred up every time an old house is demolished or a century-old garden is bull-dozed, or a public beauty spot is subdivided for private villas."

On 23 May 1956 the National Trust of Australia (Victoria) was founded by the incorporation of a company limited by guarantee. The necessary paperwork was prepared by Oswald Burt, one of Victoria's top company lawyers. He advised the executive that this was the only legal machine at the time that offered non-profit making organisations any hope of tax deductibility and they were all well aware that the Trust could not possibly succeed without this advantage.

The first formal meeting of the Trust took place at Wilson Hall at the University of Melbourne on 11 September 1956, launched by the Governor, Sir Dallas Brooks. "Places and things of natural, historic or aesthetic importance" had to be identified before they could be preserved, thus the main weapon the Trust could use against gratuitous wrecking was education. The Governor, told an audience of about 300 people, "I am convinced that the trust could exercise an almost limitless influence in the fields of education, history, architecture and the arts."

1.4 A Trust for the Nation

By 1963 every state in Australia had a National Trust but there were no national heritage bodies nor was there any legislation to protect historically significant buildings or places. Each state's National Trust operated independently of each other. The earliest National Trust had been established in New South Wales in 1945, followed by South Australia in 1955. After Victoria in 1956 came Western Australia in 1959, Tasmania in 1960, the Northern Territory and Queensland in 1963 and the Australian Capital Territory in 1965.

The setting up of a national body was first proposed in 1962 and members of the Victorian Trust played a major role in achieving this. Professor Joseph Burke chaired meetings in Canberra, and Oswald Burt drew up the constitution for the new body, the Australian Council of National Trusts. The key to its success, as in Victoria, was tax deductibility. To achieve this, the Federal National Trust had to be incorporated as a company limited by guarantee.

1.5 The National Trust's relationship with government

The State Government through Heritage Victoria is responsible for administering heritage law in Victoria. The National Trust of Australia (Victoria) is committed to working constructively with governments. While the Trust sets out with the intention of working with government, inevitably there will be decisions of government and processes established by government with which the Trust will disagree.

1.6 The first or provisional Members of the National Trust of Australia (Victoria)

As Listed in the Articles of Association

Daryl Ernest LINDSAY	Flat 1, 36 Avoca Street, South Yarra	
John Stewart TURNER	4 Berkley Street Hawthorn E.2	Professor of Botany
Joseph Terrance BURKE	7 Dunraven Avenue Toorak S.E.2	Professor of Fine Arts
Brian Bannantyne LEWIS	303 Royal Parade Parkville	Professor of Architecture
Robin Gerard Penleigh BOYD	158 Riversdale Road Camberwell	Architect

Pierre James Furneaux MANN	327 Collins Street Melbourne	Public Relations Consultant (representing the Society for for the Preservation of the Past)
John REED	Templestowe Road Heidelberg	Publisher (President of the Contemporary Art Society of Victoria)
Kenneth Baillieu MYER	51 Albany Road Toorak S.E.2	Company Director (President of the Town & Country Planning Association of Victoria)
Albert Keith LINES	327 Collins Street Melbourne	Architect (President of the Municipal Association)
Ralph Malcolm WARNER	36A Brickwood Street Elsternwick S.4	Artist (President of the Victorian Artists Society)
Phillip Foster PEARCE	3 Duncombe Avenue Middle Brighton	Architect (President of the Australian Planning Institute, Melbourne)
Harry Stephen WINBUSH	20 Queen Street Melbourne	Architect (President of the Royal Victorian Institute of Architects)
Aubrey Hickes Lawson GIBSON	5 Hopetoun Road Toorak S.E.2	Company Director
Aldo MASSOLA	Kerr Crescent Montrose	Civil Servant (representing the National Museum)
Noel Frederick GOSS	157 Gipps Street East Melbourne	Civil Servant
Sir Archie Reuben Louis MICHAELIS	441 Lonsdale Street Melbourne	Company Director
Victor Edward GREENHALGH	56 Middle Crescent Brighton	Sculptor
Henry Newton Spencer WOLLASTON	480 Bourke Street Melbourne	Solicitor (President of the Genealogical Society of Victoria)
Henry Norman Burgess WETTENHALL	16 Haverbrack Avenue Malvern	Physician
Roland Ravenscroft WETTENHALL	557 Toorak Road Toorak	Physician
Kevin Joseph NOONAN	4 Glen Eira Avenue St Kilda S.16	Surveyor (Chairman of the Institution of Surveyors, Australia, Melbourne Division)
Arthur Rex Mayhew JOHNSON	1070 Malvern Road Armadale	Engineer (Chairman of the Institution of Engineers, Australia, Melbourne Division)

1.7 Schedule of amendments to the Memorandum of Association since incorporation

- (a) Passed by Special Resolution on 24 November 1997
- (b) Passed by Special Resolution on 29 November 1999

1.8 Schedule of amendments to the Articles of Association since incorporation.

- (a) Passed by Special Resolution on 24 November 1997
- (b) Passed at a Special General Meeting on 27 March 1999
- (c) Passed by Special Resolution on 27 November 2004

- (d) Passed by Special Resolution on 20 November 2010
- (e) Passed by Special Resolution on 21 November 2015

2. Preliminary

2.1 Definitions and interpretation

Schedule 1 of this Constitution sets out definitions (defined terms are capitalised) and rules of interpretation that apply and form part of this Constitution.

2.2 Company to be referred to as "the National Trust"

The name of the company is National Trust of Australia (Victoria) and is hereinafter in this document referred to as "the National Trust".

2.3 Nature of the National Trust

- (a) The National Trust is a public company limited by guarantee.
- (b) Each Member undertakes to contribute an amount not exceeding \$25.00 to the property of the National Trust if the National Trust is wound up:
 - (i) at a time when that person is a Member; or
 - (ii) within one year of the time that person ceased to be a Member,for:
 - (iii) payment of the debts and liabilities of the National Trust contracted before that person ceased to be a Member;
 - (iv) payment of the costs, charges and expenses of winding up the National Trust; and
 - (v) adjustment of the rights of the contributories among themselves.

2.4 Location of Office

The office of the National Trust is located in Melbourne or such other place in Victoria as the Directors determine.

2.5 Replaceable rules

The replaceable rules in the *Corporations Act* do not apply to the National Trust.

2.6 Objects

To inspire Australians to conserve our heritage for the future by giving effect to all or any of the objects hereinafter set out:

- (a) Promote and foster appreciation and enjoyment of, and respect for Australia's natural, indigenous, and cultural heritage, including significant natural places;
- (b) Encourage conservation of the environment and promote a sensitive rapport between built and natural environments;
- (c) Encourage a strong sense of Australian identity;

- (d) Promote and foster learning about, or otherwise encourage the development of community knowledge and understanding of Australia's heritage by:
 - (i) Acquiring places, literature, artworks and other objects of historical significance and presenting them to the public;
 - (ii) Identifying places and things, happenings and events of heritage significance, keeping and maintaining an archival record for public reference, and recognising identified places with signage;
 - (iii) Conducting public lectures and other programs, procuring funding, making grants and awarding scholarships; and
 - (iv) Conducting such other activities as promote these objects;
- (e) Monitor, assess and act upon a range of issues which impact directly and indirectly on the conservation of Australia's heritage;
- (f) Promote legislation likely to further the achievement of these objects;
- (g) Seek and hold gifts, devises and bequests and any other contributions, and any income resulting from such gifts, devises and bequests and contributions on trust for the purposes and objects of the Trust and if any such gifts, devises bequests and contributions be subject to any trust or condition, to give effect to such trust or condition;
- (h) Conserve, manage, maintain and repair any buildings, places or objects of heritage significance as are owned by or under the control of the Trust, and for this purpose enter into agreements, including loans;
- (i) Co-operate with any other institution or society having objects complementary to those of the National Trust;
- (j) Solely for the purpose of carrying out the above objects the Trust shall have all the necessary powers, including the power to:
 - (i) Purchase, take on lease or in exchange, hire and otherwise acquire any land, building, easement or property, real and personal, and any rights or privileges which may be required for the purposes of, or capable of being conveniently used in connection with, any of the objects of the Trust;
 - (ii) Control, manage, lease, exchange, mortgage, charge, sell, transfer, give up, surrender, dispose of, develop, turn to account or otherwise deal with any real or personal property of any kind whatsoever or any estate or interest therein;
 - (iii) Invest and deal with any moneys;
 - (iv) Construct, improve, maintain, develop, work, manage and control real or personal property and to enter into contracts and agreements;
 - (v) Appoint any person or persons to be attorney or attorneys agent or agents of the National Trust with such powers, including the power to sub-delegate, upon such terms as may be thought fit and to procure the National Trust to be registered or recognised in any other country or place;
 - (vi) Enter into any arrangements with any government or authority, supreme, municipal, local or otherwise, that may seem conducive to these objects and obtain from any such government or authority, any rights, privileges and concessions which the National Trust may think it is desirable to

obtain; and to carry out exercise and comply with any such arrangements, rights, privileges and concessions;

- (vii) Appoint and remunerate such staff as may be required by the National Trust from time to time;
- (viii) Borrow, raise or secure the payment of money and secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement in any way and in particular by mortgage, charge or overdraft or by the issue of debentures or debenture stock perpetual or otherwise and to purchase, redeem or pay off any such securities;
- (ix) Expend any moneys and do all such other things, as the National Trust considers desirable for the purpose of promoting these objects;
- (x) Make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (xi) Print, publish, sell and distribute any magazines, newspapers, periodicals, books or leaflets;
- (xii) Take such steps by personal or written appeals, public meetings or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the trusts by donations, annual subscriptions, sponsorships or otherwise;
- (xiii) Make donations and gifts of real or other personal property for charitable purposes, or for any of the purposes, or to any funds, authorities or institutions, which are deductible gift recipients under the *Income Tax Assessment Act 1997* (Cth), or any modification thereof, or substitution therefore, for the time being in force; and
- (xiv) Do all such other acts and things as are incidental or conducive to the attainment of these objects or any of them.

2.7 National Trust income and property only to be applied to Objects

The National Trust will only apply the income and property of the National Trust in promoting the objects of the National Trust.

2.8 Alteration of the Constitution

Subject to the *Corporations Act*, the National Trust may modify or repeal its Constitution or a provision of its Constitution by special resolution.

3. Members

3.1 Exercise of powers

The powers of the National Trust under this Clause 3 are exercisable by the Directors.

3.2 Applications

- (a) Any person is eligible to apply to become a Member.

- (b) To become a Member a person must sign and deliver to the National Trust an application in the form which the Directors determine, and pay the subscription determined under Clause 4.1.
- (c) The National Trust shall have complete discretion whether to accept or reject an application to become a Member and is not required to give any reason for the rejection of the application.
- (d) If an application to become a Member is accepted, the National Trust must:
 - (i) give written notice of the acceptance to the applicant; and
 - (ii) enter the applicant's name in the Register.
- (e) If an application to become a Member is rejected, the National Trust must:
 - (i) give written notice of the rejection to the applicant; and
 - (ii) refund in full the subscription (if any) paid by the applicant.
- (f) A determination of an application to become a Member is not invalid if the National Trust does not comply with Clause 3.2(d)(i) or Clause 3.2(e)(i).

3.3 Classes of membership

The classes of membership may be amended or added to by the Directors in their absolute discretion and until determined otherwise shall consist of:

- (a) Members who shall be subscribers to the National Trust of a subscription determined under Clause 4.1;
- (b) Life Members who shall be persons elected by the Directors as such and who shall have paid a once-off subscription determined under Clause 4.1;
- (c) Honorary Members who shall be persons while they hold office as patron under Clause 3.4 or persons who have:
 - (i) rendered distinguished service to the National Trust; and
 - (ii) been elected by 75% of the majority of the Members present and voting at a duly convened general meeting,
 provided that:
 - (iii) no more than two Honorary Members shall be elected in any one financial year; and
 - (iv) the aggregate number of such Honorary Members, together with those previously elected do not exceed in number one for every hundred Members.
- (d) Honorary Members elected under Clause 3.3(c) are entitled to all privileges and rights of Members for life.

3.4 Patrons

- (a) The Directors may from time to time invite a person or persons to be patrons of the National Trust;

- (b) For the avoidance of doubt, the patron shall not be a Director of the National Trust unless otherwise admitted or appointed as such.

3.5 No transfers

The rights of being a Member are not transferable whether by operation of law or otherwise.

3.6 Ceasing to be a Member

- (a) A person will cease to be a Member if:
 - (i) the Member resigns in accordance with Clause 3.7;
 - (ii) the Member is expelled under Clause 3.8;
 - (iii) a Cessation Event occurs in respect of the Member; or
 - (iv) if the Member does not pay a subscription within 90 days after the due date for its payment, and the Directors at their discretion pass a resolution from time to time terminating the membership of Members who have not paid subscription within 90 days after the due date for its payment.
- (b) The estate of a deceased Member is not released from any liability in respect of that person being a Member.

3.7 Resignation

- (a) A Member may resign as a Member by giving the National Trust notice in writing.
- (b) A resignation by a Member takes effect immediately on the giving of that notice to the National Trust.

3.8 Suspension and Expulsion

- (a) Subject to Clause 3.8(c), the National Trust may suspend or expel a Member by a resolution of the Directors if:
 - (i) in the opinion of the Directors a Misconduct Event has occurred in respect of the Member; and
 - (ii) the National Trust gives that Member at least 5 Business Days' notice in writing:
 - (A) stating the particular Misconduct Event(s) and the circumstances giving rise to the Misconduct Event(s);
 - (B) stating that the Member is liable to be suspended from the National Trust for a period of time or expelled from the National Trust; and
 - (C) informing the Member of their right under Clause 3.8(c).
- (b) The period of suspension imposed on a Member under Clause 3.8(a) is at the discretion of the Directors.
- (c) Before the passing of any resolution under Clause 3.8(a), a Member is entitled to give the Directors, either orally or in writing, any explanation or defence of the Misconduct Event the Member may think fit.

- (d) If a resolution is passed under Clause 3.8(a) or 3.8(b), the National Trust must give that Member notice in writing of the suspension or expulsion (as the case may be) within 5 Business Days of the resolution.
- (e) Within 8 Business Days of receipt of the notice referred to in Clause 3.8(d), a Member may by notice in writing to the National Trust request that a resolution under Clause 3.8(a) be reviewed by the National Trust at the next general meeting.
- (f) If a request under Clause 3.8(e) is received, the National Trust must propose at the next general meeting of the National Trust that a resolution be moved to confirm the suspension or expulsion of the Member concerned.
- (g) A resolution under Clause 3.8(f) must be passed by at least 75% of the votes cast by Members entitled to vote on the resolution.
- (h) A resolution under Clause 3.8(a) takes effect:
 - (i) if the Member gives a notice under Clause 3.8(e), on the date (if any) the resolution is confirmed by a general meeting of the National Trust; or
 - (ii) if the Member does not give a notice under Clause 3.8(e), on the date of the resolution.
- (i) A resolution under Clause 3.8(f) takes effect on the date of the resolution.
- (j) The Directors may end the suspension of a Member or reinstate an expelled Member on such terms and at any time as the Directors resolve, including a requirement that all amounts due but unpaid by the suspended or expelled Member are paid.

3.9 Variation of classes and class rights

- (a) Subject to the *Corporations Act* and the terms of a particular class of Members, the National Trust may vary or cancel terms of Members of that class by special resolution of the National Trust and:
 - (i) a special resolution passed at a meeting of the Members included in that class; or
 - (ii) the written consent of Members who are entitled to at least 75% of the votes that may be cast in respect of Members of that class.
- (b) The provisions in this Constitution concerning meetings of Members (with the necessary changes) apply to a meeting held under Clause 3.9(a)(i).

4. Subscription

4.1 Directors to determine subscription

The Directors may from time to time determine the subscription, annual or otherwise, payable by each Member or each category of Member.

4.2 Honorary Members exempt from subscription

Honorary Members are not required to pay any subscription.

4.3 Subscription period

The subscription period will commence on the anniversary of the due date for payment or at such date as the Directors determine.

5. Proceedings of Members

5.1 Who can call meetings of Members

- (a) Subject to the *Corporations Act*, the Directors may call a meeting of Members at a time and place as the Directors resolve.
- (b) The Directors must call and arrange to hold a general meeting of the National Trust on the request of Members made in accordance with the *Corporations Act*.
- (c) The Members may call and arrange to hold a general meeting of the National Trust as provided by the *Corporations Act*.

5.2 Annual General Meeting

- (a) The National Trust must hold an annual general meeting if required by, and in accordance with, the *Corporations Act*.
- (b) The business of an annual general meeting may include any of the following, even if not referred to in the notice of the meeting:
 - (i) the consideration of the annual financial report, directors' report and auditor's report for the National Trust;
 - (ii) the appointment of the auditor of the National Trust; and
 - (iii) the fixing of the remuneration of the auditor of the National Trust.

5.3 How to call meetings of Members

- (a) The National Trust must give not less than Prescribed Notice of a meeting of Members.
- (b) Notice of a meeting of Members must be given to each Member, each Director, each Alternate Director and any auditor of the National Trust.
- (c) Subject to Clause 5.13(g), a notice of a meeting of Members must:
 - (i) set out the place, date and time for the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
 - (ii) state the general nature of the business of the meeting; and
 - (iii) set out or include any other information or documents specified by the *Corporations Act*.
- (d) Subject to the *Corporations Act*, anything done (including the passing of a resolution) at a meeting of Members is not invalid because either or both a person does not receive notice of the meeting or the National Trust accidentally does not give notice of the meeting to a person.

5.4 Right to attend meetings

- (a) Each Member and any auditor of the National Trust is entitled to attend any meetings of Members.
- (b) Subject to this Constitution, each Director is entitled to attend and speak at all meetings of Members.

5.5 Offensive Material

A person may be refused admission to, or required to leave and not return to, a meeting conducted by the National Trust if the person:

- (a) refuses to permit examination of any article in the person's possession; or
- (b) is in possession of any:
 - (i) electronic or recording device;
 - (ii) placard or banner; or
 - (iii) other article,

which the chairman considers to be dangerous, offensive or liable to cause disruption.

5.6 Meeting at more than one place

- (a) A meeting of Members may be held in 2 or more places linked together by any technology that:
 - (i) gives the Members as a whole in those places a reasonable opportunity to participate in proceedings;
 - (ii) enables the chairman to be aware of proceedings in each place; and
 - (iii) enables the Members in each place to vote on a show of hands and on a poll.
- (b) If a meeting of Members is held in 2 or more places under Clause 5.6(a):
 - (i) a Member present at one of the places is taken to be present at the meeting; and
 - (ii) the chairman of that meeting may determine at which place the meeting is taken to have been held.

5.7 Quorum

- (a) A quorum for a meeting of Members is 30 Members entitled to vote at that meeting.
- (b) In determining whether a quorum for a meeting of Members is present:
 - (i) where more than one proxy, attorney or representative of a Member is present, only one of those persons is counted;
 - (ii) where a person is present as a Member and as a proxy, attorney or representative of another Member, that person is counted only once; and

- (iii) where a person is present as a proxy, attorney or representative for more than one Member, that person is counted only once.
- (c) A quorum for a meeting of Members must be present at all times during the meeting.
- (d) If a quorum is not present within 30 minutes after the time appointed for a meeting of Members:
 - (i) if the meeting was called under Clause 5.1(b) or Clause 5.1(c), the meeting shall be dissolved; and
 - (ii) any other meeting is adjourned to the date, time and place as the Directors may by notice to the Members appoint, or failing any appointment, to the same day in the next week at the same time and place as the meeting adjourned.
- (e) If a quorum is not present within 30 minutes after the time appointed for an adjourned meeting of Members, the meeting shall be dissolved.

5.8 Chairman

- (a) The chairman of Directors shall be entitled (if present within 30 minutes after the time appointed for the holding of the meeting and willing to act) to chair each meeting of Members.
- (b) If:
 - (i) there is no chairman of Directors;
 - (ii) the chairman of Directors is not present within 30 minutes after the time appointed for the holding of a meeting of Members; or
 - (iii) the chairman of Directors is present within that time but is not willing to chair all or part of that meeting,

then if the Directors have elected a deputy chairman of Directors, the deputy chairman of Directors shall be entitled (if present within 30 minutes after the time appointed for the holding of the meeting and willing to act) to chair all or part of the meeting of Members.

- (c) Subject to Clauses 5.8(a) and (b), if:
 - (i) there is no deputy chairman of Directors;
 - (ii) the deputy chairman of Directors is not present within 30 minutes after the time appointed for the holding of a meeting of Members; or
 - (iii) the deputy chairman of Directors is present within that time but is not willing to chair all or part of that meeting,

the Directors present may, by majority vote, elect a person present to chair all or part of the meeting of Members.

- (d) Subject to Clauses 5.8(a) and (b), if at a meeting of Members:
 - (i) a chairman of that meeting has not been elected by the Directors under Clause 5.8(c); or

- (ii) the chairman elected by the Directors is not willing to chair all or part of a meeting of Members,

the Members present shall elect another person present and willing to act to chair all or part of that meeting.

5.9 General conduct of meetings

- (a) Subject to the *Corporations Act*, the chairman of a meeting of Members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The chairman of a meeting of Members may:
 - (i) make rulings or adjourn a meeting of Members without putting the question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting;
 - (ii) determine the procedures to be adopted for the casting or recording of votes;
 - (iii) subject to the *Corporations Act*, terminate debate or discussion on any matter being considered at the meeting and require that matter be put to a vote;
 - (iv) subject to the *Corporations Act*, refuse to allow debate or discussion on any matter which is not business referred to in the notice of that meeting or is not business referred to in Clause 5.2(b); or
 - (v) subject to the *Corporations Act*, refuse to allow any amendment to be moved to a resolution set out in the notice of that meeting.
- (c) The chairman of a meeting of Members may delegate any power conferred by this Clause 5.9 to any person.
- (d) The powers conferred on the chairman of a meeting of Members under this Clause 5.9 do not limit the powers conferred by law.

5.10 Attendance of non-members at meetings

Any person (whether or not a Member) permitted by the Directors to attend any general meeting is entitled to be present and if permitted by the chairman of the meeting, to speak at that meeting.

5.11 Resolutions of Members

- (a) Subject to the *Corporations Act*, a resolution at a meeting of Members is passed if the number of votes cast in favour of the resolution by Members entitled to vote on the resolution exceeds the number of votes cast against the resolution by Members entitled to vote on the resolution.
- (b) Unless a poll is requested in accordance with Clause 5.12, a resolution put to the vote at a meeting of Members must be decided on a show of hands.
- (c) A declaration by the chairman of a meeting of Members that a resolution on a show of hands is passed, passed by a particular majority, or not passed, and an entry to that effect in the minutes of the meeting, are sufficient evidence of that fact, unless proved incorrect.

5.12 Polls

- (a) A poll may be demanded on any resolution at a meeting of Members.
- (b) A poll on a resolution at a meeting of Members may be demanded by:
 - (i) at least 5 Members present and entitled to vote on that resolution;
 - (ii) one or more Members present and who are together entitled to at least 5% of the votes that may be cast on that resolution on a poll; or
 - (iii) the chairman of that meeting.
- (c) A poll on a resolution at a meeting of Members may be demanded:
 - (i) before a vote on that resolution is taken; or
 - (ii) before or immediately after the results of the vote on that resolution on a show of hands are declared.
- (d) A demand for a poll may be withdrawn.
- (e) A poll demanded on a resolution at a meeting of Members other than for the election of a chairman of that meeting or the adjournment of that meeting must be taken in the manner, which may include a postal ballot, and at the time and place the chairman directs.
- (f) A poll demanded on a resolution at a meeting of Members for the election of a chairman of that meeting or the adjournment of that meeting must be taken immediately.
- (g) The result of a poll demanded on a resolution of a meeting of Members is a resolution of that meeting.
- (h) A demand for a poll on a resolution of a meeting of Members does not prevent the continuance of that meeting or that meeting dealing with any other business.

5.13 Adjourned, cancelled and postponed meetings

- (a) Subject to the *Corporations Act*, the chairman:
 - (i) may adjourn a meeting of Members to any day, time and place; and
 - (ii) must adjourn a meeting of Members if the Members present with a majority of votes that may be cast at that meeting agree or direct the chairman to do so. The chairman may adjourn that meeting to any day, time and place.
- (b) The National Trust is only required to give notice of a meeting of Members resumed from an adjourned meeting if the period of adjournment exceeds 21 days.
- (c) Only business left unfinished is to be transacted at a meeting of Members resumed after an adjournment.
- (d) Subject to the *Corporations Act* and this Clause 5.13, the Directors may at any time postpone or cancel a meeting of Members by giving notice not less than 5 Business Days before the time at which the meeting was to be held to each person who is, at the date of the notice:
 - (i) a Member;

- (ii) a Director or Alternate Director; or
 - (iii) auditor of the National Trust.
- (e) A general meeting called under Clause 5.1(b) must not be cancelled by the Directors without the consent of the Members who requested the meeting.
 - (f) A general meeting called under Clause 5.1(c) must not be cancelled or postponed by the Directors without the consent of the Members who called the meeting.
 - (g) A notice under Clause 5.13(b) of a meeting of Members resumed from an adjourned meeting and a notice postponing a meeting of Members must set out the place, date and time for the revised meeting (and if the revised meeting is to be held in 2 or more places, the technology that will be used to facilitate this).

5.14 Number of votes

- (a) Subject to this Constitution and any rights or restrictions attached to a class of Members, on a show of hands or on a poll at a meeting of Members, every Member present has one vote.
- (b) In the case of an equality of votes on a resolution at a meeting of Members, the chairman of that meeting has a casting vote on that resolution both on a show of hands and on a poll, in addition to any vote the chairman of that meeting has in respect of that resolution.
- (c) A Member present at a meeting of Members is not entitled to vote on any resolution if any amount due and payable to the National Trust by that person in their capacity as a Member has not been paid.
- (d) A Member present at a meeting of Members is not entitled to vote on a resolution at that meeting where that vote is prohibited by the *Corporations Act* or an order of a court of competent jurisdiction.
- (e) The National Trust must disregard any vote on a resolution purported to be cast by a Member present at a meeting of Members where that person is not entitled to vote on that resolution.
- (f) The authority of a proxy or attorney for a Member to speak or vote at a meeting of Members is suspended while the Member is present in person at that meeting.

5.15 Objections to qualification to vote

- (a) An objection to the qualification of any person to vote at a meeting of Members may only be made:
 - (i) before that meeting, to the Directors; or
 - (ii) at that meeting (or any resumed meeting if that meeting is adjourned), to the chairman of that meeting.
- (b) Any objection under Clause 5.15(a) must be decided by the Directors or the chairman of the meeting of the Members (as the case may be), whose decision, made in good faith, is final and conclusive.

5.16 Proxies, attorneys and representatives

- (a) A Member, who is entitled to attend and cast a vote at a meeting of Members, may vote on a show of hands and on a poll:

- (i) in person or, if the Member is a body corporate, by its representative appointed in accordance with the *Corporations Act*;
 - (ii) by not more than one proxy; or
 - (iii) by not more than one attorney.
- (b) A proxy, attorney or representative of a Member need not be a Member.
- (c) A Member may appoint one proxy, attorney or representative for:
- (i) all or any number of meetings of Members; or
 - (ii) a particular meeting of Members.
- (d) An instrument appointing a proxy is valid if it is signed by the Member making the appointment and contains:
- (i) the name and address of that Member;
 - (ii) the name of the National Trust;
 - (iii) the name of the proxy or the name of the office of the proxy; and
 - (iv) the meetings of Members at which the proxy may be used.
- (e) The chairman of a meeting of Members may determine that an instrument appointing a proxy is valid even if it contains only some of the information specified in Clause 5.16(d).
- (f) An instrument appointing an attorney or representative must be in a form as the Directors may prescribe or the chairman of a meeting of Members may accept.
- (g) Subject to the *Corporations Act*, the decision of the chairman of a meeting of Members as to the validity of an instrument appointing a proxy, attorney or representative is final and conclusive.
- (h) A proxy, attorney or representative appointed to attend and vote for a member has the same rights as the member:
- (i) to speak at the meeting;
 - (ii) to vote (but only to the extent allowed by the appointment); and
 - (iii) demand or join in demanding a poll.
- (i) An appointment of proxy or attorney for a meeting of Members is effective only if the National Trust receives the appointment (and any authority under which the appointment was signed or a certified copy of the authority) not less than:
- (i) 48 hours before the time scheduled for commencement of that meeting; or
 - (ii) in the case of a meeting which has been adjourned, 48 hours before the time scheduled for resumption of the meeting.

6. Directors

6.1 Number of Directors

- (a) Subject to Clause 6.1(b), the National Trust must have not less than 9, and not more than 12 Directors. For the avoidance of doubt, Alternate Directors are not counted when determining the number of Directors.
- (b) Notwithstanding the maximum of 12 Directors specified under Clause 6.1(a), an additional Director may be appointed under Clause 6.3(b)(ii).
- (c) At any time the National Trust may not have more than 9 Directors appointed by Members under Clause 6.3(a).
- (d) Subject to Clause 6.1(a), the National Trust in general meeting may:
 - (i) increase or reduce the number of Directors; and
 - (ii) may determine the order of rotation the increased or reduced number of directors is to vacate office.
- (e) If the number of Directors is below the minimum fixed by this Constitution, the Directors must not act except in an emergency, to appoint one or more directors in order to make up a quorum for a meeting of Directors, or to call and arrange to hold a meeting of Members.

6.2 Qualification and nomination of Directors

- (a) To qualify as a Director, a person must be a Member and must not be an employee of the National Trust.
- (b) A person nominated to be a director by Members under a postal ballot (or other mode of election prescribed under by-laws made under Clause 8.1(d)), including a retiring Director eligible for re-election under Clause 6.4(e), must be nominated by two Members.
- (c) For the nomination to be effective, the following information must reach the Secretary at least six weeks before the annual general meeting:
 - (i) written notification of the name of the nominee and the names of the nominee's nominators; and
 - (ii) written consent of the nominee or such other evidence of consent as may be accepted by the Secretary.

6.3 Appointment of Directors

- (a) Subject to Clause 6.3(d), the appointment of Directors by Members is conducted by postal ballot or such other mode of election as may be set out in the by-laws made under Clause 8.1(d).
- (b) Subject to Clause 6.2(a), the Directors may at any time:
 - (i) appoint a person as a Director to fill a casual vacancy who shall retire from office at the same time as if they had become a Director on the day on which the Director they are replacing was last appointed as a Director;
 - (ii) appoint a person as an additional Director who shall retire from office at the next annual general meeting;

- (iii) appoint up to three persons as Directors who shall hold office until the conclusion of the third annual general meeting following their appointment or such shorter period as agreed at the time of their appointment.
- (c) Appointment of Directors under Clause 6.3(b)(iii) are to be made:
 - (i) based on the ability of the appointees to contribute to the National Trust's Objects and to represent Members; and
 - (ii) having regard to the skills and experience determined by the Board.
- (d)
 - (i) Where the National Trust has removed a Director under Clause 6.5(b), the National Trust may by ordinary resolution at the general meeting at which the Director was removed appoint another person in place of that Director;
 - (ii) A person nominated to replace a Director removed under Clause 6.5(b) must be nominated by two Members; and
 - (iii) For the nomination to be effective, the following information must reach the Secretary at least six weeks before the general meeting:
 - (A) written notification of the name of the nominee and the names of the nominee's nominators; and
 - (B) written consent of the nominee or such other evidence of consent as may be accepted by the Secretary.
- (e) Directors appointed under Clause 6.3(b)(iii) can be re-appointed under Clause 6.3(b)(iii) at the conclusion of the third annual general meeting following their appointment by the Directors under Clause 6.3(b)(iii).
- (f) For the purposes of Clauses 6.3(e) and 6.4(c), Directors appointed under Clause 49(a) of the Articles of Association of the National Trust, are for the purposes of this Constitution, to be treated as if they were appointed under Clause 6.3(b)(iii) of the Constitution.

6.4 Rotation of Directors

- (a) At each annual general meeting one-third of the Directors of the Board shall retire from office. If the number of Directors on the Board at the time of the annual general meeting is not a multiple of three, then the number of Directors nearest one- third shall retire from office.
- (b) Subject to Clause 6.1(d)(ii), the Directors to retire in every year shall be those who have been longest in office since their last election. Where persons became Directors on the same day, those to retire shall be determined by lot unless the Directors otherwise agree among themselves.
- (c) Directors appointed or reappointed under Clause 6.3(b)(iii) are not subject to rotation under Clause 6.4 until the conclusion of the third annual general meeting following their appointment.
- (d) A determination under Clauses 6.4(a) and 6.4(b) shall be made not less than six weeks prior to the annual general meeting.
- (e) A retiring Director is eligible for re-election at any time.

- (f) The National Trust at the annual general meeting at which a Director retires in accordance with Clause 6.4, may fill the vacated office by electing a person nominated as a Director under Clause 6.2. Where this does not occur, the retiring Director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill the vacated office.

6.5 Vacation of office

- (a) A Director may resign from office by giving the National Trust notice in writing.
- (b) Subject to the Corporations Act, the National Trust may by special resolution passed at a general meeting remove any Director.
- (c) Director ceases to be a Director if:
 - (i) the Director ceases to be a Member;
 - (ii) the Director becomes of unsound mind or a person whose property is liable to be dealt with under a law about mental health;
 - (iii) the Director is absent without the consent of the Directors, which shall not be unreasonably withheld, from all meetings of the Directors held during a period of 6 months; or
 - (iv) the Director resigns or is removed under this Constitution;
 - (v) the Director becomes an insolvent under administration
 - (vi) the Director holds an office or place of profit in the National Trust (including being an employee of the National Trust); or
 - (vii) the *Corporations Act* so provides.

6.6 Alternate Directors

- (a) Subject to the approval of a majority of the other Directors, a Director may appoint a person as an alternate director of that Director for any period provided the person:
 - (i) is a Member and is not an employee of the National Trust; and
 - (ii) is not an Alternate Director for any other Director.
- (b) The appointing Director may terminate the appointment of his or her Alternate Director at any time.
- (c) A notice of appointment, or termination of appointment, of an Alternate Director is effective only if:
 - (i) the notice is in writing;
 - (ii) the notice is signed by the Director who appointed that Alternate Director; and
 - (iii) the Secretary is given a copy of the notice.
- (d) Subject to this Constitution and the *Corporations Act*, an Alternate Director may:

- (i) attend, count in the quorum of, speak at, and vote at a meeting of Directors in place of his or her appointing Director if that Director is not present at a meeting; and
 - (ii) exercise any other powers (except the power under Clause 6.6(a)) that his or her appointing Director may exercise.
- (e) An Alternate Director cannot exercise any powers of his or her appointing Director if that appointing Director ceases to be a Director.
 - (f) A person does not cease to be a Director under Clause 6.6(e) if that person retires as a Director at a meeting of Members and is re-elected as a Director at that meeting.
 - (g) Subject to Clause 6.7(b), the National Trust is not required to pay any remuneration to an Alternate Director.
 - (h) An Alternate Director is an officer of the National Trust and not an agent of his or her appointing Director.

6.7 Remuneration of Directors

- (a) Subject to Clause 6.7(d), the National Trust must not pay any fees to a Director (including any Alternate Directors) for performing that person's duties and responsibilities as a Director.
- (b) The National Trust may pay all reasonable travelling, accommodation and other expenses that a Director or Alternate Director properly incurs:
 - (i) in attending meetings of Directors or any meetings of committees of Directors;
 - (ii) in attending any meetings of Members; and
 - (iii) in connection with the business of the National Trust.
- (c) Subject to the *Corporations Act*, no Director may participate in any fund, trust or scheme for the benefit of:
 - (i) past or present employees or Directors of the National Trust or a Related company of the National Trust; or
 - (ii) the dependants of, or persons connected with, any person referred to in Clause 6.7(c)(i).
- (d) Subject to the *Corporations Act*, the Directors may give, or agree to give, a person a benefit by way of remuneration in connection with that person's, or someone else's, retirement from a board or managerial office in the National Trust or a Related company of the National Trust.
- (e) The value of the remuneration provided under Clause 6.7(d) shall not exceed the sum of \$500 without the prior approval of the Members.

6.8 Interests of Directors

- (a) A Director:
 - (i) in the National Trust, shall not hold an office or place of profit;

- (ii) may hold an office or otherwise be interested in any Related company of the National Trust or other company in which the National Trust is interested; or
- (iii) may act, or the Director's firm may act, in any professional capacity for the National Trust (except as auditor) or any Related company of the National Trust or other company in which the National Trust is interested,

and retain the benefits of doing so if the Director discloses in accordance with the *Corporations Act* the interest giving rise to those benefits.

- (b) If a Director discloses the interest of the Director in accordance with the *Corporations Act*:
 - (i) the Director may contract or make an arrangement with the National Trust, or a Related company of the National Trust or a company in which the National Trust is interested, in any matter in any capacity;
 - (ii) the Director may, subject to the *Corporations Act*, be counted in a quorum for a meeting of Directors considering the contract or arrangement;
 - (iii) the Director may on behalf of the National Trust, sign or witness the affixing of the common seal of the National Trust to, any document in respect of the contract or arrangement;
 - (iv) the Director may retain the benefits under the contract or arrangement; and
 - (v) the National Trust cannot avoid the contract or arrangement merely because of the existence of the Director's interest.
- (c) Notwithstanding disclosure by a Director under Clause 6.8(b), the Director may not vote on whether the National Trust enters into the contract or arrangement, nor on any matter that relates to the contract or arrangement so disclosed.

7. Officers

7.1 Secretary

- (a) Subject to the requirements of the *Corporations Act*, the Directors must appoint one or more Secretaries, for any period and on any terms (including as to remuneration) as the Directors resolve.
- (b) Subject to any agreement between the National Trust and a Secretary, the Directors may remove or dismiss a Secretary at any time, with or without cause.
- (c) The Directors may revoke or vary the appointment of a Secretary at any time, with or without cause.

7.2 Indemnity and insurance

- (a) To the extent permitted by law, the National Trust indemnifies every person who is or has been an officer of the National Trust against any liability (other than for Legal Costs) incurred by that person as such an officer of the National Trust (including liabilities incurred by the officer as an officer of a subsidiary of the National Trust where the National Trust requested the officer to accept that appointment).

- (b) To the extent permitted by law, the National Trust indemnifies every person who is or has been an officer of the National Trust against reasonable Legal Costs incurred in defending an action for a liability incurred by that person as such an officer of the National Trust (including such Legal Costs incurred by the officer as an officer of a subsidiary of the National Trust where the National Trust requested the officer to accept that appointment).
- (c) To the extent permitted by law, the National Trust may make a payment (whether by way of advance, loan or otherwise) to an officer of the National Trust in respect of Legal Costs of that person.
- (d) The amount of any indemnity payable under Clauses 7.2(a) and 7.2(b) will include an additional amount (GST Amount) equal to any GST payable by the officer being indemnified in connection with the indemnity (less the amount of input tax credit claimable by the officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the officer providing the National Trust with a GST tax invoice for the GST amount.
- (e) To the extent permitted by law, the National Trust may enter into an agreement or deed with a person who is, or has been an officer of the National Trust or a subsidiary of the National Trust or other company in which the National Trust is interested, under which the National Trust may do all or any of the following:
 - (i) keep books of the National Trust and allow either or both that person and that person's advisers access to those books on the terms agreed;
 - (ii) subject to Clause 7.2(a), indemnify that person against any Liability of that person;
 - (iii) make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs of that person; and
 - (iv) keep that person insured in respect of any act or omission by that person while an officer of the National Trust or a subsidiary of the National Trust or other company in which the National Trust is interested, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).
- (f) For the purposes of this Clause 7.2, officer means:
 - (i) a Director; or
 - (ii) a Secretary.

8. Powers of the National Trust and Directors

8.1 General powers

- (a) The National Trust may exercise in any manner permitted by the *Corporations Act* any power which a public company limited by guarantee may exercise under the *Corporations Act*.
- (b) The business of the National Trust is managed by or under the direction of the Directors.
- (c) The Directors may exercise all the powers of the National Trust except any powers that the *Corporations Act* or this Constitution requires the National Trust to exercise in general meeting.

- (d) The Directors may by resolution make, amend or repeal by-laws provided such by-laws are not inconsistent with the *Corporations Act* or the Constitution.
- (e) By-laws passed pursuant to the Articles of Association remain in force until otherwise amended or repealed under Clause 8.1(d).

8.2 Execution of documents

- (a) If the National Trust has a common seal, the National Trust may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by:
 - (i) 2 Directors;
 - (ii) a Director and a Secretary; or
 - (iii) a Director and another person appointed by the Directors for that purpose.
- (b) The National Trust may execute a document without a common seal if the document is signed by:
 - (i) 2 Directors;
 - (ii) a Director and a Secretary; or
 - (iii) a Director and another person appointed by the Directors for that purpose.
- (c) The National Trust may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with Clause 8.2(a) or 8.4(b).
- (d) The Directors may resolve, generally or in a particular case, that any signature on certificates for Members may be affixed by mechanical or other means.
- (e) Negotiable instruments may be signed, drawn, accepted, endorsed or otherwise executed by or on behalf of the National Trust in the manner and by such persons as the Directors resolve.
- (f) The National Trust may also have a duplicate common seal.

8.3 Committees and delegates

- (a) The Directors may delegate any of their powers (including this power to delegate) to a committee of Directors, a Director, an employee of the National Trust or any other person.
- (b) The Directors may revoke or vary any power delegated under Clause 8.3(a).
- (c) A committee or delegate must exercise the powers delegated in accordance with any directions of the Directors.
- (d) The exercise of a delegated power by the committee or delegate is as effective as if the Directors exercised the power.
- (e) Clause 9 applies with all necessary changes to meetings of a committee of Directors.

8.4 Attorney or agent

- (a) The Directors may appoint any person to be attorney or agent of the National Trust for any purpose, for any period and on such terms (including as to remuneration) as the Directors resolve.
- (b) The Directors may delegate any of their powers (including the power to delegate) to an attorney or agent.
- (c) The Directors may revoke or vary:
 - (i) an appointment under Clause 8.4(a); or
 - (ii) any power delegated to an attorney or agent.

9. Proceedings of Directors

9.1 Written resolutions of Directors

- (a) The Directors may pass a resolution without a meeting of the Directors being held if:
 - (i) all the Directors receive notice of the resolution; and
 - (ii) a majority of the Directors entitled to vote on the resolution assent to a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of the document referred to in Clause 9.1(a)(ii) may be used for assenting to by Directors if the wording of the resolution and the statement is identical in each copy.
- (c) A Director may signify assent to a document under Clause 9.1(a)(ii) by signing the document or by notifying the National Trust of the assent of the Director:
 - (i) in a manner permitted by Clause 10.3; or
 - (ii) by any technology including telephone.
- (d) Where a Director signifies assent to a document under Clause 9.1(c) other than by signing the document, the Director must by way of confirmation sign the document before or at the next meeting of Directors attended by that Director.
- (e) A resolution under Clause 9.1(a) is carried on the day on which and at the time at which the document was assented to by a majority of directors and the document has effect as a minute of the resolution.
- (f) The resolution the subject of a document under Clause 9.1(b) is not invalid if a Director does not comply with Clause 9.1(d).

9.2 Meetings of Directors

- (a) The Directors may meet, adjourn and otherwise regulate their meetings as they think fit.
- (b) A meeting of all Directors may be held using any technology consented to by the Directors.

9.3 Who can call meetings of Directors

- (a) A Director may call a meeting of Directors at any time.
- (b) On request of any Director, a Secretary must call a meeting of the Directors.

9.4 How to call meetings of Directors

- (a) Notice of a meeting of Directors must be given to each Director and Alternate Director.
- (b) A notice of meeting of Directors must:
 - (i) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this); and
 - (ii) state the general nature of the business of the meeting.
- (c) A Director or Alternate Director may waive notice of a meeting of Directors by notice in writing to the National Trust.

9.5 Quorum

- (a) Subject to the *Corporations Act*, a quorum for a meeting of Directors is:
 - (i) if the Directors have fixed a number for the quorum, that number of Directors; and
 - (ii) in any other case, 5 Directors entitled to vote on a resolution that may be proposed at that meeting.
- (b) In determining whether a quorum for a meeting of Directors is present,
 - (i) where a Director has appointed an Alternate Director, that Alternate Director is counted if the appointing Director is not present;
 - (ii) where a person is present as Director and an Alternate Director for another Director, that person is counted separately for each appointment.
- (c) A quorum for a meeting of Directors must be present at all times during the meeting.
- (d) If there are not enough persons to form a quorum for a meeting of Directors, one or more of the Directors (including those who have an interest in a matter being considered at that meeting) may call a general meeting of the National Trust and the general meeting may pass a resolution to deal with the matter.

9.6 Chairman

- (a) The Directors may elect a Director as chairman of Directors or deputy chairman of Directors for any period they resolve, or if no period is specified, until that person ceases to be a Director.
- (b) The Directors may remove the chairman of Directors or deputy chairman of Directors at any time.

(c) The chairman of Directors shall be entitled (if present within 15 minutes after the time appointed for the holding of the meeting and willing to act) to chair each meeting of Directors.

(d) If:

(i) there is no chairman of Directors; or

(ii) the chairman of Directors is not present within 15 minutes after the time appointed for the holding of a meeting of Directors; or

(iii) the chairman of Directors is present within that time but is not willing to chair all or part of that meeting,

then if the Directors have elected a deputy chairman of Directors, the deputy chairman of Directors shall be entitled (if present within 15 minutes after the time appointed for the holding of the meeting and willing to act) to chair all or part of the meeting of Directors.

(e) Subject to Clauses 9.6(c) and 9.1(d), if:

(i) there is no deputy chairman of Directors; or

(ii) the deputy chairman of Directors is not present within 15 minutes after the time appointed for the holding of a meeting of Directors; or

(iii) the deputy chairman of Directors is present within that time but is not willing to chair all or part of that meeting,

the Directors present must elect one of themselves to chair all or part of the meeting of Directors.

(f) A person does not cease to be a chairman of Directors or deputy chairman of Directors if that person retires as a Director at a meeting of Members and is re-elected as a Director at that meeting.

9.7 Resolutions of Directors

(a) A resolution of Directors is passed if more votes are cast in favour of the resolution than against it.

(b) Subject to Clause 6.8 and this Clause 9.7, each Director has one vote on a matter arising at a meeting of the Directors.

(c) In determining the number of votes a Director has on a matter arising at a meeting of Directors, where a person is present as a Director and an Alternate Director for another Director, that person has one vote as a Director and subject to Clause 6.6(d), one vote as an Alternate Director.

(d) Subject to the *Corporations Act*, in case of an equality of votes on a resolution at a meeting of Directors, the chairman of that meeting has a casting vote on that resolution in addition to any vote the chairman has in his or her capacity as a Director in respect of that resolution.

10. Notices

10.1 Notice to Members

- (a) The National Trust may give Notice to a Member:
 - (i) in person;
 - (ii) by sending it by post to the address of the Member in the Register or the alternative address (if any) nominated in writing by that Member;
 - (iii) by sending it to the fax number or electronic address (if any) nominated in writing by that Member;
 - (iv) if permitted by the *Corporations Act*, by sending it by other electronic means (if any) nominated in writing by that Member; or
 - (v) by any other means permitted by the *Corporations Act*.
- (b) If the address of a Member in the Register is not within Australia, the National Trust must send all documents to that Member by air-mail, air courier or by fax.
- (c) Subject to the *Corporations Act*, a Notice to a Member is sufficient, even if:
 - (i) a Cessation Event occurs in respect of that Member; or
 - (ii) that Member is an externally administered body corporate,and regardless of whether or not the National Trust has notice of that event.
- (d) Any Notice required or allowed to be given by the National Trust to one or more Members by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.

10.2 Notice to Directors

The National Trust may give Notice to a Director or Alternate Director:

- (a) in person;
- (b) by sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person;
- (c) by sending it to the fax number or electronic address (if any) nominated by that person; or
- (d) by any other means agreed between the National Trust and that person.

10.3 Notice to the National Trust

A person may give Notice to the National Trust:

- (a) by leaving it at the registered office of the National Trust;
- (b) by sending it by post to the registered office of the National Trust;
- (c) by sending it to the fax number at the registered office of the National Trust nominated by the National Trust for that purpose;

- (d) by sending it to the electronic address (if any) nominated by the National Trust for that purpose; or
- (e) by any other means permitted by the *Corporations Act*.

10.4 Time of service

- (a) A notice sent by post to an address within Australia is taken to be given:
 - (i) in the case of a notice of meeting, two Business Days after it is posted; or
 - (ii) in any other case, at the time at which the notice would be delivered in the ordinary course of post.
- (b) A notice sent by post or air-mail to an address outside Australia is taken to be given:
 - (i) in the case of a notice of meeting, six Business Days after it is posted; or
 - (ii) in any other case, at the time at which the notice would be delivered in the ordinary course of post.
- (c) A notice sent by air courier to a place outside Australia is taken to be given 2 Business Days after delivery to the air courier.
- (d) A notice sent by fax is taken to be given on the Business Day it is sent, provided that the sender's transmission report shows that the whole notice was sent to the correct fax number.
- (e) If the *Corporations Act* permits a notice of meeting to be given to a Member by notifying the Member (using the nominated notification means of that Member):
 - (i) that the notice of meeting is available; and
 - (ii) how the Member may use the nominated access means of that Member to access the notice of meeting,

the notice of meeting is taken to be given on the second Business Day after the day on which the Member is notified that the notice of meeting is available.
- (f) The giving of a notice by post, air-mail or air courier is sufficiently proved by evidence that the notice:
 - (i) was addressed to the correct address of the recipient; and
 - (ii) was placed in the post or delivered to the air courier.
- (g) A certificate by a Director or Secretary of a matter referred to in Clause 10.4(f) is sufficient evidence of the matter, unless it is proved to the contrary.

10.5 Signatures

The Directors may decide, generally or in a particular case, that a notice given by the National Trust be signed by mechanical or other means.

11. National Trust distributions

11.1 No distributions to Members

- (a) Subject to Clause 11.1(b), the National Trust must not make any distributions to any Members, whether by way of dividend, surplus on winding up or otherwise.
- (b) Subject to Clause 6.7, the National Trust may make the following payments to a Member of:
 - (i) reasonable remuneration to any Member in consideration for services rendered or goods supplied by that Member to the National Trust in the ordinary course of business;
 - (ii) interest at a reasonable rate on money borrowed by the National Trust from any Member;
 - (iii) reasonable rent for premises leased to the National Trust by any Member;
or
 - (iv) any other reasonable sum of a similar character to those described in this Clause 11.1(b).

11.2 Winding up

On a winding up of the National Trust, the Members must determine one or more companies, associations or institutions who are deductible gift recipients (as defined by the *Income Tax Assessment Act 1997* (Cth)) and whose constituent documents satisfy the following requirements to whom the liquidator must give or transfer any surplus on winding up:

- (a) requires it to pursue only objects similar to those in Clause 2.6 and to apply its income in promoting those objects;
- (b) prohibits it from making distributions to its members to at least the same extent as in Clause 11.1; and
- (c) if a company, prohibits it from paying fees to its directors and requires its directors to approve all other payments the company makes to its directors.

Schedule 1 – Definitions and interpretation

1. Definitions

In this Constitution:

Alternate Director means a person for the time being holding office as an alternate director of the National Trust under Clause 6.6.

Business Day means any day except a Saturday, Sunday or public holiday in Victoria.

Cessation Event means:

- (a) if a Member is an individual:
 - (i) death or bankruptcy of that Member or any step is taken for the Member to become, either an insolvent under administration or an externally administered body corporate; or
 - (ii) that Member becoming of unsound mind or becoming a person whose property is liable to be dealt with under a law concerning mental health;
- (b) if a Member is a body corporate, the liquidation, administration or deregistration of that Member under the laws of the jurisdiction of its registration.

Constitution means the Clauses and Schedules contained in this document.

Corporations Act means the *Corporations Act 2001* (Commonwealth), except to the extent of any exemption, modification, declaration or order made in respect of that legislation which applies to the National Trust.

Directors means the directors of the National Trust for the time being.

Legal Costs of a person means legal costs incurred by that person in defending an action for a Liability of that person.

Liability of a person means any liability incurred by that person as an officer of the National Trust or a subsidiary of the National Trust.

Member means a person whose name is entered in the Register as a member of the National Trust.

Memorandum of Association and **Articles of Association** mean respectively the National Trust's Memorandum of Association and Articles of Association in existence prior to the adoption of this Constitution.

Misconduct Event means, in respect of a Member:

- (a) the Member has intentionally, recklessly or negligently breached a provision of this Constitution other than payment of any subscription; or
- (b) the conduct of the Member is unbecoming of the Member or prejudicial to the interests or reputation of the National Trust.

Notice means a notice given pursuant to, or for the purposes of, this Constitution or the *Corporations Act*.

Prescribed Notice means 21 days or any shorter period of notice for a meeting allowed under the *Corporations Act*.

Register means the register of Members kept under the *Corporations Act* and, where appropriate, includes any branch register.

Related company means in relation to the National Trust a related body corporate as that term is defined in the *Corporations Act*.

Secretary means a company secretary of the National Trust for the time being.

Special resolution means a resolution:

- (a) of which notice as required in accordance with the *Corporations Act* has been given; and
- (b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

2. Interpretation

- (a) In this Constitution:
 - (i) a reference to a meeting of Members includes a meeting of any class of Members;
 - (ii) a Member is taken to be present at a meeting of Members if the Member is present in person or by proxy, attorney or representative;
 - (iii) a reference to something being "**written**" or "**in writing**" includes that thing being represented or reproduced in any mode in a visible form; and
 - (iv) where a notice or document is required by this Constitution to be signed, that notice or document may be authenticated by any other manner permitted by the *Corporations Act* or any other law, instead of being signed.
- (b) In this Constitution, headings are for convenience only and do not affect interpretation, Clause 1 does not form part of this Constitution and does not affect interpretation and unless the context indicates a contrary intention:
 - (i) words importing the singular include the plural (and vice versa);
 - (ii) words indicating a gender include every other gender;
 - (iii) the word "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (iv) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
 - (v) the word "includes" in any form is not a word of limitation.

- (c) Unless the context indicates a contrary intention, in this Constitution:
 - (i) a reference to an Clause or a schedule is to an clause or a schedule of this Constitution;
 - (ii) a reference in a schedule to an clause is to an clause of that schedule;
 - (iii) a schedule is part of this Constitution; and
 - (iv) a reference to this Constitution is to this Constitution (and where applicable any of its provisions) as modified or repealed from time to time.
- (d) Unless the context indicates a contrary intention, in this Constitution, a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it.
- (e) Unless the context indicates a contrary intention:
 - (i) an expression in a provision of this Constitution that deals with a matter dealt with by a provision of the *Corporations Act* has the same meaning as in that provision of the *Corporations Act*, and
 - (ii) an expression in a provision of this Constitution that is defined in section 9 of the *Corporations Act* has the same meaning as in that section.

3. Exercise of powers

Where this Constitution confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.

4. Severing invalid provisions

If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that does not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Constitution.