

ASSOCIATIONS INCORPORATION ACT 1981

SMITHS BEACHCOMBER ASSOCIATION INCORPORATED

RULES

1. The name of the incorporated association is Smiths' Beachcomber Association incorporated (in these rules called "the Association")
2. The purposes of the Association are:-
 - (1) To encourage the orderly management, maintenance, supervision, protection and development of the natural, cultural, civic, wild life, environmental and recreational resources of Smith's Beachcomber estates (Phillip Island) and their environs or those affecting them.
 - (2) To do all such lawful things as are incidental or conducive to the attainment of the above purposes or any of them.
3.
 - (1) Membership of the Association shall be open to any person over the age of eighteen years who is a Resident/Property Owner
 - (2) Every application for membership of the Association shall be made in writing. The application shall be signed by the applicant, and shall be in such format as the Committee from time to time prescribes.
 - (3) At the next meeting of the Committee after receipt of the application for membership, such application shall be considered by the Committee who shall thereupon determine upon admission or rejection of the applicant.
In no case shall the Committee be required to give any reason for rejection of the applicant.
4.
 - (1) Persons whose application for membership has been approved shall pay an annual subscription, the amount of which will be determined by the Committee from time to time.
Where applicants are the owners (whether joint owners or tenants in common) of a property in the Smith's Beachcomber estates, only one annual subscription shall be payable, but each owner will have full voting rights.
 - (2) Subscriptions shall be payable in advance on the 1st day of January in each year
5.
 - (1) The Secretary shall keep and maintain a register of members in which shall be entered the full name, address, and

date of entry of the name of each member and the register shall be available for inspection by members at the address of the Public Officer.

6. (1) Upon a resignation from the Association, the Secretary shall make, in the register of members, an entry recording the date on which the member, by whom the notice was given, ceased to be a member.
7. (1) Subject to these rules, the Committee, may by resolution:-
 - (a) Expel a member from the Association
 - (b) Suspend a member from membership of the Association for a specified period, or if the Committee is of the opinion that this member:-
 - (c) Has refused or neglected to comply with these or
 - (d) Has been guilty of conduct unbecoming a member or prejudicial to the interests of the Association:-
- (2) A resolution of the Committee under sub clause (1)
 - (a) Does not take effect unless the Committee at a meeting held not earlier than 14 and not later than 28 days after the service on the member of a notice under sub clause (3) confirms the resolution In accordance with this clause, and
 - (b) Where the member exercises the right of appeal to the Association under this clause does not take effect unless the Association confirms the resolution in accordance with this clause.
- (3) Where the Committee passes a resolution under sub-clause (1), the Secretary shall, as soon as practicable, cause to be served on the member a notice in writing :-
 - (a) Setting out the resolution of the Committee and the grounds on which it is based;
 - (b) Stating that the member may address the Committee at a meeting to be held not earlier than 14 days and not later than 28 days after the service of the notice;
 - (c) Stating the date, place and time of the meeting;

(d) Informing the member that he or she may do one or more of the following:-

- (i) Attend the Meeting
- (ii) Give to the committee before the date of that meeting a written statement seeking the revocation of the resolution; and
- (iii) Not later than 24 hours before the date of the meeting, lodge with the Secretary a notice to the effect that he/she wishes to appeal to the association in a general meeting against the Resolution

(4) At a meeting of the Committee held in accordance with sub clause (2), the Committee

- (a) Shall give to the member an opportunity to be heard
- (b) Shall give due consideration to any written statement submitted by the member; and
- (c) Shall by resolution determine whether to confirm or to revoke the resolution.

(5) Where the Secretary receives a notice under sub clause (3), he/she shall notify the Committee and shall convene a general meeting of the Association to be held within twenty one days after the date on which the Secretary received the notice.

(6) At a general meeting of the Association convened under sub clause (5)

- (a) No business other than the question of the appeal shall be transacted;
- (b) The Committee may place before the meeting details of the grounds for the resolution and the reasons for passing the resolution;
- (c) The member shall be given an opportunity to be heard; and
- (d) The members present shall vote by secret ballot on the question whether the resolution should be confirmed or revoked.

- (7) If at the general meeting
 - (a) Two-thirds of the members vote in person in favour of the confirmation of the resolution, the resolution is confirmed; and
 - (b) In any other case, the resolution is revoked
- (8) Disputes and Mediation
 - (1) The grievance procedure set out in this rule applies to disputes under these Rules between-
 - (a) a member and another member; or
 - (b) a member and the Association.
 - (2) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen days after the dispute comes to the attention of all of the parties.
 - (3) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.
 - (4) The mediator must be-
 - (a) a person chosen by agreement between the parties; or
 - (b) in the absence of agreement-
 - (i) in the case of a dispute between a member and another member, a person appointed by the committee of the Association; or
 - (ii) in the case of a dispute between a member and the Association, a person who is a mediator appointed or employed by the Dispute Settlement Centre of Victoria (Department of Justice).
 - (5) A member of the Association can be a mediator.
 - (6) The mediator cannot be a member who is a party to the dispute.
 - (7) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
 - (8) The mediator, in conducting the mediation, must--
 - (a) give the parties to the mediation process every opportunity to be heard; and
 - (b) allow due consideration by all parties of any written submitted by any party; and

(c) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.

(9) The mediator must not determine the dispute.

(10) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

8.0

(1) The Association, shall in each calendar year convene an Annual General meeting of its members within five months of the end of the financial year

(2) The Annual General meeting shall be held on such day as the Committee determines

(3) The Annual General Meeting shall be specified as such in the notice convening it

(4) The ordinary business of the Annual General Meeting shall be

(a) To confirm the minutes of the last preceding annual general meeting and of any general meeting held since that meeting;

(b) To receive from the Committee reports upon the transactions of the Association during the last preceding financial year;

(c) To elect officers of the Association and the ordinary members of the Committee

(d) to appoint an auditor: and

(e) to receive and consider the audited statement submitted by the Association

(5) The Annual General Meeting may transact special business of which notice is given in accordance with these rules.

(6) The Annual General Meeting shall be in addition to any other general meetings that may be held in that same year.

9. All general meetings other than the Annual General Meeting shall be called special general meetings.

10.

(1) The Committee may whenever it thinks fit, convene a special general meeting of the Association and, where, but for this sub clause, more than fifteen months would lapse between Annual General Meetings, shall convene a special meeting before the expiration of that period.

(2) The committee on the requisition in writing of members representing not less than 5 per cent of the total number of members shall convene a special general meeting of the Association.

(3) The requisition for a special general meeting shall state the objects of the meeting and shall be signed by the members making the requisition and be sent to that address of the Secretary and may consist of several documents in a like form, each signed by one or more of the members making the requisition.

(4) If the Committee does not cause a special general meeting to be held within one month after the date on which the requisition is sent to the address of the Secretary, the members making the requisition or any of them may convene a special general meeting to be held not later than three months after that date.

(5) A special general meeting convened by the members in pursuance of these rules shall be convened in the same manner as nearly as possible as that in which those meetings are convened by the Committee and all reasonable expenses incurred in convening this meeting shall be refunded by the Association to the persons incurring the expense

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(1) The Secretary of the Association shall at least 14 days before the date fixed for holding a general meeting of the Association cause to be sent to each member of the Association at his/her address appearing in the register of members, a notice by prepaid post or if the member requests, facsimile or electronic transmission, stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.

(2) No business other than that set out in the notice convening the meeting shall be transacted at the meeting.

(3) A member desiring to bring any business before a meeting may give notice of that business in writing to the Secretary, who shall include that business in the notice calling the next general meeting after the receipt of the notice.

12.

(1) All business that is transacted at a special general meeting and all business that is transacted at the Annual General Meeting with the exception of that specially referred to in these rules as being ordinary business of the Annual General Meeting, shall be deemed to be special business.

(2) No item of business shall be transacted at a general meeting unless a quorum of members entitled under these rules to vote is present during the time when the meeting is considering that item.

(3) Ten members personally present (being members entitled under these rules to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting. Members unable to personally attend may elect to provide a proxy vote in accordance with Appendix 1 Form of Appointment of Proxy for Meeting of the Association.

Members are required to be currently financial in order to exercise a vote.

(4) If within half an hour after the appointed time for the commencement of a general meeting, a quorum is not present, the meeting if convened upon the requisition of members shall be dissolved and in any other case shall stand adjourned to the same day in the next week at the same time and (unless another place is specified by the Chairman at the time of the adjournment or by written notice to members given before the day to which the meeting is adjourned) at the same place and if at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (being not less than 3)shall be a quorum.

13. (1) The President, or in his/her absence, the Vice President, shall preside as Chairman at each general meeting of the Association
- (2) If the President and the Vice President are absent from a general meeting the members present shall elect one of their number to preside as Chairman at the Meeting.
14. (1) The Chairman of a general meeting at which a quorum is present may, with the consent of the meeting, adjourn the meeting from time to time and place to place, but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (2) Where a meeting is adjourned for fourteen days or more, a like notice of the adjourned meeting shall be given as in the case of the general meeting
- (3) Except as provided in sub clauses (1) and (2), it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 15 A question arising at a general meeting of the Association shall be determined on a show of hands and unless before or on the declaration of the show of hands a poll is demanded, a declaration by the Chairman that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, and an entry to that effect in the Minute Book of the Association is evidence of the fact, without proof of the number or proportion of votes recorded in favour of ,or against, that resolution.
16. (1) Upon any question arising at a general meeting of the Association a member has one vote only
- (2) All votes shall be given personally or by proxy in accordance with the provisions of Clause 12 Sub – clause 3.
- (3) In the case of an equality of voting on a question, the Chairman of the meeting is entitled to exercise a second or casting vote.
17. (1) If at a meeting a poll on any question is demanded by not less than three members, it shall be taken at that meeting in such manner as the Chairman may direct and the resolution of the poll shall be deemed to be a resolution of the meeting on that question

- (2) A poll that is demanded on the election of a Chairman or on a question of an adjournment shall be taken forthwith and a poll that is demanded on any other question shall be taken at such time before the close of the meeting as the Chairman may direct
18. A member is not entitled to vote at any general meeting unless that member is a financial member in that current financial year.
19. (1) The affairs of the Association shall be managed by a Committee of Management constituted as provided in rule 21.
- (2) The Committee :-
- (a) Shall control and manage the business and affairs of the Association
- (b) May, subject to these rules , exercise all such powers and functions as may be exercised by them other than those powers and functions that are required by these rules to be exercised by general meetings of the members of the Association; and
- (c) Invest and deal with the money of the Association not immediately required in such manner as may be permitted by Law for the investment of Trust Funds.
- (d) Subject to these rules, have power to perform all such acts and things as appear to the Committee to be essential for the proper management of the business and affairs of the Association.
20. (1) the officers of the Association shall be:-
- (a) President
- (b) Vice President
- (c) Treasurer
- (d) Secretary
- (2) The provisions of Rule 22 so far as they are applicable and with the necessary modifications, apply to and in relation to the election of persons to any of the offices mentioned in sub clause 1.

(3) Each Officer of the association shall hold office until the Annual General Meeting next after the date of his/her election but is eligible for re-election

(4) In the event of a casual vacancy in any office referred to in sub clause 1 the Committee may appoint one of its members to the vacant office and the member so appointed may continue in office up to and including the conclusion of the Annual General Meeting next following the date of his appointment.

21

(1) The Committee shall consist of :-

- (a) The Officers of the Association
and
- (b) three ordinary members

each of whom shall be elected at the Annual General Meeting of the Association in each year.

(2) Each ordinary member of the committee, shall subject to these rules, hold office until the Annual General Meeting next after the date of his or her election but is eligible for re-election

(3) In the event of a casual vacancy occurring in the office of an ordinary member of the Committee, the Committee may appoint a member of the Association to fill the vacancy and the member so appointed shall hold office, subject to these rules, until the conclusion of the Annual General Meeting next following the date of his or her appointment

22

(1) Nominations of candidates for election as officers of the Association or as ordinary members of the Committee shall be:-

- (a) made in writing, signed by two members of the Association and accompanied by the written consent of the candidate (which may be endorsed on the form of nomination); and
- (b) delivered to the Secretary of the Association not less than seven days before the date fixed for the holding of the Annual General Meeting.

- (2) If insufficient nominations are received to fill all vacancies on the Committee, the candidates nominated shall be deemed to be elected and further nominations shall be received at the Annual General Meeting.
- (3) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated shall be deemed to be elected.
- (4) If the number of nominations exceeds the number of vacancies to be filled, a ballot shall be held.
- (5) The ballot for the election of officers and ordinary members of the Committee shall be conducted at the annual general meeting in such usual and proper manner as the Committee may direct.
- (6) A nomination of a candidate for election under this clause is not valid if that candidate has been nominated for another office for election at the same election.

23 For the purposes of these rules, the office of an officer of this Association or of an ordinary member of the Committee becomes vacant if the officer or member:-

- (a) Ceases to be a member of the Association
- (b) Becomes an insolvent under administration within the meaning of the Associations Incorporation Act 1981
- (c) Becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (d) Is absent from two (2) consecutive Committee meetings without leave; or
- (e) Resigns his office by notice in writing given to the Secretary.

- 24.
- (1) The Committee shall meet at least three times in each year at such place and such times as the Committee may determine.
 - (2) Special meetings of the Committee may be convened by the President or by any four of the members of the Committee.

- (3) Notice shall be given to members of the Committee of any special meeting specifying the general nature of the business to be transacted and no other business shall be transacted at such meeting.
- (4) Any four members of the Committee constitute a quorum for the transaction of business of a meeting of the Committee.
- (5) No business shall be transacted unless a quorum is present and if within half an hour of the time appointed for the meeting a quorum is not present the meeting shall stand adjourned to the same place and at the same hour of the same day in the following week unless the meeting was a special meeting in which case it lapses.
- (6) At meetings of the Committee:-
 - (a) The President or in his/her absence the Vice President shall preside; or
 - (b) If the President and the Vice President are absent such one of the remaining members of the Committee as may be chosen by members present shall preside.
- (7) Questions arising at a meeting of the Committee or of any sub-committee appointed by the Committee shall be determined by a show of hands or, if demanded by a member, by a poll taken in such manner as the person presiding at the meeting may determine.
- (8) Each member present at a meeting of the Committee or any sub-committee appointed by the Committee (including the person presiding at the meeting) is entitled to vote and, in the event of an equality of votes on any question; the person presiding may exercise a second or casting vote.
- (9) Written notice of each committee meeting shall be served on each member of the committee by delivering it to him/her at a reasonable time before the meeting or by sending it by pre-paid post addressed to their last known place of abode or if the member requests by facsimile or electronic transmission at least two business days before the date of the meeting.

- (10) Subject to sub-clause (4), the Committee may act notwithstanding any vacancy on the Committee.

25. The Secretary of the Association shall keep minutes of the resolutions and proceedings of each general meeting and each committee meeting in books provided for that purpose together with a record of the names of the persons present at committee meetings

- 26 (1) The Treasurer of the Association shall:-
- (a) collect and receive all monies due to the Association and make all payments authorised by the Association.
 - (b) keep correct accounts and books showing the financial affairs of the Association with full details of all receipts and expenditure connected with the activities of the Association.
 - (c) all cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by two members of the committee.
 - (d) the funds of the Association shall be derived from entrance fees, annual subscriptions, donations and such other sources as the committee determines
 - (e) present a financial statement to each meeting of the committee; and
 - (f) prepare and cause to be audited financial statements covering the year ending 31st December
- (2) The accounts and books referred to in sub-clause (1) shall be available for inspection by members.

- 27 (1) The Association in general meeting may by resolution remove any member of the Committee before the expiration of his term of office and appoint another member in his stead to hold office until the expiration of the term of the first named member.
- (2) Where the member to whom a proposed resolution referred to in sub-clause (1) makes representations in writing to the Secretary or the President of the

Association (not exceeding a reasonable length) and requests that they be notified to the members of the Association, the Secretary or the President may send a copy of the representations to each member of the Association, or if they are not so sent, the member may require that they be read out at the meeting.

28. (1) The committee shall cause to be opened a banking account in the name of the Association into which all monies received shall be paid within seven days after receipt where possible.
- (2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments shall be signed by either two members of the Committee or by one member of the committee and countersigned by the Treasurer of the Association
29. (1) The Common Seal of the Association shall be kept in the custody of the Secretary.
- (2) The Common Seal shall not be affixed to any document except by the authority of the committee and the affixing of the Common Seal shall be attested by the signatures of two members or of one member of the Committee and of the Public Officer of the Association.
30. (1) The purposes and rules of the Association may be added to, repealed or amended by special resolution at any annual or special general meeting provided that twenty one days written notice of such will be given by the Secretary to all members of the Association and provided further that no such special resolution shall be deemed to have been passed unless it is carried by a majority of at least three fourths of the members present.
- (2) Any alteration made in accordance with the preceding paragraph shall have no effect until such time as same has been approved in accordance with the relevant Act.
31. (1) A notice may be served by or on behalf of the Association upon any member either personally or by sending it by post to the member at his/her address shown in the Register of Members abode or if the member requests by facsimile or electronic transmission.
- (2) Where a document is properly addressed prepaid and posted to the person as a letter, the document shall,

unless to the contrary is proved, be deemed to have been given to the person at the time at which the letter would have been delivered in the ordinary course of post.

32. The Committee shall cause every person having receipt or charge of any money of the Association to give such security for duly accounting for all monies which may be entrusted to him/her as it thinks sufficient. The Association shall pay all premiums in respect of any security given by such person.
33. Every member of the committee, auditor, secretary and other officer for the time being of this Association shall be indemnified out of the assets of the Association against any liability incurred by him/her in defending any proceedings whether civil or criminal, in which judgement is given in his/her favour or in which he/she is acquitted or in connection with any application under the Act in which relief is granted to him/her by the Court in respect of any negligence, default, breach of duty or breach of trusts.
34. Except as otherwise provided in these Rules, the Secretary shall keep in his custody or under his control all books, documents and securities of the Association.
35. The income and property of the Association shall be derived from the annual subscriptions, donations, and other such source as the Committee determines and shall be applied solely towards the promotion of the purposes of the Association as set out in these Rules and no portion thereof shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise however by way of profit to members of the Association. Provided that nothing contained herein shall prevent payment in good faith of remuneration to any officers or servants of the Association in return for any services actually rendered to the Association nor for goods supplied in the ordinary and usual way of business
36. If upon winding up or dissolution of the association there remains after satisfaction of all its debts and liabilities, any property whatsoever the same shall not be paid to or distributed among members of the Association but shall be distributed in accordance with the following provisions:-
- (a) If the value of the property remaining does not exceed \$2400.00 all of that property shall be paid or

transferred to the Committee of Management for the time being of the “Warley” Cowes Bush Nursing Hospital to be used for the purposes of that hospital as the Committee of Management in its sole discretion shall determine

(b) If the value of the property then remaining exceeds \$2400.00 the sum of \$2400.00 shall first be paid or transferred to the Committee of Management for the time being of the “Warley” Cowes Bush Nursing Hospital to be used for the purposes of that hospital as the Committee of Management in its sole discretion shall determine and the balance shall be given or transferred to some other institution/ institutions, body or bodies having purposes similar to the purposes of the Association to be determined by members and office bearers of the Association at or before the time of dissolution and in default thereof by such Judge or such Court of Victoria as may have or acquire jurisdiction in the matter.

APPENDIX 1

FORM OF APPOINTMENT OF PROXY FOR MEETING OF SMITHS BEACHCOMBER ASSOCIATION INC. UNDER RULE 12 (3)

I,

(name)

Of

(address)

Being a member of Smiths Beachcomber Association Inc

Appoint

(name of proxy holder)

Of

(address of proxy holder)

being a fully paid financial member of the Smiths Beachcomber Association, as my proxy to vote for me on my behalf at this meeting dated and at any adjournment of that meeting.

I authorise my proxy to vote on my behalf at their discretion in respect of:

(a) any resolutions which may arise

(b) the following resolutions:

.....
.....
.....

Name.....

Signed.....

Date