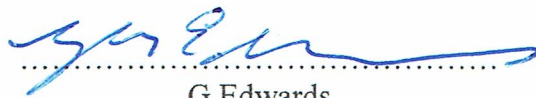


CERTIFICATE

The attached Constitution was amended by Committee resolution on 31 March 2018 pursuant to the provisions of Section 200 of the *Associations Incorporation Act 2015* and is the current Constitution of The Molloy Island Home Owners' Association (Inc.).

It is certified that the amended Articles confirm to and comply with the *Associations Incorporation Act 2015*.



G Edwards
President
Molloy Island
Augusta, Western Australia

Dated: 31 March 2018

THE MOLLOY ISLAND HOME OWNERS' ASSOCIATION (INC.)

CONSTITUTION

**As Amended by Special Resolution on 28 September 2003
and**

**As Amended by Special Resolution on 11 April 2004
and**

**As Amended by Committee resolution on 31 March 2018 pursuant to
Section 200 of the *Associations Incorporation Act 2015***

Registration Number A 0780032J

THE MOLLOY ISLAND HOME OWNERS' ASSOCIATION (INC.)

Registration Number A 0780032J

CONSTITUTION

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THE MOLLOY ISLAND HOME OWNERS' ASSOCIATION (INC.)

CONSTITUTION

1.0 NAME

The name of the Association is THE MOLLOY ISLAND HOME OWNERS' ASSOCIATION (INC.).

2.0 INTERPRETATION

2.1 In these Rules, unless the contrary intention appears, the following expressions have the meanings indicated:

- | | | |
|-------|--------------------|---|
| 2.1.1 | "Act" | <i>Associations (Incorporation) Act 2015;</i> |
| 2.1.2 | "Annual Accounts" | the usual annual financial statements (including income and expenditure statement, balance sheet and auditors report) prepared in respect of the financial transactions of the Association during an Association Year; |
| 2.1.3 | "Annual Fee" | the fee payable in respect of an Association Year by a Member, assessed and levied in accordance with Article 7; |
| 2.1.4 | "Article" | a clause, separately numbered, of this Constitution and "Sub-Article" has a corresponding meaning; |
| 2.1.5 | "Association" | THE MOLLOY ISLAND HOME OWNERS' ASSOCIATION (INC.); |
| 2.1.6 | "Association Year" | a period fixed by the Association (by special resolution) from time to time for the Annual Fee and the Annual Accounts and until otherwise fixed, the period commencing on 1st July and expiring on the 30th June next following; |
| 2.1.7 | "Committee" | the management committee of the Association provided for by Article 10; |
| 2.1.8 | "Committee member" | a member elected or appointed for the time being to the Committee, including the President; |
| 2.1.9 | "Rule" | means a Rule made by the Association under Article 12; |

- 2.1.10 "Common Facilities" the land area of each Reserve, all improvements including the waterways and roads or paths near or on any Reserve under the sole or partial management of the Association and the buildings, fixed improvements to land, vehicles, plant and equipment (including the vehicle ferry) owned by the Association;
- 2.1.11 "Lot Owner" a person, or the persons, or a corporation registered in the Office of Titles on the relevant title as the proprietor for the time being of a Private Lot on Molloy Island;
- 2.1.12 "Member" a person who, or corporation which, becomes and is for the time being a member of the Association, in accordance with Article 5;
- 2.1.13 "Molloy Island" the whole of Sussex Location a (Molloy Island) and, where appropriate, so much of Sussex Location as is included in Lot 270 on Diagram 55668;
- 2.1.14 "Office of Titles" the Western Australian land registry established under the Transfer of Land Act 1893;
- 2.1.15 "Private Lot" a surveyed lot on Molloy Island shown on a plan or diagram in the Office of Titles which is not held by the Crown, the Shire or the Association;
- 2.1.16 "Register" the register of Members provided for in Article 5.9;
- 2.1.17 "Reserve" an area of land on Molloy Island which is depicted on a plan or diagram in the Office of Titles as:-
a) a reserve for recreation; or
b) a road or drainage reserve; or
c) a lot which is registered in the name of the Association (or part of such a lot) and which lot, or part of a lot, is accessible to the public;
- 2.1.18 "Shire Scheme" the Town Planning Scheme of the Shire for the time being in force in relation to Molloy Island;
- 2.1.19 "Shire" the Shire of Augusta-Margaret River (or the municipal body for the time being within which Molloy Island is located);
- 2.1.20 "Special Resolution" a resolution passed at a general meeting of Members;
a) of which the notice specified the intention to propose the resolution; and
b) for which three fourth of Members who vote (in person or by proxy) vote in favour;

(Section 51 of the Act).

- 2.2 In interpretation, the singular includes the plural and vice versa and one gender includes all others.

3.0 OBJECTS

- 3.1 The object or function for which the Association exists is to fulfil the function for it described in the Shire Scheme, namely to assist the Shire to implement and administer the Shire Scheme. A copy of the relevant portions of the Shire Scheme in the form in which it exists at the date of adoption of this Constitution is set out in the Part I of the Schedule.
- 3.2 Without limiting the preceding Sub-Article, the objects of the Association at the date of adoption of these Articles include the functions set out in Part II of the Schedule.
- 3.3 The Shire and the Association may from time to time agree upon and specify other functions to be carried out by the Association.
- 3.4 The property and income of the Association must be applied solely towards the promotion of the objects or purposes of the Association and no part of that property or income may be paid or otherwise distributed directly or indirectly to any Member, except in good faith in the promotion of those objects or purposes (Section 22(2) of the Act). A payment may be made to a Member out of the funds of the Association only if is authorised under Sub-Article 9.6.2.

4.0 POWERS

The Association shall, so far as the Act permits, have the legal capacity of a natural person, and, without limiting that statement, may do anything necessary or convenient for carrying out its objects or functions (Section 14 of the Act).

5.0 MEMBERSHIP OF THE ASSOCIATION

5.1 Lot Owner Automatically a Member

Every Lot Owner shall, by virtue of becoming a Lot Owner, become a Member of the Association, and that Lot Owner shall remain a Member whilst he, she or it remains a Lot Owner.

5.2 Cease to be a Lot Owner, cease to be a Member

A Member who ceases to be a Lot Owner shall, by virtue of that fact cease to be a Member of the Association. That cessation shall not affect the right of the Association to recover from that Member an amount of money which fell due to the Association from that Member whilst he, she or it was a Member.

5.3 Resignation and Expulsion not possible; result of Death

No Member may resign or be expelled from the Association. A Member who dies shall cease to be a Member in the case of a joint tenant, or otherwise, thereafter be represented by his or her personal representative.

5.4 No other type of Member

No person other than a Lot Owner may be admitted as a Member of the Association, and no other type of membership may be created.

5.5 Claims through Lot Owners not recognised

The Association must not recognise, or accord any rights of membership to any person claiming any ownership interest in a Private Lot under, through or from a Member, who is not registered as a Lot Owner, or registered in the Office of Titles in an ownership capacity in relation to a Lot Owner (such as a personal representative or receiver but not a person claiming in any other capacity such as mortgagee, caveator, purchaser, etc).

5.6 Notification of Becoming or Ceasing to be a Member

When a Lot Owner becomes, or ceases, unless by reason of death, to be Member, he, she or it must give the Association written notice of that fact, with (in the case of becoming a Lot Owner) his, her or its full name and address. A Member must give the Association written notice of any change in his, her or its name or address.

5.7 Notify the Association of Representatives of Corporations

If a corporation is a Member, the corporation may from time to time, by a written notice delivered to the Association, nominate one or two persons who may represent the corporate Member and exercise all of the rights of the corporate Member, on its behalf in relation to the Association, and that nomination shall apply for as long as its terms provide, or until revoked if no term is set.

5.8 Deemed Corporate Representative if none notified

Until a corporate Member has nominated a person or persons as its representative under the preceding Sub-Article, the first two named directors of the corporation in the most recent notification of directors to the Australian Securities Commission shall be deemed to be its representatives for the purpose of the preceding Sub-Article.

5.9 Register of Members

5.9.1 The Association must maintain a current register of its Members in accordance with Section 53 of the Act.

5.9.2 The Association may maintain the register in electronic form, but only if backed up in accordance with appropriate practice.

5.9.3 The Association must verify the Members register from time to time from the records of the Office of Titles.

- 5.9.4 At the request of a Member, the Association must allow that Member to inspect the Register, and allow the Member to make a copy of, or take an extract from the Register. For this purpose, the Association must make a hard copy of any electronically stored data so requested.
- 5.9.5 A Member may not remove the Register from the Association's custody for any purpose.

(Section 53 of the Act).

6.0 RIGHTS OF MEMBERS

6.1 Receive Notices

The Association must dispatch to each Member, at the address on the Register given by that Member to the Association:-

- 6.1.1 written notice of the convening of any general meeting of Members (except information meetings convened under Sub-Article 8.4);
- 6.1.2 written notice of any proposed election of Committee members, including the closing date for nominations and the number of vacancies for the election of Committee members;
- 6.1.3 written notice of the Annual Fee and any other Association charges payable by that Member;
- 6.1.4 a copy of the signed Annual Accounts; and
- 6.1.5 any other information or material distributed by the Association generally to Members, when so distributed.

6.2 Notify Business to, Attend Meetings of, Members and Speak

- 6.2.1 A Member may prior to the printing and dispatch of the notice of a general meeting of Members under Sub-Articles 8.1 or 8.2, or by convening a meeting of Members under Sub-Article 8.3, notify the Committee in writing of a motion which he wishes to be considered at that general meeting of Members.
- 6.2.2 Subject to compliance with directions by the presiding officer as to its conduct and good order, a Member may attend and speak at a general meeting of Members of the Association.

6.3 Vote

- 6.3.1 The Members in respect of one Private Lot may (if more than one, jointly) exercise one vote in respect of that Private Lot, on any motion put to a vote or poll at a general meeting of Members of the Association.
- 6.3.2 A Member or Members owning more than one Private Lot may exercise one vote in respect of each Private Lot owned.

6.3.3 No vote may be cast in respect of a Private Lot if any instalment of the Annual Fee, or any other charge due in respect of that Private Lot has fallen due for payment, and remains unpaid.

6.4 **Appoint Proxies**

The Members in respect of one Private Lot may (if more than one, jointly) in accordance with Article 8, and with the procedures notified under Sub-Article 8.11 for the meeting concerned, appoint one person (whether a Member or not) to act as the sole proxy of those Members in respect of that Private Lot, to exercise the right of the Members concerned to attend the meeting, speak, and vote, as the representative of the Members concerned. The Members so appointing may cancel a proxy at any time prior to the meeting by notice to the Committee.

6.5 **Stand for Committee**

A Member eligible under Article 10 may stand for election to the Committee, or be appointed to the Committee, in accordance with Article 10.

6.6 **Use and Enjoyment of Common Facilities**

Every Member may, subject to such Rules or conditions for use, as the Association may impose, use and enjoy the Common Facilities, except where an item is used for a specific purpose (such as the manager's residence and Association machinery buildings).

6.7 **Delegation by Member of Rights of Use**

A Member may, by contract (such as in a lease), or informally, allow his or her contractor, tenant, visitors and family members to enjoy the rights which the Member enjoys under Sub-Article 6.6, subject to those persons in turn observing all of the Rules or conditions for use, imposed by the Association.

8 **Association may Contract with a Member**

Article 14.2 does not prevent the Association from engaging or contracting with a Member and paying that Member for services rendered or goods supplied, providing the requirements of Sub-Article 9.6.2 are satisfied.

BUDGET, ANNUAL FEE AND OTHER CHARGES TO MEMBERS

Annual Fee Association Principal Income

The Association will, in general, meet most of its expenditure by levying Members with an Annual Fee in accordance with this Article.

A Financial Year

For the purposes of Schedule 1 of the Act, the Association's financial year is the period of 12 months commencing on the first day of each Association Year.

7.2 Draft Budget and Recommended Annual Fee

- 7.2.1 The Committee must, if possible before, but in any event as close as possible to the beginning of an Association Year, prepare a budget and appropriate working papers in support of it for Association income and expenditure in the forthcoming Association Year, and from that budget determine the amount of the Annual Fee which it recommends as payable in respect of each Private Lot in respect of that Association Year.
- 7.2.2 The Committee must then dispatch a copy of the draft budget and recommended fee to each Member, with the notice of the Budget Approval Members Meeting provided for in Article 8.
- 7.2.3 The Committee must retain the budget workings and have them available for inspection by Members at the Budget Approval Members Meeting.

7.3 Budget Approval Procedure

- 7.3.1 The Budget Approval Members Meeting may:-
 - 7.3.1.1 approve the Draft Budget and Recommended Annual Fee; or either
 - 7.3.1.2 refer either or both back to the Committee for further consideration with recommended changes;
 - 7.3.1.3 vary the Recommended Annual Fee by up to 10 percentum up or down; or
 - 7.3.1.4 make no decision.
- 7.3.2 If the Budget Approval Members Meeting approves the Draft Budget and Recommended Annual Fee, or makes no decision, the Draft Budget and Recommended Annual Fee become the Approved Budget and Approved Annual Fee.
- 7.3.3 If the Budget Approval Members Meeting resolves to refer the Draft Budget or the Recommended Annual Fee back to the Committee for further consideration with recommended changes, the Committee must meet as soon as possible and give bona fide consideration to the recommendations, and complete a new Draft Budget or Annual Fee calculation (as the case may be), which shall then become the Approved Budget and Approved Annual Fee (as the case may be).

7.4 Annual Fee Notice

Subject to approval of the Annual Fee by the Budget Approval Members Meeting or in accordance with Article 7.3.3, the Committee must endeavour to dispatch the Annual Fee notice to Members before, or as close as possible to the beginning of the Association Year to which it applies, notifying the Member or Members of the Approved Annual Fee payable in respect of the Private Lot in respect of which they are the Members.

7.5 Payment Options

- 7.5.1 The Committee must, in the Annual Fee Notice, offer to Members the right to elect to pay the Annual Fee in two or three equal instalments specifying the date by which each instalment must be paid.
- 7.5.2 The Committee may when calculating the instalment amounts payable under the instalment options, add to each instalment of the Annual Fee payable by a Member under the instalment payment option:-
 - 7.5.2.1 an amount representing interest at a rate fixed from time to time by the Committee but not exceeding four percentum per annum over the overdraft rate charged by the Association's Bank, calculated on the instalments amount from the date being 30 days after the Annual Fee Notice is dispatched to Members, until the due date for payment of an instalment, and
 - 7.5.2.2 an administrative charge not exceeding four (4) percentum of the instalment.

7.6 Liability to Pay Annual Fee

The Members who are the Lot Owners in respect of a Private Lot will become jointly and severally liable to pay the Annual Fee as follows:-

- 7.6.1 where, within 30 days of receipt of an Annual Fee Notice, a Member notifies the Committee in writing that the Members in respect of a Private Lot elects to pay the Annual Fee for that Private Lot by instalments, and they pay the first instalment, then the liability of those Members to pay each subsequent instalment will arise on the date stated in the Notice for payment of that instalment;
- 7.6.2 where the Members concerned do not elect under the previous Sub-Article, liability to pay the Annual Fee levied in respect of that Private Lot arises 30 days after the Annual Fee Notice is dispatched to Members.

7.7 Other Charges to Members

The Committee may from time to time set and levy charges to a Member individually or the Member or Members in respect of a Private Lot, for goods or services provided by the Association, including without limiting the generality of this Sub-Article, charges for examining and approving house plans, building performance bond deposits, vehicle ferry use and key supply deposits and charges, equipment hire or specific service charges.

7.8 Payment of Other Charges and Interest

The Committee may include in the Notice of Annual Fee, or may by separate Notice, require a Member to pay:-

- 7.8.1 any other charge levied to that Member or those Members by the Association under Article 7.7,

- 7.8.2 interest on the unpaid amount of the Annual Fee or an instalment of the Annual Fee or many other charge, at a rate fixed from time to time by the Committee, but not exceeding six per centum per annum over the overdraft rate charged by the Association's Bank, such interest to be calculated from the date on which liability under Article 7.6 in this Article commences.

8.0 MEETINGS OF MEMBERS

8.1 Budget Approval Members Meeting

- 8.1.1 Once in every calendar year, the Committee must convene a general meeting of Members by written notice to each Member, to be known as the Budget Approval Members Meeting, so as to be held within four (4) months before the commencement of each Association Year. The Committee must endeavour, when appropriate, to hold the Budget Approval Members Meeting at Easter.
- 8.1.2 The principal business of the Budget Approval Members Meeting must be consideration of the Draft Budget and Recommended Annual Fee prepared by the Committee pursuant to Article 7. The meeting must also consider any other business of which the Committee is notified by a Member before the Notice of Meeting is dispatched and which is included in the Notice. No business other than that so notified may be considered.

8.2 Annual Members Meeting

- 8.2.1 Once in every calendar year, the Committee must convene a general meeting of Members, by written notice to each Member, to be known as the Annual Members Meeting, or Annual General Meeting so as to be held within six (6) months after the end of the Association Year (Section 50 of the Act).
- 8.2.2 The principal business of the Annual Members Meeting must be:-
- 8.2.2.1 consideration of the Annual Accounts in accordance with Article 9.9;
 - 8.2.2.2 receiving the declaration of the ballot for the election of the President, if applicable, and of Committee members as required in accordance with Article 10;
 - 8.2.2.3 to identify, and consider any termination or appointment of the Auditor (if necessary) in accordance with Article 9.10;
 - 8.2.2.4 any other business of which the Committee is notified before the Notice of Meeting is dispatched and which is included in the Notice;
- 8.2.3 No business other than that so notified may be considered.
- 8.2.4 The Committee must give members the opportunity to place agenda items on the Notice of Meeting.

8.3 Other General Meetings of Members

The Committee must convene a general meeting of Members by written notice to each Member if:

8.3.1 it so decides, or

8.3.2 it is requested to do so by the President, or

8.3.3 at least 5% of the Members require a general meeting to be convened,

in the last case, so as to be held within 30 days of receiving all the requests.

8.4 Informal Information Meetings

The Committee may convene a general meeting of Members without giving written notice to each Member, such as, by a general notice or advertisement. No resolution that binds the Association may be put or carried at such a meeting. The purpose of such meetings is for the Committee to give information to Members, and receive comment.

8.5 Meeting Notice Period

In the case of every general meeting of Members convened by written notice sent to Members, the Committee must ensure 14 clear days elapses between the day on which notice is dispatched to all Members, and the day of the meeting.

8.6 How Notice Addressed

The Committee must send the meeting notices to each Member at the current address given in the Register by that Member to the Association. The Association may include all such notices for Members who have given one address in one envelope addressed to that address or one email addressed to that address.

8.7 Notified Business only

The Committee must ensure the notice describes the business of the meeting where relevant, in accordance with Sub-Articles 8.1 or 8.2. The Association may not accept a substantive (i.e. not procedural) motion to transact any business at a meeting which is not described in the notice of that meeting.

8.8 Quorum for Member Meetings

Fourteen (14) Members present in person or by proxy within 15 minutes of the appointed commencement time will be a quorum for any general meeting, and if no quorum is present the meeting shall be abandoned, but may be reconvened by proper notice.

8.9 Chair

The President or in his or her absence, the Vice President must be the presiding officer to chair a general meeting of Members, and in the absence of both of them the Committee members present or if none, the Members present, may elect one of their number to preside.

8.10 Notice of Business of Annual Members Meeting

The business of and order of business at the Budget Approval Members Meeting and the Annual Members Meeting shall, subject to the Act, be notified by the Committee in the meeting notice in accordance with Sub-Articles 8.1 and 8.2.

8.11 Proxy (Absentee Vote) Procedure

The Committee must dispatch with each notice of a general meeting of Members, a form of proxy instrument to be substantially as follows:-

To: THE MOLLOY ISLAND HOME OWNERS' ASSOCIATION (INC)

PO Box 304
Augusta WA 6290

FORM OF PROXY

I/We

.....
(Print Name of Lot Owners in Full)

being (all) the registered member(s) of Molloy Island Home Owners' Association (Inc) in respect of Lot, (your Lot No.) Molloy Island, hereby appoint (name of proxy) (you may insert "The Chairman") as my/our proxy to attend, speak and vote on my/our behalf at the General Meeting of Members of the Association to be held on the day of at o'clock.

My/Our proxy is appointed to vote in respect of resolutions put to the meeting in accordance with my/our following instructions:

Resolution

For

Against

.....

.....
Signatures of Lot Owner(s)

In the absence of instructions, the proxy may vote as he thinks fit.

A proxy may be withdrawn at any time prior to the Meeting.

If the Lot Owner who has appointed a proxy attends the Meeting, he cannot vote unless he withdraws the proxy.

Please post so as to be received before on by the Secretary, Molloy Island Home Owners' Association (Inc) at the above address.

The Committee must advise in the notice or proxy form the time by which, the method of delivery by which, and the place at which proxy forms must be lodged.

8.12 Voting Procedure

- 8.12.1 At the general meeting, the Committee must verify the entitlement of a Member to vote, and determine which Member will exercise the vote in respect of a particular Private Lot.
- 8.12.2 Unless a poll is demanded, the presiding officer must conduct voting initially by a show of hands, by those Members or proxies entitled to vote. A declaration by the presiding officer that a resolution is passed or lost shall be evidence of that fact.
- 8.12.3 The presiding officer, or 3 Members present, in person or by proxy, may demand a poll (whether or not the vote by show of hands has taken place). If so demanded, the poll shall be taken substantially in the following manner:-
 - 8.12.3.1 The presiding officer will appoint as many returning officers as are necessary (who may be Committee Members);
 - 8.12.3.2 The returning officers will distribute voting slips to those Members or proxies entitled to vote;
 - 8.12.3.3 The presiding officer will instruct upon a suitable voting method and the returning officers will count the votes.
 - 8.12.3.4 The presiding officer will declare the polls.
- 8.12.4 The presiding officer at any meeting of Members does not have a casting vote.
- 8.12.5 If the votes for and against a motion are equal, the motion fails.

8.13 Meeting Record

- 8.13.1 The Committee must cause minutes of all general meetings to be taken and kept in an appropriate record. The Committee must ensure that minutes of all general meetings are confirmed as a correct record by Members at the next Members Meeting or the next Annual Member Meeting, and so signed by the presiding officer of that meeting.
- 8.13.2 Minutes so signed shall be evidence that:-
 - 8.13.2.1 the general meeting concerned was properly convened and held;
 - 8.13.2.2 the proceedings recorded took place;
 - 8.13.2.3 all appointments and elections recorded were validly made or conducted.

8A.0 RESOLVING DISPUTES

8A.1 Terms used

In this Article 8A:-

8A.1.1 ***grievance procedure*** means the procedure set out in this Article 8A; and

8A.1.2 ***party to a dispute*** includes a person:-

8A.1.2.1 who is a party to the dispute; and

8A.1.2.1 who ceases to be a Member within 6 months before the dispute has come to the attention of each party to the dispute.

8A.2 Application of Article 8A

The procedure set out in this Article 8A (the grievance procedure) applies to disputes:-

8A.2.1 between Members; or

8A.2.2 between one or more Members and the Association.

8A.3 Parties to attempt to resolve dispute

The parties to a dispute must attempt to resolve the dispute between themselves within 14 days after the dispute has come to the attention of each party.

8A.3 How grievance procedure is started

8A.3.1 If the parties to a dispute are unable to resolve the dispute between themselves within the time required by Sub-Article 8A.3, any party to the dispute may start the grievance procedure by giving written notice to the Secretary of:-

8A.3.1.1 the parties to the dispute; and

8A.3.1.2 the matters that are the subject of the dispute.

8A.3.2 Within 28 days after the Secretary is given the notice, a Committee meeting must be convened to consider and determine the dispute.

8A.3.3 The Secretary must give each party to the dispute written notice of the Committee meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held.

8A.3.4 The notice given to each party to the dispute must state:-

8A.3.4.1 when and where the Committee meeting is to be held; and

8A.3.4.2 that the party, or the party's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Committee about the dispute.

8A.3.5 If:-

- 8A.3.5.1 the dispute is between one or more Members and the Association;
and
- 8A.3.5.2 any party to the dispute gives written notice to the Secretary stating that the party:
 - (a) does not agree to the dispute being determined by the Committee; and
 - (b) requests the appointment of a mediator under Article 8B,the Committee must not determine the dispute

8A.4 Determination of dispute by Committee

- 8A.4.1 At the Committee meeting at which a dispute is to be considered and determined, the Committee must:-
 - 8A.4.1.1 give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Committee about the dispute; and
 - 8A.4.1.2 give due consideration to any submissions so made; and
 - 8A.4.1.3 determine the dispute.
- 8A.4.2 The Committee must give each party to the dispute written notice of the Committee's determination, and the reasons for the determination, within 7 days after the Committee meeting at which the determination is made.
- 8A.4.3 A party to the dispute may, within 14 days after receiving notice of the Committee's determination under Sub-Article 8A.4.1.3, give written notice to the Secretary requesting the appointment of a mediator under Article 8B.
- 8A.4.4 If notice is given under Sub-Article 8A.4.3, each party to the dispute is a party to the mediation.

8B.0 MEDIATION

8B.1 Application of Article 8B

- 8B.1.1 This Article 8B applies if written notice has been given to the Secretary requesting the appointment of a mediator by a party to a dispute under Sub-Articles 8A.3.5.2(b) or 8A.4.3.
- 8B.1.2 If this Article 8B applies, a mediator must be chosen or appointed under Sub-Article 8B.2.

8B.2 Appointment of mediator

- 8B.2.1 The mediator must be a person chosen by agreement between the parties to the dispute.

- 8B.2.2 If there is no agreement for the purposes of Sub-Article 8B.2.1, then, subject to Sub-Articles 8B.2.3 and 8B.2.4, the Committee must appoint the mediator.
- 8B.2.3 The person appointed as mediator by the Committee must be a person who acts as a mediator for another not-for-profit body, such as a community legal centre.
- 8B.2.4 The person appointed as mediator by the Committee may be a Member or former Member of the Association but must not:-
- 8B.2.4.1 have a personal interest in the matter that is the subject of the mediation; or
 - 8B.2.4.2 be biased in favour of or against any party to the mediation.

8B.3 Mediation process

- 8B.3.1 The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- 8B.3.2 Each party to the mediation must give the mediator a written statement of the issues that need to be considered at the mediation at least 5 days before the mediation takes place.
- 8B.3.3 In conducting the mediation, the mediator must:-
- 8B.3.3.1 give each party to the mediation every opportunity to be heard;
 - 8B.3.3.2 allow each party to the mediation to give due consideration to any written statement given by another party; and
 - 8B.3.3.3 ensure that natural justice is given to the parties to the mediation throughout the mediation process.
- 8B.3.4 The mediator cannot determine the matter that is the subject of the mediation.
- 8B.3.5 The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that take place in relation to the matter that is the subject of the mediation.
- 8B.3.6 The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator.

9.0 MANAGEMENT OF THE ASSOCIATION'S AFFAIRS

9.1 Management by Committee

The Committee must, exclusively, manage all of the affairs of the Association and shall be responsible to the Members of the Association to do so and for that purpose it may exercise all of the powers of the Association (Section 38 of the Act).

9.2 Committee can engage others and delegate

- 9.2.1 The Committee may engage such consultants agents advisers, employees or contractors as it thinks fit and delegate to any of them any power or function which it may itself exercise.
- 9.2.2 No such engagement or delegation shall diminish or excuse the responsibility of the Committee to the Members for management of the affairs of the Association.

9.3 Contracting Authority

The Association may enter into, vary or rescind any contract which if made between natural persons would:-

- 9.3.1 be required to be in writing under seal, then, under its common seal; or
- 9.3.2 be required to be in writing but not under seal, then, signed by a person authorised by the Association or its Committee so to sign; or
- 9.3.3 not required to be in writing, then if made orally by a person authorised by the Association or the Committee so to do.

(Section 15 of the Act).

9.4 Common Seal

The Association must obtain and maintain in the custody of the Committee a Common Seal with the Association's full name in legible characters. The Common Seal may only be affixed pursuant to the authority of a resolution of the Committee, and its use must be attested by two (2) Committee members. Every use of the Common Seal must be recorded in the Committee records of proceedings.

9.5 Constitution Inspection

The Committee must keep copies of the current Constitution of the Association in a form and at a place where it can make the Constitution available for inspection by a Member. The Committee may keep the Constitution recorded in electronic form. A Member may inspect, make a copy of or extract from the Constitution but may not remove it (Section 35 of the Act), and for this purpose the Committee must when requested in accordance with this Article make a hard copy of the Constitution.

9.6 Association Funds

- 9.6.1 The Committee shall maintain bank or other custodial accounts in the name of the Association with a licensed Bank or like institution for the deposit and custody of all money received by the Association. All authorities on all bank and other accounts of the Association shall consist of at least two (2) Committee members, except that the Committee may authorise an employee to conduct an imprest cash account.
- 9.6.2 A payment to a Member out of the funds of the Association is authorised if it is:

- 9.6.2.1 a payment made in good faith to the Member as reasonable remuneration for any services provided to the Association, or for goods supplied to the Association, in the ordinary course of business; or
- 9.6.2.2 a payment of interest, on money borrowed by the Association from the Member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia; or
- 9.6.2.3 a payment of reasonable rent to the Member for premises leased by the Member to the Association; or
- 9.6.2.4 the reimbursement of reasonable expenses properly incurred by the Member on behalf of the Association.

9.7 Financial and other Record Keeping

The Committee must keep financial records that:-

- 9.7.1 correctly record and explain its transactions and financial position and performance; and
- 9.7.2 enable true and fair financial statements to be prepared in accordance with Division 3 of the Act.

(Section 66 of the Act).

9.8 Custody and Inspection of Records

The Committee must make provision for the safe custody, under its control or authority, of:-

- 9.8.1 the register of Members to be maintained under Article 5.9;
- 9.8.2 the record of Committee Members to be maintained under Article 10.12; and
- 9.8.3 the accounting and other records to be kept under Article 9.7.

The Committee must permit a Member, on reasonable notice, to inspect and copy any part of those records but the Member may not remove any such records.

9.9 Annual Accounts

The Committee must prepare Annual Accounts showing the financial position of the Association at the end of each Association Year, submit those Annual Accounts to the Association Auditor and instruct the Auditor to audit those Annual Accounts, then despatch a copy of the Annual Accounts, and the Auditor's Report on them to each Member together with the Notice of the Annual Members Meeting. The Committee must then propose the adoption of the Annual Accounts and Auditor's Report by resolution at the Annual Members Meeting.

9.10 Auditor

The Committee must from time to time, as necessary, engage and pay an independent registered Company auditor as the Association Auditor, to carry out the audit of the Annual Accounts prepared pursuant to Sub-Article 9.9. The Committee must advise Members at each Annual Members Meeting of the identity of the Association Auditor. The Association may (subject to notice of the motion to do so having been given) in general meeting terminate the appointment of an Association Auditor, and engage another in his or her place.

9.11 Principal Office

The Committee must from time to time designate a place attended during usual business hours as the principal office or address of the Association for the purpose of access and communication from Members to the Committee.

9.12 Supervision of Title and Mortgage Covenant Obligations by Lot Owners

The Committee must ensure Members, as Lot Owners:-

9.12.1 enter into a covenant upon becoming a Lot Owner with all Lot Owners for the time being and the Association on their behalf that:

9.12.1.1 the Lot Owner will comply with:

- a) the Shire Planning Scheme;
- b) the Constitution of the Association;
- c) the Rules lawfully made by the Association;

9.12.1.2 the Lot Owner will become and remain whilst a Lot Owner a Member;

9.12.1.3 the Lot Owner will secure from every transferee from him or her of an interest in the Private Lot of which he or she is an owner, covenants to the same effect as Sub-Articles 9.12.1.1 and 9.12.1.2.

9.12.2 Each Lot Owner (if it is not already so mortgaged), mortgages the estate in fee simple held by him in a Private Lot to the Association, and assist and allow that mortgage to be registered, in order to secure to the Association, the payments of all fees and charges levied to that Lot Owner by the Association. The Association will usually require the mortgage to be a first mortgage but may in certain circumstances allow it to be in fact or in effect, a second mortgage.

9.12.3 Each Lot Owner must ensure that he or she, or his or her mortgagee secures from every transferee from him or her, or from his or her mortgagee, of the Private Lot of which he or she is a proprietor, a covenant to be bound by the terms of the mortgage described in the preceding Sub-Article 9.12.2.

10.0 ELECTION AND APPOINTMENT OF PRESIDENT AND COMMITTEE

10.1 The Committee defined

The Committee shall consist of the Members of the Association who are elected or appointed under this Article from time to time to be the President and the ordinary Committee members.

10.2 Minimum and Maximum Number

The Committee must comprise the President, and not more than 8 and not less than 5 Committee members.

10.3 Eligibility

Only a natural-person Member of the Association or a representative under Article 5 of a corporate Member may be elected or appointed as a Committee Member.

10.4 Term of Elected Committee Member

The President and each Committee member elected at an Annual Members Meeting must retire at the end of the second Annual Members Meeting occurring after the one at which he or she was elected.

10.5 Appointment of Committee Members

At any time that there are less than 8 Committee members, the Committee may appoint a Member or Members, up to the maximum number, to the Committee. Any Committee member appointed under this Clause must retire at the end of the Annual Members Meeting as would be appropriate had the appointed member been elected.

10.6 Election of the President separate but same

The President may not be appointed but shall be elected, separately from, but in the same manner, as other Committee members. If the President resigns, becomes incapacitated from acting, dies or there is no President in office, the Committee may appoint a Committee Member to act as President until the next Annual Members Meetings or Annual Budget Meeting, as the case may be, at which time the Members shall elect a President in accordance with clause 10.7.

10.7 Procedure for Election of all Committee Members

The procedure for election of the President and all Committee members to be elected is as follows:

- 10.7.1 the Committee will notify all Members not less than 28 days prior to closing date for nominations, of the number of Committee members due to retire or retiring at the end of the next Annual Members Meeting, including the President, if applicable, the closing date for nominations and the closing date for the receipt of ballot papers;

- 10.7.2 a Member seeking election or re-election as a Committee member must be nominated and seconded in writing by Members and must sign the nomination form to indicate his or her consent;
- 10.7.3 the written nomination in respect of a candidate for election, duly signed by the candidate, must be accompanied by a brief résumé. The nomination and résumé must be delivered to the Committee in any manner that will ensure that they reach the Committee on or before the closing date for nominations. A nomination, which is not accompanied by such a résumé, shall be invalid;
- 10.7.4 a Member may not stand for election if any amount due and payable by him to the Association remains outstanding;
- 10.7.5 where the number of candidates for election is either equal to or less than the number of vacancies, all the candidates shall be declared elected;
- 10.7.6 if there are more candidates than vacancies, the Committee must conduct an election. The method of election will be by secret ballot. All Members entitled to vote under clause 6.3.3 at the time of close of nominations, will be sent, by post, a ballot paper listing the names of all candidates and the résumé submitted to the Committee by each candidate. Voting will be to mark the box opposite the candidates of choice. A valid vote shall have the same number of boxes marked, as there are vacancies on the Committee;
- 10.7.7 Ballot papers must be delivered to the Molloy Island Administration Office prior to 5.00pm the day before the Annual Members Meeting;
- 10.7.8 The Committee will nominate the Returning Officer and the Scrutineers. The Returning Officer will declare the result of the election of Committee members and the President, if applicable, but not the number of votes cast in favour of each candidate at the Annual Members Meeting;
- 10.7.9 an elected candidate shall take office as a Committee member at the closure of the meeting at which he or she is elected.

10.8 Termination of Committee Membership

A Committee member shall cease to be a Committee member if he or she:

- 10.8.1 ceases to be a Member;
- 10.8.2 is removed by resolution of the Members in general meeting;
- 10.8.3 is convicted of an indictable offence.

10.9 Other Office Bearers Appointed by Committee

The Committee must designate a Committee Member to hold the following offices: Vice President, Secretary, Treasurer, and each shall perform the duties usually associated with such office or as designated by the Committee. The Committee may from time to time (but does not have to) designate Committee member as the holder of an office such as Planning Approvals Officer, Shire Liaison Officer, Permanent Residents Liaison Officer, etc and may delegate such duties and authorities as it thinks fit to that Committee member.

10.10 Proceedings of the Committee

- 10.10.1 the Committee shall meet as often as is necessary to attend to the affairs of the Association properly, at such places and times as the Committee from time to time determines. The President, or any two Committee members can convene a Committee Meeting with reasonable notice to the other Committee members. In the absence of any other decision the Committee should meet monthly;
- 10.10.2 the President or in his absence the Vice President, or in his absence a Committee Member appointed by the Committee shall chair each Committee Meeting;
- 10.10.3 one half (rounded up to the nearest whole number) of the existing number of Committee members shall be a Committee quorum;
- 10.10.4 the Committee members may, without meeting, resolve by a written resolution signed personally or by fax by all Committee members then within Western Australia, as effectively as if they had met and so resolved.
- 10.10.5 the Committee shall keep an adequate record of its proceedings to fully explain its conduct of the affairs of the Association.

10.11 Record of the Committee Members and Inspection

The Committee must keep a current record of the names and addresses of the Committee members for the time being, in a form and at a place where it can make that record available for inspection by a Member. A Member may inspect and make a copy of or extract from that record but may not remove it (Section 58 of the Act).

10.12 Indemnity of Committee Members

The Association must indemnify and keep indemnified all present and past Committee members against liability under any action claim demand or suit which a Committee member may receive suffer or incur by reason of anything done by him as a Committee member in the proper discharge of his duties.

11.0 COMMUNICATIONS WITH MEMBERS

11.1 The Association may communicate with a Member by:-

- 11.1.1 posting or emailing a written notice to him, her or it at his, her or its address in the Register of Members, or
- 11.1.2 faxing or emailing to a Member who provides a fax or email address for that purpose,

and any such communication so dispatched shall be deemed to have been received on the second day following the day of despatch

12.0 RULES FOR USE OF COMMON FACILITIES

The Association may from time to time make and impose, amend and revoke Rules or conditions for the use of, and conduct of Members on, or with, Common Facilities.

13.0 ALTERATION TO THE CONSTITUTION

13.1 The Association may only alter this Constitution by a Special Resolution of a general meeting of Members of which full notice of the proposed alteration is given.

13.2 An alteration to the Constitution of the Association will not take effect until the Committee lodges with the Department of Consumer and Employment Protection notice of the Special Resolution setting out particulars of the change, certified by a Committee member as having been passed as a special resolution, and that the rules of the Association as so changed conform with the requirements of the Act.

14.0 DISTRIBUTION OF SURPLUS PROPERTY ON CANCELLATION OF INCORPORATION OR WINDING UP

14.1 Terms used

In this Article 14, *surplus property*, in relation to the Association, means property remaining after satisfaction of:-

14.1.1 the debts and liabilities of the Association; and

14.1.2 the costs, charges and expenses of winding up or cancelling the incorporation of the Association,

but does not include books relating to the management of the Association.

14.2 Distribution of surplus property on cancellation of incorporation or winding up

On the cancellation of the incorporation or the winding up of the Association, its surplus property must be distributed as determined by special resolution of the Members by reference to the persons mentioned in Section 24(1) of the Act.

**THE CONSTITUTION OF THE MOLLOY ISLAND
HOME OWNERS' ASSOCIATION (INC.)**

SCHEDULE

**PART I: EXCERPT FROM THE SHIRE OF AUGUSTA-MARGARET RIVER TOWN
PLANNING SCHEME**

CONTENTS

**SHIRE OF AUGUSTA-MARGARET
RIVER**

Local Planning Scheme No. 1

Updated to include AMD 46 GG 16/02/2018



Department of Planning,
Lands and Heritage

Prepared by the
Department of Planning, Lands and Heritage

Original Town Planning Scheme Gazetted
24 September 2010

DISCLAIMER

This is a copy of the Town Planning Scheme produced from an electronic version of the Scheme held and maintained by the Department of Planning, Lands and Heritage. Whilst all care has been taken to accurately portray the current Scheme provisions, no responsibility shall be taken for any omissions or errors in this documentation.

Consultation with the respective Local Government Authority should be made to view a legal version of the Scheme.

Please advise the Department of Planning, Lands and Heritage of any errors or omissions in this document.

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6.4.2 Molloy Island Area – (SCA2)

6.4.2.1 Objective

The objective of the Molloy Island Special Control Area is to protect the existing natural qualities and amenity of Molloy Island by strict control of all development. Notwithstanding the provisions of the Scheme, development approval is required in respect of any development on Molloy Island, the surrounding Watercourse and Estuaries Reserve and the land area containing the northern ferry terminal.

AMD 1 GG 9/11/12

6.4.2.2 Preservation of natural vegetation

- (a) The removal of any indigenous tree or clearing of indigenous undergrowth is prohibited, other than for approved fire hazard reduction measures (e.g. firebreaks, building protection zones, hazard separation zones) without the prior written approval of the local government, with the exception of vegetation that is cleared in accordance with clause 5.20.
- (b) Vegetation which is not indigenous to Molloy Island shall not be introduced, with the exception that domestic gardens within the immediate curtilage of a dwelling and as approved by the local government, may contain non-invasive non-indigenous species which, in the opinion of the local government does not adversely impact upon the integrity of the Island's indigenous vegetation.
- (c) Soil, earth, rock or gravel reasonably suspected of being infected with plant disease and/or invasive plant species must not be introduced.
- (d) Advertising signs are prohibited on Molloy Island except signs listed under the dwellings, home occupation and property transaction categories in Schedule 5 of the Scheme.

6.4.2.3 Administration

- (a) For the purposes of assisting the local government in the administration of the Scheme, the owners of the land on Molloy Island shall form and be financial members of an Owners' Association with a constitution approved by, or as may be required from time to time to be amended by the local government dealing with but not limited to Scheme matters.
- (b) All landowners shall jointly and severally agree with the local government by virtue of this Scheme that, in the event of any transfer of any land, the transferee shall be supplied by the transferor with copies of the Scheme Text and the Constitution of the Owners' Association.

6.4.2.4 Application procedure

Notwithstanding the procedures for the lodgement and consideration of applications for development approval under this Scheme, the following provisions also apply in respect of proposals for development on the Island:

- (a) The application shall be submitted to the local government with a copy lodged concurrently with the Owners' Association;
- (b) The local government shall consult with the Owners' Association advising that it has received an application and seeking the views and recommendation of the Owners' Association as to the manner in which the application should be determined;
- (c) In formulating the recommendation referred to in subclause (b), the Owners' Association shall have regard to:
 - (i) the provisions of the Scheme and any applicable local planning policy;
 - (ii) the constitution of the Owners' Association;
 - (iii) the design, siting and external appearance of the building or structure proposed;
 - (iv) the compatibility of the proposal with, and its impact upon the natural, environmental and landscape qualities of Molloy Island;
 - (v) the compatibility of the development with the established pattern of development on Molloy Island;
 - (vi) the suitability of the materials to be used on the external surfaces of the building or structure to blend in with its setting; and,
 - (vii) the suitability and relevant licence of any jetty on or adjacent to the site.
- (d) The Owners' Association shall forward its recommendation to the local government within 21 days from the date on which it received a copy of the application in accordance with subclause (a). Where a recommendation is not received within 21 days, the local government may determine the application without the recommendation.
- (e) The local government shall have due regard to, but not be bound by, any recommendations of the Owners' Association.

6.4.2.5 Development in the Residential Zone

On residential lots on the Island:

- (a) development is confined to a single dwelling and its incidental development;
- (b) building is prohibited within 15 metres of a public right-of-way and within 5 metres of a side boundary, however, the local government may vary these distances by up to 30%;

- (c) subdivision of lots will not be supported by the local government;
- (d) boundary fences are prohibited except for the construction of a post and wire fence around a rear courtyard having an area no greater than 10% of the lot and the fence is not visible from any road; and
- (e) development is prohibited unless the on-site septic effluent disposal capacity is sufficient to support the proposed development, and onsite effluent disposal arrangements are provided to the satisfaction of the local government.

6.4.2.6 Land use and development within the Parks and Recreation Reserve

- (a) The Parks and Recreation Reserve of the Island, shall only be used for passive recreation except for low-key, unobtrusive recreation and community facilities approved by the local government.

6.4.2.7 Essential services

- (a) Essential services for Molloy Island properties are limited by the Scheme and are as follows:
 - (i) underground mains power supply only. Private petrol and diesel driven independent electricity generators, other than for emergency purposes, are prohibited;
 - (ii) renewable energy systems to the satisfaction of the local government; and
 - (iii) each new dwelling unit shall be served by its own water storage tank with a capacity of not less than 90,000 litres.

6.4.2.8 Fire risk management

- (a) The Owners' Association shall maintain fire-fighting equipment and a reserve water supply, to the satisfaction of Fire and Emergency Services Authority of Western Australia and the local government; and
- (b) All buildings constructed shall comply with the standard specifications outlined in the Australian Standard Number AS 3959 - Construction of Buildings in Bush Fire Prone Areas (as amended from time to time).

PART II: FUNCTIONS BEING PERFORMED BY THE ASSOCIATION AS AT DATE OF ADOPTION OF THIS CONSTITUTION

The Association will assist the Shire to administer Shire functions on Molloy Island, including, without limitation, performing the following functions:-

1.0 Operate Vehicle Ferry

Own or lease, keep licensed and approved by each relevant authority, and in continuously good working order, and operate, a vehicle ferry or ferries, and their appurtenant equipment and machinery, adequate for the purpose of transporting vehicles and persons across the Blackwood River to and from Molloy Island in accordance with demand from time to time.

1.1 Maintain Reserves

Inspect, report to the Shire on the condition of, and to the extent it is able, preserve, maintain and keep clear of all litter the Reserves; ensure that the Reserves are maintained in a manner which preserves and enhances the environmental qualities and natural beauty of Molloy Island; make and issue rules or guidelines for the use of Reserves and any facilities erected from time to time on Reserves.

1.2 Management of Fixed Assets

Manage and maintain, and may, where appropriate, and subject to the approval of the Shire when required, add to or improve any fixed assets of the Association, on Molloy Island.

1.3 Resident Services

Provide for Lot Owners a procedure for consultation with regard to plans and specifications for any development, or improvement, or any change to improvements proposed on any Private Lot, and inspect and report to the Shire in respect of any such plans. It must make a recommendation to the Shire having regard to the need to preserve and enhance the environmental qualities and natural beauty of Molloy Island in accordance with the current Local Planning Scheme.

1.4 Monitor existing storm water drains, and where necessary recommend to the Shire any improvement or change to the storm water drainage system on Molloy Island which it thinks appropriate.

1.5 Facilitate and assist the Shire or its contractors to operate a waste collection service on Molloy Island.

1.6 Inspect and report to the Shire and to affected Lot Owners damage on Molloy Island resulting from any storm fire flood or other natural disaster.

1.7 Give such guidance or assistance as is necessary to non-resident visitors, invitees, licensees, officials or tradesmen temporarily on Molloy Island.

1.8 Other Designated or Agreed Functions

Carry out such other functions as agreed between the Shire and the Home Owners Association.