

12.9 LEEDERVILLE GARDENS INC. - BOARD APPOINTMENTS

- Attachments:**
1. CV - Pina Christie - Confidential
 2. CV - Jane Wedgwood - Confidential
 3. Leederville Gardens Inc. Board Member Selection Criteria
 4. Rules of the Leederville Gardens Inc.

RECOMMENDATION:**That Council:**

1. **APPOINTS Ms Jane Wedgwood and Ms Pina Christie for a further three year term to the Board of Leederville Gardens Inc. commencing from 18 November 2021 and ending on 17 November 2024;**
2. **ENDORSES the Leederville Gardens Inc. Board Member Selection Criteria as contained in Attachment 3; and**
3. **REQUESTS the Chief Executive Officer (CEO) to commence the search and selection process for appointing a third Director to the Leederville Gardens Inc. Board.**

PURPOSE OF REPORT:

To consider the re-appointment of Council-nominated members to serve on a voluntary basis on the Board of Leederville Gardens Inc. for a term of three years, and to initiate the search and selection process for a third Board Director.

BACKGROUND:

The (then) City of Perth initiated the establishment of Leederville Gardens Inc. (the Association) in 1991 and construction of the Leederville Gardens Retirement Village in 1993. The Association's Constitution incorporated a strategic role for the City of Perth, which was subsequently transferred to the City of Vincent.

From the inception of the Association through to 2015, the three City appointed Board Members were Council Members, with the sitting Mayor appointed as the Chairperson. At the Ordinary Meeting of Council held on 22 September 2015, Council decided to seek nominations from members of the public to serve as Board members.

At its meeting 11 December 2018 Council consented to the new Rules of the Leederville Gardens Inc. as contained in **Attachment 4**.

DETAILS:

The current City appointed Board members are Ms Jane Wedgwood and Ms Pina Christie, both appointed by Council at its meeting 13 November 2018. Their three (3) year terms expire 17 November 2021.

There is one (1) vacancy as a result of the earlier resignation of Mr Bradley Schrader from the Board.

The way Council nominees are appointed to the Board has changed with the new Rules of Association.

Part 4 – Board, Division 2 – Composition of Board and duties of Directors provides:

18. *Appointment of community Directors by the City*
- (2) *The City will run a search and selection process for each community Director to be appointed by the City, before that position becomes vacant, as follows:*
 - (a) *The City will use the selection criteria in its search and selection process.*
 - (b) *The City will provide a shortlist of potential appointees to the Board.*
 - (c) *The Board will interview the potential appointees and recommend to the City its preferred candidate for appointment to the Board.*

- (d) *The City will appoint one (or more) of the potential appointees to the Board after taking into consideration the Board's recommendation and the selection criteria.*
- (3) *Where a community Director is eligible for reappointment and confirms their willingness to be reappointed, and the Board recommends that they be reappointed, the City may reappoint them without undertaking a search and selection process.*

In accordance with rule 18(3) the City has received advice from the Board that both Ms Wedgewood and Ms Christie have indicated their desire to continue as Directors and the Board has recommended the City reappoints both.

Administration believes that there is benefit in re-appointing Ms Wedgewood and Ms Christie to the Board as it will provide continuity to the strategic direction and decision making for the Village. It is also recognised that a substantial period is required to gain a good understanding of the retirement village industry, so consecutive terms are desirable.

The Rules of Association further notes:

14. *Selection criteria*

The Board will review the selection criteria every year and send any revisions to the City.

Once the City has agreed to the revised selection criteria they will remain in place until revised or new selection criteria are developed by the Board and approved by the City.

The City needs to agree to the revised selection criteria (Attachment 3) which will be the basis of pursuing the search and selection process in accordance with rule 18(2).

The recruitment criteria proposed by the Board stated that candidates should meet at least one of the following criteria:

Asset management	Experience in asset planning and maintenance including: <ul style="list-style-type: none"> • contract management • operational management • site development.
Finance/Accounting	Broad financial experience including: <ul style="list-style-type: none"> • Knowledge of corporate finance and financial reporting • The ability to understand the economics of the Village at ownership and operational levels.
Grant writing/Fund raising	<ul style="list-style-type: none"> • Knowledge of developments, innovation and initiatives in the grants and fundraising industry • Understanding of the legislation regulating fund raising in Western Australia
Industry Knowledge - Retirement villages	Experience with retirement villages including: <ul style="list-style-type: none"> • Management • Operations • Funding • Development.
Experience with Not-for-profit organisations	<ul style="list-style-type: none"> • Experience operating in a not-for-profit environment • Understanding of director's duties, including how to manage potential conflicts of interests.

In addition, candidates should meet all the following attributes:

Diversity	The proposed director should add to the range and diversity of views, experience, age, skills, backgrounds and gender mix of the Board.
Independence	The proposed director should be an independent thinker and their personal and professional circumstances should not give rise to any conflict of interest.

Commitment	The proposed director must have adequate time to devote to the affairs of the village.
Genuine interest	The proposed director must have a genuine interest in the village and, preferably, should live or work in the local area.
Commercial common sense	The proposed director must be able to make decisions on a sensible and commercial basis.

It is proposed that the Council endorses the above selection criteria and request the CEO to undertake the search and selection process towards appointing a third Director to the Board.

CONSULTATION/ADVERTISING:

The advertising and selection process will be undertaken across a variety of City platforms including, website, social media, recruitment sites, newspaper, etc.

LEGAL/POLICY:

The role of the Board is established in the Association's Constitution. Eligibility to be a member of the Board is governed by section 39 of the *Associations Incorporations Act 2015*, which states:

39. *Persons who are not to be members of management committee*

(1) *Subject to section 40, this section applies to the following persons —*

- (a) *a person who is, according to the Interpretation Act 1984 section 13D, a bankrupt or person whose affairs are under insolvency laws;*
- (b) *a person who has been convicted, within or outside the State, of —*
 - (i) *an indictable offence in relation to the promotion, formation or management of a body corporate; or*
 - (ii) *an offence involving fraud or dishonesty punishable by imprisonment for a period of not less than 3 months; or*
 - (iii) *an offence under Division 3 or section 127.*

(2) *A person to whom this section applies must not, without leave of the Commissioner, accept an appointment or act as a member of a management committee of an incorporated association.*

Penalty: a fine of \$10 000.

RISK MANAGEMENT IMPLICATIONS:

Low: If Council appoints the two Board Members at its Ordinary Meeting on 16 November 2021, they will be available to attend the next scheduled Annual General meeting on 25 November 2021.

STRATEGIC IMPLICATIONS:

In keeping with the City's *Strategic Community Plan 2018-2028*, the following Outcome states:

"Connected Community

We have enhanced opportunities for our community to build relationships and connections with each other and the City."

SUSTAINABILITY IMPLICATIONS:

Not applicable.

FINANCIAL/BUDGET IMPLICATIONS:

Leederville Gardens Board Members are not remunerated. The City will incur the cost for advertising the vacancies and conducting the necessary Police, financial and other regulatory checks.



BOARD MEMBER SELECTION CRITERIA

for appointment to the Board of Leederville Gardens Inc.

The candidate should meet at least one of the following criteria:

Asset management	Experience in asset planning and maintenance including: <ul style="list-style-type: none"> • contract management • operational management • site development
Finance / Accounting	Broad financial experience including: <ul style="list-style-type: none"> • Knowledge of corporate finance and financial reporting • The ability to understand the economics of the Village at ownership and operational levels.
Grant writing / Fund raising	<ul style="list-style-type: none"> • Knowledge of developments, innovation and initiatives in the grants and fundraising industry • Understanding of the legislation regulating fund raising in Western Australia
Industry knowledge – Retirement villages	Experience with retirement villages including: <ul style="list-style-type: none"> • Management • Operations • Funding • Development
Experience with Not-for-profit organisations	<ul style="list-style-type: none"> • Experience operating in a not-for-profit environment • Understanding of director's duties, including how to manage potential conflicts of interests

The candidate should meet the majority of the following criteria:

Diversity	The proposed director should add to the range and diversity of views, experience, age, skills, backgrounds, and gender mix of the Board.
Independence	The proposed director should be an independent thinker and their personal and professional circumstances should not give rise to any conflict of interest.
Commitment	The proposed director must have adequate time to devote to the affairs of the village.
Genuine interest	The proposed director must have a genuine interest in the village and, preferably, should live or work in the local area.
Commercial common sense	The proposed director must be able to make decisions on a sensible and commercial basis.

LEEDERVILLE GARDENS INC

PART 1 — PRELIMINARY

Rules - Approved by special majority at the special general meeting of the Association 7/12/2018 and approved by the City on 11/12/2018 (OMC item 13.2).

1. Name

The name of the Association is Leederville Gardens Inc.

2. Terms used

In these rules, unless the contrary intention appears:

Act means the Associations Incorporation Act 2015;

Association means the incorporated association to which these rules apply;

Board means the management committee of the Association for the purposes of the Act, constituted in accordance with rule 13;

Board meeting means a meeting of the Board convened in accordance with Part 4 of Division 4 of these rules;

books, of the Association, includes the following:

- (a) a register;
- (b) financial records, financial statements or financial reports, however compiled, recorded or stored;
- (c) a document;
- (d) any other record of information;

whether in physical, electronic or digital form.

Chair means the person appointed in accordance with rule 22 to hold office as the Chair of the Association;

chairperson means the Chair, or Deputy Chair, or other person chairing a meeting in accordance with these rules;

City means the City of Vincent;

Commissioner means the person for the time being designated as the Commissioner under section 153 of the Act;

community Director means a person who is not a resident and who is appointed as a Director in accordance with rule 18 or 21;

Director means a member of the Board, constituted in accordance with rule 13, and:

financial records include:

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers;
- (b) documents of prime entry; and
- (c) working papers and other documents needed to explain:
 - (i) the methods by which financial statements are prepared; and
 - (ii) adjustments to be made in preparing financial statements;

financial report has the meaning given in section 63 of the Act;

financial year, of the Association, means the 12 month period commencing on 1 July and ending on 30 June the following year;

general meeting, of the Association, means a meeting of the Association that all members are entitled to receive notice of and to attend, including the annual general meeting of the Association;

Management Committee means the management committee of Leederville Gardens Residents' Association (Inc.);

member means a person who is a member of the Association in accordance with rule 5;

office holder means a person holding office in accordance with rule 13(2);

register of members means the register of members referred to in section 53 of the Act;

resident means a person who is a resident of the village under a lease granted to that person by the Association, for a term expiring at the end of the person's lifetime;

resident Director means a resident who is elected as a Director in accordance with rule 19;

rules means these rules of the Association, as in force for the time being;

Secretary means the person holding office as the Secretary of the Association, appointed in accordance with rule 16;

special general meeting means a general meeting of the Association other than the annual general meeting;

selection criteria means the selection criteria developed by the Board and approved by the City in accordance with rule 14 for the search for and selection of community Directors based on what the Board considers to be the relevant skills, experience and attributes for the Board;

special resolution means a resolution passed by the members at a general meeting in accordance with section 51 of the Act;

subcommittee means a subcommittee appointed by the Board under rule 36;

Treasurer means the person holding office as the Treasurer of the Association, appointed in accordance with rule 17;

village means Leederville Gardens retirement village, which is owned and managed by the Association.

PART 2 — OBJECTS

3. Objects

The objects of the Association shall be:

- (1) To provide independent living accommodation under a retirement village scheme in Western Australia through housing that is suitable for residents as they age;
- (2) To provide a safe and healthy living environment which offers a high quality of life for residents as they age through the provision of homes, accommodation, facilities and related services;
- (3) To provide care and support for the ageing and the aged;
- (4) To provide a range of social, recreational and health and wellbeing services for residents (and the wider aged community where appropriate);
- (5) To provide or facilitate in-home care and other services for residents where necessary, including personal care services, housekeeping services and meals;
- (6) To work with other organisations, local authorities, and the State and Federal Governments to develop policies and programs that promote the well-being of residents;
- (7) To preserve and improve the financial strength of the Association;
- (8) To maintain and improve the village for the benefit of current and future residents;
- (9) To act in a manner consistent with that of a charitable institution.
- (10) To do all such things that are incidental or conducive to the attainment of any or all of the above objects.

4. Not-for-profit body

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, and subject always to any additional limitations applying by virtue of these rules and/or the Act.

PART 3 — MEMBERS

Division 1 — Membership

5. Membership

The Association's members shall comprise:

- (1) Any person who is a resident.
- (2) The Directors.

6. When membership commences

A person's membership commences when:

- (a) In the case of a person who is a resident, the date they become a resident.
- (b) In the case of a person who is a community Director, the date their term of office commences.

7. When membership ceases

- (1) A person ceases to be a member when any of the following takes place:
 - (a) the person dies;
 - (b) for a member who is a resident, the person ceases to be a resident; or
 - (c) for a member who is a community Director, the person ceases to be a Director.
- (2) The Secretary must keep a record, for at least one year after a person ceases to be a member, of:
 - (a) the date on which the person ceased to be a member; and
 - (b) the reason that the person ceased to be a member.

8. Rights not transferable

The rights of a member are not transferable and end when membership ceases.

9. Membership fees

The Association shall not charge or levy any membership fees.

Division 2 — Register of members

10. Register of members

- (1) The Secretary, or another person authorised by the Board, is responsible for the requirements imposed on the Association under section 53 of the Act to maintain the register of members and record in that register any change in the membership of the Association.
- (2) In addition to the matters referred to in section 53(2) of the Act, the register of members must include the date on which each member becomes a member.
- (3) The register of members must be kept at a secure location at the village, or at another place determined by the Board, and may be kept in a digital form.
- (4) A member who wishes to inspect the register of members must contact the Secretary to make the necessary arrangements.
- (5) If:
 - (a) a member inspecting the register of members wishes to make a copy of, or take an extract from, the register under section 54(2) of the Act; or
 - (b) a member makes a written request under section 56(1) of the Act to be provided with a copy of the register of members,

the Board may require the member to provide a statutory declaration setting out the purpose for which the copy or extract is required and declaring that the purpose is connected with the affairs of the Association.

Division 3 — Disputes and mediation

11. Procedure for dealing with disputes

- (1) The procedure set out in this clause applies to disputes relating to the operation and management of the Association, between:
 - (a) members; or
 - (b) a member, and the Association or the Board.

It does not apply to:

- (a) disputes between Directors;
 - (b) matters in respect of which dispute resolution procedures are available under the Retirement Villages Act 1992 (WA) or the code of practice prescribed for retirement villages under the Fair Trading Act 2010 (WA) from time to time.
- (2) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.

- (3) If the parties are unable to resolve the dispute by the end of the 14 day period described in rule 11(2), the parties must, within a further 10 days, hold a meeting in the presence of a mediator and in good faith attempt to settle the dispute by mediation.
- (4) The mediator must:
 - (a) be a person chosen by agreement between the parties; or
 - (b) if unable to be agreed between the parties, be:
 - (i) in the case of a dispute between a member and another member, a person appointed by the Board;
 - (ii) in the case of any other dispute, a person nominated by the City.
- (5) A member may be appointed as a mediator under rule 11(4).
- (6) The mediator, in conducting the mediation, must:
 - (a) give the parties to the mediation process every opportunity to be heard;
 - (b) allow due consideration by all parties of any written statement;
 - (c) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process; and
 - (d) not determine the dispute.
- (7) The mediation must be confidential and without prejudice.
- (8) 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.

PART 4 — BOARD

Division 1 — Powers of Board

12. Board

- (1) The Board shall have and shall exercise the sole control, direction and management of the Association.
- (2) Subject to the Act and these rules, the Board has power to do all things necessary or convenient to be done for the proper management of the affairs of the Association.
- (3) The Board must take all reasonable steps to ensure that the Association complies with the Act and these rules.

Division 2 — Composition of Board and duties of Directors

13. Directors and office holders

- (1) The Board shall, subject to rule 13(4), comprise up to:
 - (a) three community Directors appointed by the City under rule 18;
 - (b) two resident Directors elected by the members under rule 19; and
 - (c) one community Director elected by the members under rule 21.
- (2) The office holders of the Association are:
 - (a) the Chair, who must be a Director;
 - (b) the Deputy Chair, who must be a Director;
 - (c) the Secretary;
 - (d) the Treasurer; and
 - (e) any other person the Board formally designates as an office holder to perform a function other than the above.
- (3) If persons other than Directors are appointed to the role of the office holders described in paragraph (2)(c) to (2)(e), those officeholders may be paid a fee agreed by the Board, subject to these rules and the Act.
- (4) This rule 13:
 - (a) shall apply when Board vacancies arise from time to time following the commencement of the rule; and
 - (b) does not affect the validity of the election or appointment of any Director prior to commencement of these rules.

14. Selection criteria

- (1) The Board will review the selection criteria every year and send any revisions to the City.
- (2) Once the City has agreed to the revised selection criteria they will remain in place until revised or new selection criteria are developed by the Board and approved by the City.

15. Chair and Deputy Chair

- (1) It is the duty of the Chair to consult with the Secretary regarding the business to be conducted at each Board meeting and general meeting.
- (2) The Chair has the powers and duties relating to:
 - (a) convening and presiding at Board meetings and presiding at general meetings, as provided for in these rules; and
 - (b) such other powers and duties as may be given to the Chair under these rules or by the Board from time to time.
- (3) If the Chair is absent from a meeting or on leave, the Deputy Chair shall assume the powers and duties of the Chair described above.

16. Secretary

- (1) The Secretary is appointed by the Board and may either be a Director or another person appointed by the Board to fulfil that role.
- (2) The Secretary has the following duties:
 - (a) Advising the Board on governance matters;
 - (b) coordinating the induction of new Directors;
 - (c) dealing with the Association's correspondence;
 - (d) consulting with the Chair regarding the business to be conducted at each Board meeting and general meeting;
 - (e) preparing the notices required for meetings and for the business to be conducted at meetings;
 - (f) maintaining on behalf of the Association the register of members, and recording in the register any changes in the membership, as required under section 53(1) of the Act;
 - (g) maintaining on behalf of the Association an up-to-date copy of these rules, as required under section 35(1) of the Act;
 - (h) maintaining on behalf of the Association a record of Board members and office holders, as required under section 58(2) of the Act;

- (i) ensuring the safe custody of the books of the Association, other than the financial records, financial statements and financial reports, as applicable to the Association;
 - (j) maintaining full and accurate minutes of Board meetings and general meetings;
 - (k) monitoring and advising the Board on compliance with relevant legislation, standards of practice and policies and procedures;
 - (l) facilitating the appointment and reappointment of Board members;
 - (m) carrying out any other duty given to the Secretary under these rules or by the Board.
- (3) The duties of the Secretary may be delegated by the Board in whole or in part to another Director, or to any person who is an employee, contractor or acting in a voluntary or other capacity.

17. Treasurer

- (1) The Treasurer is appointed by the Board and may either be a Director or another person appointed by the Board to fulfil that role.
- (2) The Treasurer has the following duties:
- (a) ensuring that any amounts payable to the Association are collected and issuing receipts for those amounts in the Association's name;
 - (b) ensuring that any amounts paid to the Association are credited to the appropriate account of the Association, as directed by the Board;
 - (c) ensuring that any payments made by the Association have been authorised by the Board or at a general meeting;
 - (d) ensuring that the Association complies with the relevant requirements of Part 5 of the Act;
 - (e) ensuring the safe custody of the Association's financial records, financial statements and financial reports, as applicable to the Association;
 - (f) coordinating the preparation of the Association's financial report before its submission to the Association's annual general meeting;
 - (g) providing any assistance required by an auditor conducting an audit of the Association's financial report under Part 5 Division 5 of the Act;
 - (h) carrying out any other duty given to the Treasurer under these rules or by the Board.
- (3) The duties of the Treasurer may be delegated by the Board in whole or in part to another Director, or to any person who is an employee, contractor or acting in a voluntary or other capacity.

Division 3 — Appointment of Directors and tenure of office

18. Appointment of community Directors by the City

- (1) The Secretary will give the City at least 90 days' notice of the expiry of the term of office of each community Director appointed by the City.
- (2) The City will run a search and selection process for each community Director to be appointed by the City, before that position becomes vacant, as follows:
 - (a) The City will use the selection criteria in its search and selection process.
 - (b) The City will provide a shortlist of potential appointees to the Board.
 - (c) The Board will interview the potential appointees and recommend to the City its preferred candidate for appointment to the Board.
 - (d) The City will appoint one (or more) of the potential appointees to the Board after taking into consideration the Board's recommendation and the selection criteria.
- (3) Where a community Director is eligible for reappointment and confirms their willingness to be reappointed, and the Board recommends that they be reappointed, the City may reappoint them without undertaking a search and selection process.

19. Nomination of resident Directors

- (1) When a current resident Director's term is due to expire at the next annual general meeting, the Secretary must give all members at least 42 days' notice before the annual general meeting by sending them a written notice:
 - (a) calling for nominations for election as a resident Director; and
 - (b) stating the date by which nominations must be received by the Secretary to comply with subrule (2).
- (2) A member who wishes to be considered for election as a resident Director at the annual general meeting must nominate for election by sending written notice of the nomination to the Secretary at least 28 days before the annual general meeting.
- (3) The written notice must be seconded by another member in support of the nomination.

20. Election of resident Directors

- (1) If the number of members nominating for the position of resident Director at a general meeting is not greater than the number of positions to be elected, the chairperson of the meeting must declare the member or members so nominating to be elected to the position.
- (2) If the number of members nominating for the position of resident Director is greater than the number of vacancies, the members at the meeting must vote in accordance with procedures that have been determined by the Board to decide the members who are to be elected to the position of resident Director.

21. Election of community Directors by the members

- (1) The Secretary must give the Board and the Management Committee at least 90 days' notice of the expiry of the term of office of a community Director who was elected by the members.
- (2) The Board and the Management Committee will agree a process for identifying and selecting an appropriate person to be elected as the community Director.
- (3) The process will take into account the selection criteria.
- (4) If the Board and the Management Committee agree on a person, they will jointly recommend that person to the annual general meeting for election.
- (5) If the Board and the Management Committee do not agree on the person to be nominated for the role, they may each nominate a person to the annual general meeting for election.
- (6) If the annual general meeting does not elect a community Director under subrules (4) or (5), there shall be a casual vacancy for that role which may be filled by the Board under rule 25 only if the Management Committee agrees to the appointment.

22. Appointment of Chair and Deputy Chair

- (1) The Board shall at its first meeting following every annual general meeting appoint a Chair from among the 3 community Directors appointed by the City, and a Deputy Chair from among any of the Directors who are not appointed as Chair.
- (2) The Chair and Deputy Chair shall hold those offices until the first Board meeting held after the next annual general meeting, at which time they shall be eligible for reappointment if they continue to satisfy the criteria in rule 22(1) and confirm their willingness to be reappointed.
- (3) A Director seeking to be appointed Chair or Deputy Chair shall not preside at the meeting at which the appointment is to be made until the appointment has been made.

23. Term of office

- (1) The term of office of a Director begins:
 - (a) in the case of a community Director appointed by the City, from the date specified at the time of appointment or, if no date is specified, from the later of:
 - (i) the date of the meeting at which they were appointed; and
 - (ii) the day following the final day of the term of office of the Director they are replacing;
 - (b) in the case of a Director who is elected at a general meeting, from the date of that meeting; or
 - (c) in the case of a Director who is appointed by the Board to fill a casual vacancy under rule 25, from the date specified at the time of appointment or, if no date is specified, from the date of the meeting at which they were appointed.
- (2) The term of office of a Director ends:
 - (a) in the case of a community Director appointed by the City, from the date specified at the time of appointment which shall not be more than 3 years from the date of appointment or, if no date is specified, 3 years from the date of appointment; or
 - (b) in the case of a resident Director or a community Director elected at a general meeting, at the third annual general meeting held after the date of their appointment..
- (3) A Director may be reappointed or re-elected for a further term, provided that a person shall not be eligible to serve as a Director for a total period of more than 9 years.

24. Resignation, cessation and removal from office

- (1) A person ceases to be a Director if that person:
 - (a) dies;
 - (b) in the case of a resident Director, ceases to be a resident;
 - (c) resigns from the Board by written notice given to the Secretary or, if the resigning member is the Secretary, given to the Chair;
 - (d) is removed from office under these rules;
 - (e) becomes ineligible to accept an appointment or act as a Director under these rules or section 39 of the Act;
 - (f) becomes permanently unable to act as a Director because of a mental or physical disability; or

- (g) fails to attend in person 3 consecutive Board meetings, of which the Director had been given notice, without leave previously granted by a resolution of the Board.
- (2) For the purpose of rule 24(1) a resignation takes effect:
- (a) when the notice is received by the Secretary or Chair; or
 - (b) if a later time is stated in the notice, at the later time.
- (3) At a general meeting, the Association may by resolution:
- (a) remove from office a Director who was elected at a general meeting or appointed to fill a casual vacancy under rule 25; and
 - (b) elect a person who is eligible to fill the vacant position.
- (4) The Board may, by resolution of 4 or more Directors passed in accordance with these rules, remove a person from being a Director if that person:
- (a) is unwilling to act as a Director;
 - (b) breaches the Board's code of conduct; or
 - (c) behaves in a manner that brings the Association into disrepute.
- (5) When the Board removes a Director under subrule (4), it shall inform:
- (a) the City, in the case a community Director appointed by the City; and
 - (b) the Management Committee, in the case of a Director elected at a general meeting.

25. Filling casual vacancies

- (1) If a position of Director falls or remains vacant for any reason and:
- (a) in the case of a community Director appointed by the City, the City has not appointed a person to fill that position; or
 - (b) in the case of a resident Director or a community Director elected at a general meeting, a person was not elected to that position at an annual general meeting,
- then the Board may appoint a person to that position.
- (2) The person appointed under this rule:
- (a) in the case of a community Director, must be a person who is not a resident; and
 - (b) in the case of a resident Director, should preferably be a resident.
- (3) When making an appointment to fill a casual vacancy, the Board shall take into consideration:

- (a) in the case of a community Director, the selection criteria; and
 - (b) in the case of a resident Director, the views of the Management Committee.
- (4) The term of office of the person so appointed will run until:
- (a) in the case of a community Director appointed by the City, until the City makes an appointment under rule 18, provided that the term of office shall not exceed 3 years;
 - (b) in the case of a resident Director or a community Director elected at a general meeting, until the next annual general meeting.
- (5) If there are fewer than 4 current Directors, the Board shall be deemed to have a quorum for the purpose of appointing Board members under this rule.

26. Validity of acts

The acts of the Board or a subcommittee, or of a Director or member of a subcommittee, are valid despite any defect that may afterwards be discovered in the election, appointment or qualification of a Director or member of a subcommittee.

27. Payments to Directors and subcommittee members

- (1) A Director or a member of any subcommittee is entitled to be paid out of the funds of the Association only if:
- (a) the payment is for any out-of-pocket expenses for travel and accommodation in connection with the performance of the Director's functions; or
 - (b) the payment is authorised by resolution at a general meeting on the basis that the payment is:
 - (i) reimbursement for an expense not referred to in rule 27(1)(a), that has been properly incurred in connection with the Association's business; or
 - (ii) a fee or allowance for the Director or subcommittee member's work not exceeding reasonable market rates for that work.

Division 4 — Board meetings

28. Board meetings

- (1) The Board must hold Board meetings at least 6 times in each year on the dates and at the times and places determined by the Board.
- (2) Special Board meetings may be convened by the Chair or any 2 Directors.
- (3) The President of Leederville Gardens Residents' Association Inc. and other members of the Management Committee may be invited to attend Board meetings in the capacity of an ex-officio member with no voting rights.

29. Notice of Board meetings

- (1) Notice of each Board meeting must be given to each Director at least 48 hours before the time of the meeting.
- (2) The Directors may unanimously agree to shorter notice of a Board meeting.
- (3) The notice must state the date, time and place of the meeting and must describe the general nature of the business to be conducted at the meeting.
- (4) The only business that may be conducted at the meeting is the business described in the notice unless the Directors at the meeting unanimously agree to deal with other business.

30. Procedure and order of business

- (1) The Chair or, in the Chair's absence, the Deputy Chair must preside as chairperson of each Board meeting.
- (2) If the Chair and deputy Chair are absent or are unwilling to act as chairperson of a meeting, the Directors at the meeting must choose one of them to act as chairperson of the meeting.
- (3) The procedure to be followed at a Board meeting shall be determined from time to time by the Board.
- (4) The order of business at a Board meeting shall be determined by the Directors at the meeting.

31. Use of technology to be present at Board meetings

- (1) The Board may allow a Director to attend a Board meeting by telephone or other means of instantaneous communication.
- (2) A Director who participates in a Board meeting under subrule (1) is taken to be present at the meeting and, if the Director votes at the meeting, the Director is taken to have voted in person, subject to rule 31(3).
- (3) A Director who attends a Board meeting in the above manner is not taken to be in attendance in person for the purpose of rule 24(1)(g).

32. Resolutions by email

- (1) With the approval of the Chair, urgent matters may be dealt with by proposed resolutions sent by the Secretary or by or on behalf of the Chair by email or other electronic communication to all Directors.
- (2) If any 2 Directors request that the matter be deferred for consideration at a Board meeting, consideration of the resolutions shall be deferred until the next Board meeting.
- (3) Subject to subrule (2), a resolution sent by email or other electronic communication shall be considered carried when:
 - (a) 5 or more Directors agree to it within 72 hours of the sending of the proposed resolution; or
 - (b) 4 Directors agree to it within the 72 hour period and 72 hours have elapsed since the proposed resolution was sent.

33. Quorum for Board meetings

- (1) Subject to subrule (4), the quorum for every Board meeting shall be 4 Directors.
- (2) Subject to subrule (4), no business is to be conducted at a Board meeting unless a quorum is present.
- (3) If a quorum is not present within 30 minutes after the notified commencement time of a Board meeting:
 - (a) in the case of a special meeting, the meeting lapses; or
 - (b) otherwise, the meeting is adjourned to another place, date and time determined by the Chair chairperson?.
- (4) If:
 - (a) a quorum is not present within 30 minutes after the commencement time of a Board meeting held under subrule (3)(b); and
 - (b) at least 2 Board members are present at the meeting,those members present are taken to constitute a quorum.

34. Voting at Board meetings

- (1) All decisions at Board meeting shall be made by consensus.
- (2) If a consensus cannot be reached on an item of business, the Chair shall put the item to the vote.
- (3) Each Director present at a Board meeting shall have one vote, and the item shall be carried if:
 - (a) a majority of Directors present vote in favour of the item; or
 - (b) if the votes are divided equally, the chairperson of the meeting – who shall have a second or casting vote – votes in favour of the item.

35. Minutes of Board meetings

- (1) The Board must ensure that minutes are taken and kept of each Board meeting.
- (2) The minutes must record the following:
 - (a) the names of the Directors and any other persons present at the meeting;
 - (b) the business considered at the meeting;
 - (c) every decision that was made at the meeting.
- (3) The minutes of a Board meeting must be entered in the Association's minute book within 30 days after the meeting is held and submitted to the subsequent Board meeting for approval by the Board.
- (4) The Chair must ensure that the minutes of a Board meeting are reviewed and confirmed at the subsequent Board meeting and signed as correct by:
 - (a) the chairperson of the meeting to which the minutes relate; or
 - (b) the chairperson of the next Board meeting.
- (5) When the minutes of a Board meeting have been signed as correct they are, until the contrary is proved, evidence that:
 - (a) the meeting to which the minutes relate was duly convened and held;
 - (b) the matters recorded as having taken place at the meeting took place as recorded; and
 - (c) any appointment purportedly made at the meeting was validly made.

Division 5 — Subcommittees and Delegation

36. Subcommittees

- (1) To help the Board in the conduct of the Association's business, the Board may appoint one or more subcommittees.
- (2) A subcommittee may consist of such people, whether or not Directors, as the Board considers appropriate.

37. Delegation

- (1) In this rule:
 - non-delegable duty* means a duty imposed on the Board by the Act or another written law.
- (2) The Board may delegate to a subcommittee or any person the exercise of any power or the performance of any duty of the Board other than:
 - (a) the power to delegate; or
 - (b) a non-delegable duty.
- (3) A power or duty, the exercise or performance of which has been delegated to a subcommittee or a person under this rule, may be exercised or performed by the subcommittee or person in accordance with the terms of the delegation.
- (4) The delegation may be made subject to any conditions, qualifications, limitations or exceptions that the Board specifies in the document or Board resolution by which the delegation is made.
- (5) The delegation does not prevent the Board from exercising or performing at any time the power or duty delegated.
- (6) Any act or thing done by a subcommittee or a person under the delegation has the same force and effect as if it had been done by the Board.
- (7) The Board may amend or revoke any delegation.

PART 5 — GENERAL MEETINGS OF ASSOCIATION

38. Annual general meeting

- (1) The Board must determine the date, time and place of the annual general meeting, which shall be held on or before 30 November each year.
- (2) The ordinary business of the annual general meeting shall be:
 - (a) to confirm the minutes of the previous annual general meeting and of any special general meeting held since then if the minutes of those meetings have not yet been confirmed;
 - (b) to receive and consider:
 - (i) the Board's annual report on the Association's activities during the preceding financial year;
 - (ii) the financial report of the Association for the preceding financial year presented under Part 5 of the Act; and
 - (iii) a copy of the auditor's report on the financial report;
 - (c) if applicable, to elect resident Directors; and
 - (d) if applicable, to appoint or remove an auditor of the Association in accordance with the Act.
- (3) Any other business of which notice has been given in accordance with these rules may be conducted at the annual general meeting.

39. Special general meetings

- (1) The Board may convene a special general meeting.
- (2) The Board must convene a special general meeting if at least 20% of the members require a special general meeting to be convened.
- (3) The members requiring a special general meeting to be convened must:
 - (a) make the requirement by written notice given to the Secretary;
 - (b) state in the notice the business to be considered at the meeting; and
 - (c) each sign the notice.
- (4) The special general meeting must be convened within 28 days after notice is given under subrule (3)(a).
- (5) If the Board does not convene a special general meeting within that 28 day period, the members requiring the special general meeting (or any of them) may convene the special general meeting.

- (6) A special general meeting convened by members under subrule (5):
 - (a) must be held within 3 months after the date the original requirement was made; and
 - (b) may only consider the business stated in the notice by which the requirement was made.
- (7) The Association must reimburse any reasonable expenses incurred by the members convening a special general meeting under subrule (5).

40. Notice of general meetings

- (1) The Secretary or, in the case of a special general meeting convened under rule 39, the members convening the meeting, must give to each member:
 - (a) at least 21 days' notice of a general meeting if a special resolution is to be proposed at the meeting; or
 - (b) at least 14 days' notice of a general meeting in any other case.
- (2) The notice must:
 - (a) specify the date, time and place of the meeting;
 - (b) indicate the general nature of each item of business to be considered at the meeting;
 - (c) if the meeting is the annual general meeting, include the names of the people who have nominated for election as Director under rule 20(2);
 - (d) if a special resolution is proposed:
 - (i) set out the wording of the proposed resolution as required by section 51(4) of the Act;
 - (ii) state that the resolution is intended to be proposed as a special resolution; and
 - (iii) comply with rule 41(5); and
 - (e) state each member's right to attend and vote at the meeting.

41. Proxies

- (1) Subject to subrule (2), a member may appoint the Chair or another member as their proxy to vote and speak on their behalf at a general meeting.
- (2) A member other than the Chair may not be appointed the proxy for more than 5 other members.
- (3) The appointment of a proxy must be in writing and signed by the member making the appointment.
- (4) If the Board has approved a form for the appointment of a proxy, the member may use that form or any other form:

- (a) that clearly identifies the person appointed as the member's proxy; and
 - (b) that has been signed by the member making the appointment.
- (5) Notice of a general meeting given to a member under rule 40 must:
 - (a) state that the member may appoint an individual who is a member as a proxy for the meeting; and
 - (b) include a copy of any form that the Board has approved for the appointment of a proxy.
- (6) A form appointing a proxy must be given or sent electronically to the Secretary before the commencement of the general meeting for which the proxy is appointed.
- (7) The Chair shall announce the proxies that have been received by the Secretary under subrule (6) at the commencement of the general meeting for which the proxies have been appointed.

42. Presiding member at general meetings

- (1) The Chair or, in the Chair's absence, the Deputy Chair must preside as chairperson of each general meeting.
- (2) If the Chair and deputy Chair are absent or are unwilling to act as chairperson of a general meeting, the Directors at the meeting must choose one of them to act as chairperson of the meeting.
- (3) If no Directors are present at the general meeting or willing to act as chairperson of the meeting, the meeting shall elect a chairperson from the members in attendance.

43. Quorum for general meetings

- (1) The quorum for a general meeting shall be the lesser of:
 - (a) 20% of all members, and
 - (b) 20 members,present in person or by proxy.
- (2) No business is to be conducted at a general meeting unless a quorum is present.
- (3) If a quorum is not present within 30 minutes after the notified commencement time of a general meeting:
 - (a) in the case of a special general meeting, the meeting lapses; or
 - (b) in the case of the annual general meeting, the meeting is adjourned to:
 - (i) the same time and day in the following week; and
 - (ii) the same place, unless the Chair:
 - (A) specifies another place at the time of the adjournment; or
 - (B) causes written notice of another place to be given to the members before the day to which the meeting is adjourned.
- (4) If:
 - (a) a quorum is not present within 30 minutes after the commencement time of an annual general meeting held under subrule (3)(b); and

- (b) at least 2 members are present at the meeting,
those members present are taken to constitute a quorum.

44. Adjournment of a general meeting

- (1) The chairperson of a general meeting at which a quorum is present may, with the consent of a majority of the members present at the meeting, adjourn the meeting to another time at either the same place or at another place.
- (2) Without limiting subrule (1), a meeting may be adjourned:
 - (a) if there is insufficient time to deal with the business at hand; or
 - (b) to give the members more time to consider an item of business.
- (3) No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.
- (4) Notice of the adjournment of a meeting under this rule is not required unless the meeting is adjourned for 14 days or more, in which case notice of the meeting must be given in accordance with rule 40.

45. Voting at general meetings

- (1) On any question arising at a general meeting:
 - (a) subject to subrule (3), each member has one vote; and
 - (b) members may vote personally or by proxy.
- (2) Except in the case of a special resolution, a motion is carried if a majority of the members present at a general meeting in person or by proxy vote in favour of the motion.
- (3) If votes are divided equally on a question, the chairperson of the meeting has a second or casting vote.

46. When special resolutions are required

- (1) A special resolution is required if it is proposed at a general meeting:
 - (a) to amalgamate the Association with another body;
 - (b) to request the Commissioner to apply to the State Administrative Tribunal under section 109 of the Act for the appointment of a statutory manager;
 - (c) to make any alteration to these rules; or
 - (d) any matter required to be put to a special resolution by the Act.
- (2) Subrule (1) does not limit the matters in relation to which a special resolution may be proposed.

47. Determining whether resolution carried

- (1) In this rule:

poll means the process of counting the votes, including proxies, that is conducted by counting hands, bodies or written voting papers.

- (2) Subject to subrule (4), the chairperson of a general meeting may, on the basis of general agreement or disagreement or by a show of hands, declare that a resolution has been:
- (a) carried; or
 - (b) carried unanimously; or
 - (c) carried by a particular majority; or
 - (d) lost.
- (3) If the resolution is a special resolution, the declaration under subrule (2) must identify the resolution as a special resolution.
- (4) If a poll is demanded on any question by the chairperson of the meeting or by at least 3 members present in person or by proxy:
- (a) the poll must be taken at the meeting in the manner determined by the Chair;
 - (b) the Chair must declare the determination of the resolution on the basis of the poll.
- (5) A declaration under subrule (2) or (4) must be entered in the minutes of the meeting, and the entry is, without proof of the voting in relation to the resolution, evidence of how the resolution was determined.

48. Minutes of general meeting

- (1) The Secretary, or a person authorised by the Board from time to time, must take and keep minutes of each general meeting.
- (2) The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- (3) In addition, the minutes of each annual general meeting must record:
- (a) the names of the members attending the meeting;
 - (b) any proxy forms announced by the chairperson of the meeting under rule 41(7);
 - (c) the financial statements or financial report presented at the meeting, as referred to in rule 50(1); and
 - (d) any report of the review or auditor's report on the financial report presented at the meeting, as referred to in rule 50(2)(d).

- (4) The minutes of a general meeting must be entered in the Association's minute book within 30 days after the meeting is held.
- (5) The chairperson of a general meeting must ensure that the minutes of the previous general meeting are considered by the general meeting, put to the meeting for adoption and, following adoption by the meeting, signed as correct by:
 - (a) the chairperson of the meeting to which they relate; or
 - (b) the chairperson of the general meeting at which they are adopted.
- (6) Where the general meeting is the annual general meeting, the minutes are to be considered and adopted by the next annual general meeting.
- (7) When the minutes of a general meeting have been signed as correct they are, in the absence of evidence to the contrary, taken to be proof that:
 - (a) the meeting to which the minutes relate was duly convened and held; and
 - (b) the matters recorded as having taken place at the meeting took place as recorded; and
 - (c) any election or appointment purportedly made at the meeting was validly made.

PART 6 — FINANCIAL MATTERS

49. Control of funds

- (1) The Board will have control of the Association's funds and assets and may:
 - (a) Open bank accounts in the name of the Association
 - (b) approve expenditure on behalf of the Association; and
 - (c) delegate responsibility for management of the Association's funds to a subcommittee or a person.
- (2) The Board shall adopt policies, with appropriate authorisations and delegations, for the prudent management and oversight of the receipt and disbursement of its funds.

50. Financial statements and financial reports

- (1) For each financial year, the Board must ensure that the requirements imposed on the Association under Part 5 of the Act relating to the financial statements or financial report of the Association are met.
- (2) Without limiting subrule (1), those requirements include:
 - (a) the preparation of the financial report; and
 - (b) the auditing of the financial report; and
 - (c) the presentation to the annual general meeting of the financial report; and
 - (d) the presentation to the annual general meeting of the copy of the auditor's report on the financial statements.

51. Accumulated operating surplus

(1) In this clause:

- (a) **accumulated operating surplus** means the total of the accumulated funds of the Association after deducting therefrom all amounts paid or allowed for capital expenditure and after paying or allowing for the operating expenses of the Association and includes all moneys received by way of deposits, contribution fees, gifts or donations and rental and maintenance charges but excludes reserves for the purchase, replacement or periodic maintenance of capital items or equipment, reserves for repayment of contribution fees or deposits or reserves arising out of a capital revaluation.
- (b) **base amount** means in respect of a given financial year that amount which is calculated from the formula –

$$\$1,000,000 \times \frac{CPI - N}{CPI - O}$$

where CPI - O is the index number for the Consumer Price Index (All Groups) as published by the Commonwealth Bureau of Consensus and Statistics for the quarter ending 30 June 1992, and CPI - N is that index number for the quarter ending 30 June in that given financial year.

PROVIDED:

That if the reference base (or basis) of the index numbers used in calculating the value of CPI-O or CPI-N is changed, or if the Consumer Price Index (All Groups) is not calculated or published or calculation or publication is suspended then the Association's auditor shall determine the most appropriate substitutes for both the reference base and/or the Consumer Price Index (All Groups).

- (c) References to the **Income Tax Assessment Act** are to be read as references to the *Income Tax Assessment Act 1936* (Cth) subject to the amendment, repeal and replacement of that legislation from time to time.
- (2) Within five months after the end of each financial year the Association's auditor shall certify to the Board the accumulated operating surplus and the base amount.
- (3) If at the end of the financial year the amount of the accumulated operating surplus exceeds the base amount, then the Association shall within 30 days after receipt of the Association's auditor's certificate pay the amount of that excess to the City to be deposited by the City in a Particular Trust Account and disbursements therefrom shall only be made to public benevolent institutions which are located within the municipality of the City.
- (a)
- (4) If no organisation exists which satisfies the requirements set out in subrule (3) the City may transfer the excess to one or any of those organisations which:
- (a) are covered by the provisions of section 78(4) and item 4.1.1 of the Income Tax Assessment Act; and

- (b) are approved in writing by the Association as appropriate recipients of the excess prior to the transfer taking place.

and the Deputy Commissioner of Taxation in Western Australia shall be provided with a copy of the financial records of any such trust in each financial year at the completion of the audit referred to in rule 38(2)(b)(iii).

PART 7 — GENERAL MATTERS

52. Executing documents and common seal

- (1) The Association shall not have a common seal.
- (2) The Association may execute a document if the document is signed by:
 - (a) 2 Directors;
 - (b) 1 Director and the Secretary; or
 - (c) 1 Director and a person authorised by the Board.

53. Policies

- (1) The Board may adopt policies to assist its oversight and control of the Association.
- (2) The policies:
 - (a) will guide the Board, but the Board will not be bound to follow any policy; and
 - (b) will be binding on every subcommittee and every person to which the policy is expressed to apply.
- (3) The Board will adopt a Code of Conduct that will apply to the Directors, office holders and employees of the Association.

54. Giving notices to members

- (1) In this rule, recorded means recorded in the register of members.
- (2) A notice or other document that is to be given to a member under these rules is taken not to have been given to the member unless it is in writing and:
 - (a) delivered by hand to the recorded address of the member;
 - (b) sent by prepaid post to the recorded postal address of the member; or
 - (c) sent by facsimile or electronic transmission to the member's recorded facsimile number or electronic address.

55. Custody of books and securities

- (1) Subject to subrule (2), the books and any securities of the Association must be kept in the Secretary's custody or under the Secretary's control in accordance with rule 16.

- (2) The financial records and, as applicable, the financial statements or financial reports of the Association must be kept in the Treasurer's custody or under the Treasurer's control in accordance with clause 17.
- (3) Subrules (1) and (2) have effect except as otherwise decided by the Board.
- (4) The books of the Association must be retained for at least 7 years.

56. Record of office holders

The record of Directors and other persons authorised to act on behalf of the Association that is required to be maintained under section 58(2) of the Act must be kept in the Secretary's custody or under the Secretary's control.

57. Inspection of records and documents

- (1) Subrule (2) applies to a member who wants to inspect:
 - (a) the register of members under section 54(1) of the Act;
 - (b) the record of the names and addresses of Directors and other persons authorised to act on behalf of the Association, under section 58(2) of the Act; or
 - (c) any other record or document of the association.
- (2) The member must contact the Secretary to make the necessary arrangements for the inspection.
- (3) The inspection must be free of charge.
- (4) If the member wants to inspect a document that records the minutes of a Board meeting, the right to inspect that document is subject to any decision the Board has made about minutes of Board meetings generally, or the minutes of a specific Board meeting, being available for inspection by members.
- (5) The member may make a copy of or take an extract from a record or document referred to in subrule (1)(c) but does not have a right to remove the record or document for that purpose.
- (6) The member must not use or disclose information in a record or document referred to in subrule (1)(c) except for a purpose:
 - (a) that is directly connected with the affairs of the Association; or
 - (b) that is related to complying with a requirement of the Act.
- (7) The Board may adopt policies to protect confidential, personal and commercially sensitive information in books, records, registers, minutes and documents that limit the access of members and other persons to those books, records, registers, minutes and documents.

58. Distribution of surplus property on cancellation of incorporation or winding up

- (1) In this rule:

surplus property, in relation to the Association, means property remaining after satisfaction of:

- (a) the debts and liabilities of the Association; and
 - (b) 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.
- (2) On the cancellation of the incorporation or the winding up of the Association, its surplus property must be distributed as determined by special resolution to an entity that:
 - (a) has objectives and activities similar to those of the Association; and
 - (b) satisfies section 24(1) of the Act;

59. Alteration of rules

- (1) These rules may be altered or rescinded by a special resolution passed at a general meeting and by otherwise complying with Part 3 Division 2 of the Act.
- (2) Any such alteration or rescission shall not become effective until the written consent of the City to the proposed alteration or rescission is obtained.
- (3) The consent of the City may be obtained before or after the alteration or rescission has been put to a general meeting.