

Hilton Harvest Community Garden Incorporated

Constitution

Updated by Special Resolution 11 October 2017

Name of the Association

1. The name of the Association is Hilton Harvest Community Garden Incorporated "the Association".

Definitions

2. In these rules, unless the contrary intention appears-

"annual general meeting" is the meeting convened under paragraph (b) of rule 16 (1);

"Committee meeting" means a meeting referred to in rule 15;

"Committee member" means person referred to in paragraph (a), (b), (c), (d) or (e) of rule 10 (1);

"convene" means to call together for a formal meeting;

"department" means the government department with responsibility for administering the *Associations Incorporation Act (1987)*;

"financial year" means a period not exceeding 15 months fixed by the Committee, being a period commencing on the date of incorporation of the Association and ending on 30 June; and thereafter each period commencing 1 July and ending on 30 June in the following year;

"general meeting" means a meeting to which all members are invited;

"member" means member of the Association;

"ordinary resolution" means resolution other than a special resolution;

"poll" means voting conducted in written form (as opposed to a show of hands);

"special general meeting" means a general meeting other than the annual general meeting;

"special resolution" has the meaning given by section 24 of the Act, that is-

A resolution is a special resolution if it is passed by a majority of not less than three-fourths of the members of the association who are entitled under the rules of the association to vote and vote in person or, where proxies or postal votes are allowed by the rules of the association by proxy or postal vote, at a general meeting of which notice specifying the intention to propose the resolution as a special resolution was given in accordance with those rules.

At a meeting at which a resolution proposed as a special resolution is submitted, a declaration by the person presiding that the resolution has been passed as a special resolution shall be evidence of the fact unless, during the meeting at which the resolution is submitted, a poll is demanded in accordance with the rules of the Association or, if the rules do not make provision as to the manner in which a poll may be demanded, by at least 3 members of the association present in person or, where proxies are allowed, by proxy.

If a poll is held, a declaration by the person presiding as to the result of a poll is evidence of the matter so declared.

"the Act" means the *Associations Incorporation Act 1987*;

"the Association" means the Association referred to in rule 1;

"the Chairperson " means-

(a) in relation to the proceedings at a Committee meeting or general meeting, the person presiding at the Committee meeting or general meeting in accordance with rule 11; or

(b) otherwise than in relation to the proceedings referred to in paragraph (a), the person referred to in paragraph (a) of rule 10 (1) or, if that person is unable to perform his or her functions, the Vice Chairperson;

"the Commissioner" means the Commissioner for Fair Trading exercising powers under the Act;

"the Committee" means the Committee of Management of the Association referred to in rule 10 (1);

"the Secretary" means the Secretary referred to in paragraph (c) of rule 10 (1);

"the Treasurer" means the Treasurer referred to in paragraph (d) of rule 10 (1);

"the Vice-Chairperson " means the Vice-Chairperson referred to in paragraph (b) of rule 10 (1).

Objects of Association

3. (1) The objects of the Association are to:

To nurture people's interest in gardening by adopting organic gardening practices;

To contribute to building an ecologically viable and socially just food system; and,

To develop innovative ways of living sustainably in an urban environment.

(2) The property and income of the Association shall 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 the members of the Association, except in good faith in the promotion of those objects or purposes.

Powers of Association

4. The powers conferred on the Association are the same as those conferred by section 13 of the Act, so that subject to the Act and any additions, exclusions or modifications inserted below, the Association-

may do all things necessary or convenient for carrying out its objects and purposes, and in particular, may -

(a) acquire, hold, deal with, and dispose of any real or personal property;

(b) open and operate bank accounts;

(c) invest its money -

(i) in any security in which trust monies may lawfully be invested; or

(ii) in any other manner authorised by the rules of the Association;

(d) borrow money upon such terms and conditions as the Association thinks fit;

(e) give such security for the discharge of liabilities incurred by the Association as the Association thinks fit;

(f) appoint agents to transact any business of the Association on its behalf;

(g) enter into any other contract it considers necessary or desirable; and

(h) may act as trustee and accept and hold real and personal property upon trust, but does not have power to do any act or thing as a trustee that, if done otherwise than as a trustee, would contravene this Act or the rules of the Association.

Qualifications for memberships of Association

5. (1) Membership of the Association shall be open to all persons and any association may become a member.

(2) A person who wishes to become a member must-

(a) apply for membership by submitting a signed application form to the committee together with the membership fee for one year; and

(b) in such form as the Committee from time to time directs.

(3) The Committee members must consider each application made under sub-rule (2) at a Committee meeting and must at the Committee meeting or the next Committee meeting accept or reject that application.

(4) An applicant whose application for membership of the Association is rejected under sub-rule (3) must, if he or she wishes to appeal against that decision, give notice to the Secretary of his or her intention to do so within a period of 14 days from the date he or she is advised of the rejection.

(5) When notice is given under sub-rule (4), the Association in a general meeting no later than the next annual general meeting, must either confirm or set aside the decision of the Committee to reject the application, after having afforded the applicant who gave that notice a reasonable opportunity to be heard by, or to make representations in writing to, the Association in the general meeting.

Register of members of Association

6. (1) The Secretary, on behalf of the Association, must comply with section 27 of the Act by keeping and maintaining-

in an up to date condition a register of the members of the Association and their postal or residential addresses and, upon the request of a member of the Association, shall make the register available for the inspection of the member and the member may make a copy of or take an extract from the register but shall have no right to remove the register for that purpose.

(2) The register must be so kept and maintained at the Secretary's place of residence, or at such other place as the members at a general meeting decide.

(3) The Secretary must cause the name of a person who dies or who ceases to be a member under rule 8 to be deleted from the register of members referred to in sub-rule (1).

Subscriptions of members of Association

7. (1) The Committee may from time to time determine the amount of annual membership fees to be paid by each category of member.

(2) Each member must pay to the Treasurer, annually on or before 1 July or such other date as the Committee from time to time determines, the amount of the subscription determined under sub-rule (1).

(3) A member whose subscription is not paid within 3 months after the relevant date fixed by or under sub-rule (2) ceases on the expiry of that period to be a member, unless the Committee decides otherwise

(4) A person exercises all the rights and obligations of a member for the purposes of these rules if his or her subscription is paid on or before the relevant date fixed by or under sub-rule (2) or within 3 months thereafter, or such other time as the Committee allows.

Termination of membership of the Association

8. Membership of the Association may be terminated upon-

(a) receipt by the Secretary or another Committee member of a notice in writing from a member of his or her resignation from the Association. Such person remains liable to pay to the Association the amount of any subscription due and payable by that person to the Association but unpaid at the date of termination; or

- (b) non-payment by a member of his or her subscription within three months of the date fixed by the Committee for subscriptions to be paid, unless the Committee decides otherwise in accordance with rule 7 (3); or
- (c) expulsion of a member in accordance with rule 9.

Suspension or expulsion of members of Association

9. (1) If the Committee considers that a member should be suspended or expelled from membership of the Association because his or her conduct is detrimental to the interests of the Association, the Committee must communicate, either orally or in writing, to the member-

- (a) notice of the proposed suspension or expulsion and of the time, date and place of the Committee meeting at which the question of that suspension or expulsion will be decided; and
- (b) particulars of that conduct,

not less than 30 days before the date of the Committee meeting referred to in paragraph (a).

(2) At the Committee meeting referred to in a notice communicated under sub-rule (1), the Committee may, having afforded the member concerned a reasonable opportunity to be heard by, or to make representations in writing to, the Committee, suspend or expel or decline to suspend or expel that member from membership of the Association and must, forthwith after deciding whether or not to suspend or expel that member, communicate that decision in writing to that member.

(3) Subject to sub-rule (5), a member has his or her membership suspended or ceases to be a member 14 days after the day on which the decision to suspend or expel a member is communicated to him or her under sub-rule (2).

(4) A member who is suspended or expelled under sub-rule (2) must, if he or she wishes to appeal against that suspension or expulsion, give notice to the Secretary of his or her intention to do so within the period of 14 days referred to in sub-rule (3).

(5) When notice is given under sub-rule (4)-

- (a) the Association in a general meeting, must either confirm or set aside the decision of the Committee to suspend or expel the member, after having afforded the member who gave that notice a reasonable opportunity to be heard by, or to make representations in writing to, the Association in the general meeting; and
- (b) the member who gave that notice is not suspended or does not cease to be a member unless and until the decision of the Committee to suspend or expel him or her is confirmed under this sub-rule.

Committee of Management

10. (1) Subject to sub-rule (9), the affairs of the Association will be managed exclusively by a Committee of Management consisting of-

- (a) a Chairperson;
- (b) a Vice-Chairperson;
- (c) a Secretary;
- (d) a Treasurer;
- (e) not less than Three (3) other persons, all of whom must be members of the Association.

(2) Committee members must be elected to membership of the Committee at an annual general meeting or appointed under sub-rule (8).

(3) Subject to sub-rule (8), a Committee member's term will be from his or her election at an annual general meeting until the election referred to in sub-rule (2) at the next annual general meeting after his or her election, but he or she is eligible for re-election to membership of the Committee.

(4) Except for nominees under sub-rule (7), a person is not eligible for election to membership of the Committee unless a member has nominated him or her for election.

(5) A person who is eligible for election or re-election under this rule may -

- (a) propose or second himself or herself for election or re-election; and
- (b) vote for himself or herself.

(6) If the number of persons nominated in accordance with sub-rule (4) for election to membership of the Committee does not exceed the number of vacancies in that membership to be filled-

- (a) the Secretary must report accordingly to; and
- (b) the Chairperson must declare those persons to be duly elected as members of the Committee at,

the annual general meeting concerned.

(7) If vacancies remain on the Committee after the declaration under sub-rule (6), additional nominations of Committee members may be accepted from the floor of the annual general meeting. If such nominations from the floor do not exceed the number of vacancies the Chairperson must declare those persons to be duly elected as members of Committee. Where the number of nominations from the floor exceeds the remaining number of vacancies on the Committee, elections for those positions must be conducted.

(8) If a vacancy remains on the Committee after the application of sub-rule (7), or when a casual vacancy within the meaning of rule 14 occurs in the membership of the Committee-

- (a) the Committee may appoint a member to fill that vacancy; and
- (b) a member appointed under this sub-rule will -
 - (i) hold office until the election referred to in sub-rule (2); and
 - (ii) be eligible for election to membership of the Committee, at the next following annual general meeting.

(9) The outgoing committee must determine the maximum number of members who may be ordinary committee members at the last committee meeting prior to the AGM.

(9) A payment to a committee member out of the funds of the Association is authorised if it is - the payment in good faith to the committee 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 the reimbursement of reasonable out-of-pocket expenses properly incurred -

- (a) in attending a committee meeting or
- (b) in attending a general meeting; or
- (c) otherwise in connection with the Association's business.

(10) A payment may be made to a member out of the funds of the Association only if it is authorised under subrule (11).

(11) A payment to a member out of the funds of the Association is authorised if it is -

- (a) the payment 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
- (b) the reimbursement of reasonable expenses properly incurred by the member on behalf of the Association.

Chairperson and Vice-Chairperson

11. (1) Subject to this rule, the Chairperson must preside at all general meetings and Committee meetings.

(2) In the event of the absence from a general meeting or committee meeting of-

- (a) the Chairperson, the Vice-Chairperson; or
- (b) both the Chairperson and the Vice-Chairperson, a member elected by the other members present at the general meeting or committee meeting,

must preside at the general meeting or committee meeting.

Secretary

12. The duties of the Secretary shall be:

- (a) to coordinate the correspondence of the Association;
- (b) to keep a full record of all proceedings of the Committee and of the Association;
- (c) to keep attendances of members at General Meetings and Committee Meetings;
- (d) to keep and maintain in a current condition the rules of the Association and, upon the request of a Member of the Association, shall make available those rules for the inspection of the Member; and
- (e) to have custody of all books, records, documents and register of the Association as the Committee may direct him/her to keep.

Treasurer

13. The duties of the Treasurer shall be:

(a) to receive all monies paid to the Association, to pay the same into the Accounts of the Association with the Association's Bankers and to give Receipts in the name of the Association;

(b) to pay all accounts passed by the Committee by

(i) electronic transfer approved by any two authorized Committee members:

or

(ii) cheque signed by any two authorized Committee member.

(c) to comply on behalf of the Association with sections 25 and 26 of the Act with respect to the accounting records of the Association by-

(i) keeping such accounting records as correctly record as the Committee shall direct him/her to keep;

(ii) presenting a statement at each Committee meeting showing the balance of the Association's finances and a record of all monies received and disbursed since the date of the last previous Committee meeting and to produce thereat the Association's bank books and cheque books;

(iii) keeping such accounting records in a manner as will enable true and fair accounts of the Association to be conveniently and properly audited; and

- (iv) submitting to members at each annual general meeting of the Association accounts of the Association showing financial position of the Association at the end of the immediately preceding financial year; and
- (v) align the associations financial year with the membership year
- (vi) perform such other duties as instructed to do by the Committee.

Casual vacancies in membership of Committee

14. A casual vacancy occurs in the office of a Committee member and that office becomes vacant if the Committee member:

- (a) dies;
- (b) resigns by notice in writing delivered to the Chairperson or Vice-Chairperson and the resignation is accepted by resolution of the Committee;
- (c) is convicted of an offence under the Act;
- (d) is incapacitated by mental or physical ill-health;
- (e) absent from more than three consecutive Committee meetings or three Committee meetings in same financial year without prior apology to person presiding over each of the meetings;
- (f) ceases to be a member of the Association; or
- (g) is suspended or expelled in accordance with a resolution passed by a general meeting of members terminating his or her appointment.

Proceedings of Committee

15. (1) The Committee must meet together for the dispatch of business not less than five (5) occasions each year.

(2) Each Committee member has a deliberate vote.

(3) A question arising at a Committee meeting must be decided by a majority of votes, but, if there is no majority, the person presiding at the Committee meeting will have a casting vote in addition to his or her deliberative vote.

(4) The quorum at Committee Meetings shall consist of fifty percent (50%) of Office Bearers and 50% of general committee members.

Notice of meetings

16. (1) The Secretary shall give to all members not less than twenty one (21) days written, emailed or personally served notice of the Annual General Meeting or any General Meeting and of any motion to be moved or special resolution to be proposed thereat; and

(2) to all Committee members seven (7) clear days notice of a Committee Meeting in any manner he/she finds convenient.

(3) No business other than that specified in the Notice of Meeting shall be transacted at an Annual General Meeting.

(4) A member desiring to bring any business before an Annual General Meeting may give notice in writing of that business to the secretary who shall include that business in the next notice calling an Annual General Meeting given after receipt of the notice from the member.

(5) A quorum of the Committee can prevent or remove any person other than a Member from an Annual General Meeting.

(6) The committee must convene a special general meeting if at least 20% of the members require a special general meeting to be convened.

Quorum and proceedings at general meetings

17. (1) At a general meeting ten percent (10%) or at least seven (7) financial members (whichever is greater) present in person constitute a quorum. If a quorum is not reached within 30 minutes from the commencement time for the meeting, the Chairperson shall postpone the meeting to the following week for the same time and (if available) at the same venue.

(2) The Chairperson may, with the consent of a general meeting at which a quorum is present, and must, if so directed by such a general meeting, adjourn that general meeting from time to time and from place to place.

(3) There must not be transacted at an adjourned general meeting any business other than business left unfinished or on the agenda at the time when the general meeting was adjourned.

(4) When a general meeting is adjourned for a period of 30 days or more, the Secretary must give notice under rule 16 of the adjourned general meeting as if that general meeting were a fresh general meeting.

(5) At a general meeting-

(a) an ordinary resolution put to the vote will be decided by a majority of votes cast on a show of hands, subject to sub-rule (9); and

(b) a special resolution put to the vote will be decided in accordance with section 24 of the Act as defined in rule 2, and, if a poll is demanded, in accordance with sub-rules (9) and (11).

(6) A declaration by the Chairperson of a general meeting that a resolution has been passed as an ordinary resolution at the meeting will be evidence of that fact unless, during the general meeting at which the resolution is submitted, a poll is demanded in accordance with sub-rule (7).

(7) At a general meeting, a poll may be demanded by the Chairperson or by three or more members present in person or by proxy and, if so demanded, must be taken in such manner as the Chairperson directs.

(8) If a poll is demanded and taken under sub-rule (7) in respect of an ordinary resolution, a declaration by the Chairperson of the result of the poll is evidence of the matter so declared.

(9) A poll demanded under sub-rule (7) must be taken immediately on that demand being made.

Annual General Meeting

18. (1) The Annual General Meeting of the Association shall be held within the first three months of the financial year. The Annual General Meeting shall be conducted as, and have the same authority as an ordinary general meeting apart from such special provisions as made in this constitution for the Annual General Meeting.

(2) The quorum at Annual General Meetings shall consist of ten percent (10%) or at least seven (7) financial members (whichever is greater), and 50% of the Office Bearers and 50% of general committee members. If a quorum is not reached within 30 minutes from the commencement time for the meeting, the Chairperson shall postpone the meeting to the following week for the same time and (if available) at the same venue.

(3) The members by special resolution at an Annual General meeting may elect to expel a member by a special resolution.

Minutes of meetings of Association

19. (1) The Secretary must cause proper minutes of all proceedings of all general meetings and Committee meetings to be taken and then to be entered within 30 days after the holding of each general meeting or Committee meeting, as the case requires, in a minute book kept for that purpose.

(2) The Chairperson must ensure that the minutes taken of a general meeting or Committee meeting under sub-rule (1) are checked and signed as correct by the Chairperson of the general meeting or Committee meeting to which those minutes relate or by the Chairperson of the next succeeding general meeting or Committee meeting, as the case requires.

(3) When minutes have been entered and signed as correct under this rule, they are, until the contrary is proved, evidence that-

(a) the general meeting or Committee meeting to which they relate (in this sub-rule called "the meeting") was duly convened and held;

(b) all proceedings recorded as having taken place at the meeting did in fact take place at the meeting; and

(c) all appointments or elections purporting to have been made at the meeting have been validly made.

Voting rights of members of Association

20. (1) Subject to these rules, each member present in person or by proxy at a general meeting is entitled to a deliberative vote.

(2) A member which is a body corporate may appoint in writing a natural person, whether or not he or she is a member, to represent it at a particular general meeting or at all general meetings.

(3) An appointment made under sub-rule (2) must be made by a resolution of the board or other governing body of the body corporate concerned-

(a) which resolution is authenticated under the common seal of that body corporate; and

(b) a copy of which resolution is lodged with the Secretary.

Proxies of members of Association

21. A member (in this rule called "the appointing member") may appoint in writing another member who is a natural person to be the proxy of the appointing member and to attend, and vote on behalf of the appointing member at, any general meeting.

Alterations to rules of Association

22. (1) No alteration, addition or amendment of these Rules shall be made unless and until carried by a special resolution at any General Meeting.

(2) Notice of any proposed addition, alteration or amendment shall be given in accordance with Rule 19.

(3) The Secretary on behalf of the Association shall within one (1) month of the passing of the special resolution altering the Association's Rules, lodge with the Commissioner for Corporate Affairs, notice of the special resolution setting out particulars of the alteration together with a Certificate given by a Committee member certifying that the resolution was duly passed as a special resolution and that the Rules of the Association as so altered conform to the requirements of the Act.

Common seal of Association

23. The Association shall have a seal which shall be in the custody of the Secretary. It shall be affixed to such documents as the Committee determines and it shall be used only by the Chairperson and the Secretary who shall countersign every document to which the seal is affixed as evidence of the authority of its use. A true and correct record shall be kept of all such documents to which the seal is fixed in the Seal Register maintained by the Secretary who shall also keep a copy of such documents.

Inspection of records, etc. of Association

24. A member may at any reasonable time inspect without charge the books, documents, records and securities of the Association.

Disputes and mediation

25. (1) The grievance procedure set out in this rule applies to disputes under these rules between-

- (a) a member and another member; or
- (b) a member and the Association; or
- (c) if the Association provides services to non-members, those non-members who receive services from the Association, and the Association.

(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 at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.

(4) The mediator must be-

- (a) a person chosen by agreement between the parties; or
- (b) in the absence of agreement-
 - (i) in the case of a dispute between a member and another member, a person appointed by the Committee of the Association;
 - (ii) in the case of a dispute between a member or relevant non-member (as defined by sub-rule (1) (c)) and the Association, a person who is a mediator appointed to, or employed with, a not for profit organisation.

(5) A member of the Association can be a mediator.

(6) The mediator cannot be a member who is a party to the dispute.

(7) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.

(8) The mediator, in conducting the mediation, must-

- (a) give the parties to the mediation process every opportunity to be heard;
- (b) allow due consideration by all parties of any written statement submitted by any party; and
- (c) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.

(9) The mediator must not determine the dispute.

(10) The mediation must be confidential and without prejudice.

(11) 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.

Dissolution

26. (1) The Association may at any time be dissolved in accordance with Section 30 of the Act if at an Extraordinary General Meeting called for that purpose it resolves by special resolution of the members present and entitled to vote at the meeting that it be wound up.

(2) If upon the winding up or dissolution of the Association there remains after satisfaction of all its debts and liabilities any property whatsoever, the same must not be paid to or distributed among the members, or former members. The surplus property must be given or transferred to another association incorporated

under the Act which has similar objects and which is not carried out for the purposes of profit or gain to its individual members, and which association shall be determined by resolution of the members.