



HERBERT  
SMITH  
FREEHILLS

## Constitution

---

### The Southern Highlands Community Foundation

ABN 16 098 283 213



## Contents

### Table of contents

---

|           |                                                              |           |
|-----------|--------------------------------------------------------------|-----------|
| <b>1</b>  | <b>Company's name</b>                                        | <b>3</b>  |
| <b>2</b>  | <b>Company's purpose</b>                                     | <b>3</b>  |
| <b>3</b>  | <b>Company's powers</b>                                      | <b>3</b>  |
| <b>4</b>  | <b>Not for profit</b>                                        | <b>3</b>  |
|           | 4.1 Application of the company's income and property .....   | 3         |
|           | 4.2 Payments of directors fees .....                         | 3         |
|           | 4.3 Other payments to directors .....                        | 4         |
| <b>5</b>  | <b>Membership</b>                                            | <b>4</b>  |
| <b>6</b>  | <b>Liability and guarantee of member</b>                     | <b>4</b>  |
| <b>7</b>  | <b>Winding up</b>                                            | <b>4</b>  |
| <b>8</b>  | <b>Altering this constitution</b>                            | <b>5</b>  |
| <b>9</b>  | <b>General meetings</b>                                      | <b>5</b>  |
| <b>10</b> | <b>Directors</b>                                             | <b>5</b>  |
|           | 11.1 Appointing directors .....                              | 5         |
|           | 11.2 Vacation of office .....                                | 6         |
|           | 11.3 Powers and duties of directors .....                    | 6         |
|           | 11.4 Directors conflict of interest .....                    | 7         |
|           | 11.5 Committees .....                                        | 7         |
|           | 11.6 Validity of acts .....                                  | 7         |
| <b>11</b> | <b>Decision-making procedures</b>                            | <b>7</b>  |
|           | 12.1 Convening meetings .....                                | 7         |
|           | 12.2 Digital meetings .....                                  | 8         |
|           | 12.3 Quorum .....                                            | 8         |
|           | 12.4 Chair .....                                             | 8         |
|           | 12.5 Decisions at meetings .....                             | 9         |
|           | 12.6 Decisions without a meeting .....                       | 9         |
|           | 12.7 Minutes and records .....                               | 9         |
| <b>12</b> | <b>Secretary</b>                                             | <b>9</b>  |
| <b>13</b> | <b>Indemnity and insurance</b>                               | <b>10</b> |
|           | 14.1 Persons to whom the indemnity and insurance apply ..... | 10        |
|           | 14.2 Indemnity .....                                         | 10        |
|           | 14.3 Insurance .....                                         | 10        |
|           | 14.4 Savings .....                                           | 10        |
| <b>14</b> | <b>Notice</b>                                                | <b>10</b> |
|           | 15.1 Notice from the company .....                           | 10        |
|           | 15.2 Notice to the company .....                             | 11        |
|           | 15.3 Time of service .....                                   | 11        |
|           | 15.4 Other communications and documents .....                | 11        |



## Contents

|           |                                                                                                                     |           |
|-----------|---------------------------------------------------------------------------------------------------------------------|-----------|
| <b>15</b> | <b>Definitions and interpretation</b>                                                                               | <b>11</b> |
|           | 16.1 Definitions.....                                                                                               | 11        |
|           | 16.2 Interpretation .....                                                                                           | 12        |
| <b>16</b> | <b>Corporations Act and ACNC Act</b>                                                                                | <b>12</b> |
|           | Herbert Smith Freehills owns the copyright in this document and using it without permission is strictly prohibited. |           |

# Constitution

## **The Southern Highlands Community Foundation**

### **A company limited by guarantee**

#### **1 Company's name**

---

The name of the company is The Southern Highlands Community Foundation.

#### **2 Company's purpose**

---

- 2.1** The company's purpose is to pursue charitable purposes for the public benefit, particularly for the benefit of the Southern Highlands region of New South Wales.
- 2.2** In furtherance of the company's purpose set out in rule 2.1, the company acts as trustee of the Southern Highlands Foundation Trust established by trust deed dated 1 November 2001 as amended by Amending Deed dated 19 August 2011.

#### **3 Company's powers**

---

Solely for carrying out the company's purpose, the company may exercise all the powers of a company limited by guarantee under the Corporations Act.

#### **4 Not for profit**

---

##### **4.1 Application of the company's income and property**

- (a) The company's income and property must be applied solely towards promoting the company's purpose.
- (b) No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend or other profit distribution, to any member or director in their capacity as member or director.
- (c) This rule 4 does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any director to the extent permitted by law and this constitution.

##### **4.2 Payments of directors' fees**

No directors' fees may be paid to the directors.



#### 4.3 Other payments to directors

All other payments to directors must be approved by the directors including, but not limited to:

- (a) out-of-pocket expenses incurred by a director in performing a duty as a director of the company; or
- (b) a service rendered to the company by a director in a professional or technical capacity or as an employee, other than in the capacity as a director of the company, where:
  - (1) the provision of the service has the prior approval of the directors; and
  - (2) the amount payable is not more than an amount that commercially would be reasonable payment for the service.

### 5 Membership

---

- (a) The members are the directors.
- (b) Every member agrees to comply with this constitution and supports the purpose of the company set out in rule 2.
- (c) The company must maintain a register of members setting out the name, address, alternate electronic or other address (if any) for receipt of notices and date membership starts and ceases.
- (d) A person immediately ceases to be a member if the person ceases to be a director.

### 6 Liability and guarantee of member

---

- (a) The liability of the members is limited to the amount of the guarantee given in rule 6(b).
- (b) Every member must contribute an amount not more than \$100 to the property of the company if it is wound up while the person is a member or within one year after the person ceases to be a member, for:
  - (1) payment of the company's debts and liabilities contracted before the time the individual ceased to be a member; and
  - (2) expenses of winding up.

### 7 Winding up

---

- (a) If, on the winding up or dissolution of the company, any property remains after satisfaction of all its debts and liabilities, this property must only be transferred to an entity that is charitable.

- (b) The entity referred to in rule 7(a) must be decided by the directors, or if the directors do not wish to decide or do not decide, it must be decided by the Supreme Court of New South Wales.

## 8 Altering this constitution

---

- (a) The company must not pass a special resolution altering the constitution, if, as a result, the company would cease to be a charity.
- (b) A resolution purporting to alter this rule 8, or this constitution in breach of rule 8, will have no effect.

## 9 General meetings

---

- (a) The directors may convene a general meeting at such time and place as the directors see fit.
- (b) General meetings must be conducted in accordance with rule 11, with the following modifications:
  - (1) A member may appoint a proxy. The directors may decide the rules relevant to the appointment and powers of the proxy.
  - (2) A members' resolution may be passed in accordance with rule 11.6 unless a meeting is required by the Corporations Act, such as a resolution to remove an auditor or a director, or a resolution that by law requires a special resolution.
  - (3) At least 21 days' notice of a general meeting must be given to each member unless all the members consent to shorter notice.
  - (4) Where a special resolution is to be proposed at a general meeting, the notice of meeting must state the full terms of the special resolution.

## 10 Directors

---

### 10.1 Appointing directors

- (a) The minimum number of directors is 3.
- (b) The maximum number of directors is 12.
- (c) The directors may appoint any individual as a director, provided:
  - (1) that individual has signed a consent to act as director;
  - (2) the individual is not disqualified from managing a corporation under the Corporations Act nor disqualified from being a responsible entity under the ACNC Act;
  - (3) the requirements as to the composition of the directors provided in the trust deed of any trust for which the company is trustee are met; and

- (4) for any director appointed after 1 August 2020, the individual has not previously been a director of the company for two Terms, except where a director is, during their second Term but prior to its expiry, validly appointed as the chair under rule 11.4(a), then that individual may be appointed for one further Term only, by resolution decided by a majority of votes cast by the directors present at a valid meeting of directors under rule 11.

## 10.2 Vacation of office

The office of a director becomes vacant:

- (a) upon the expiry of each director's Term;
- (b) if the director dies;
- (c) if the director resigns by notice to the company;
- (d) if the director is removed from office by resolution of the members;
- (e) if the director is appointed for a specific term of office and is not reappointed;
- (f) if the director is disqualified from managing a corporation under the Corporations Act or disqualified from being a responsible entity under the ACNC Act;
- (g) except to the extent of a leave of absence granted by the directors, if the director fails to attend at least three consecutive meetings of the directors or at least four meetings over a period of one year; or
- (h) in the circumstances outlined in the Corporations Act.

## 10.3 Powers and duties of directors

- (a) The directors are responsible for managing the company's affairs and carrying out the company's purpose set out in rule 2.
- (b) The directors may exercise all the company's powers which are not required by the Corporations Act to be exercised by the members in a general meeting.
- (c) The directors must ensure they are aware of, and comply with, their duties as directors, including the ACNC governance standards and ACNC external conduct standards.
- (d) The directors must ensure the company's financial affairs are managed responsibly, including:
  - (1) maintaining financial records that correctly record and explain its transactions and financial performance, and enable true and fair financial statements to be prepared annually;
  - (2) deciding how payments are to be approved or executed by or on behalf of the company; and
  - (3) ensuring the company does not operate while insolvent.
- (e) The directors may delegate any of their powers or functions to one or more of the directors, a committee, an employee, agent or other person as the directors decide.



## 10.4 Directors' conflict of interest

- (a) A director must disclose a perceived or actual material conflict of interest to the other directors.
- (b) The directors must manage conflicts of interest in accordance with the ACNC governance standards, the Corporations Act and any conflict of interest policy adopted by the directors.
- (c) Subject to rule 10.4(b):
  - (1) a director is not disqualified from entering into an arrangement with the company as vendor, purchaser or in another capacity;
  - (2) an arrangement entered into by the company in which a director is in any way interested is not invalid or voidable;
  - (3) a director who has an interest in an arrangement involving the company is not liable to account to the company for any profit realised under the arrangement,merely because of the director's fiduciary obligations.

## 10.5 Committees

- (a) The directors may delegate their powers to one or more committees consisting of any number of directors or others.
- (b) A committee must exercise its powers within the terms of the delegation.
- (c) The procedures in rule 11 apply as far as possible to the decision-making of any committees.
- (d) The directors may establish one or more advisory committees consisting of any number of directors or others.

## 10.6 Validity of acts

An act done by a person acting as a director, a meeting of directors, or a person exercising a power or function delegated to them by a director is not invalidated merely because of one of the following circumstances, if that circumstance was not known by that person, the directors or the committee (as applicable) when the act was done:

- (a) a defect in the appointment of the person as a director or delegate;
- (b) the person being disqualified as a director or having vacated office; or
- (c) the person not being entitled to vote.

# 11 Decision-making procedures

---

## 11.1 Convening meetings

- (a) A director may call a meeting by giving reasonable notice to the other directors, or by the secretary giving notice of the meeting to all directors.
- (b) A notice of meeting:
  - (1) must specify the date, place and time of the meeting;



- (2) need not state the nature of the business to be transacted at the meeting;
  - (3) may be given immediately before the meeting; and
  - (4) must be given in accordance with rule 14.1.
- (c) The non-receipt of notice of a meeting, or a failure to give notice of a meeting, does not invalidate any thing done or resolution passed at the meeting if:
  - (1) the non-receipt or failure occurred by accident or error;
  - (2) the director waives notice of that meeting before or after the meeting;
  - (3) the director notifies the company of their agreement to that thing or resolution personally or by post, telephone, email or other electronic means before or after the meeting; or
  - (4) the director attended the meeting.

## 11.2 Digital meetings

- (a) A director who takes part in a meeting by telephone or digital means is taken to be present in person at the meeting.
- (b) The simultaneous linking together by telephone or digital means of a sufficient number of the directors to constitute a quorum constitutes a meeting.
- (c) All the provisions in this constitution relating to meetings apply, as far as they can and with any necessary changes, to meetings by telephone or digital means.
- (d) A meeting by telephone or digital means is taken as held at the place decided by the chair of the meeting, as long as at least one person involved was at that place for the duration of the meeting.
- (e) If a technical difficulty occurs which means that one or more directors cannot participate, the chair may adjourn the meeting until the difficulty is remedied or may, if a quorum remains present, continue with the meeting.

## 11.3 Quorum

- (a) No business may be transacted at a meeting unless a quorum is present at the time the business is dealt with.
- (b) A quorum consists of a majority of directors, or at least 3 directors, whichever is the greater number.
- (c) If the number of directors in office is less than the minimum number of directors fixed under this constitution, the remaining directors must act as soon as possible to appoint additional directors, as required, and, until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

## 11.4 Chair

- (a) The directors may elect one of the directors as chair and may decide the period for which that person is to be the chair.
- (b) The chair must preside as chair at each meeting if present within 10 minutes after the time appointed for the meeting and willing to act.
- (c) If there is no chair or the conditions in rule 11.4(b) have not been met, the directors present must elect one of the directors as chair of the meeting.



## 11.5 Decisions at meetings

- (a) Except where by law a resolution requires a special resolution, a resolution at a meeting must be decided by a majority of votes cast by the directors present.
- (b) Where the votes on a proposed resolution are equal, the chair of the meeting does not have a second or casting vote, and the vote is taken as lost.

## 11.6 Decisions without a meeting

- (a) A resolution is taken to have been passed if:
  - (1) all of the directors who would be entitled to receive notice of a meeting and to vote on a resolution are given a document setting out that resolution;
  - (2) at least 75% of the directors sign or consent to the resolution within the time specified, or if no time is specified, within 14 days of the document being sent to the directors; and
  - (3) the directors who sign or consent to the resolution would have constituted a quorum at a meeting held to consider that resolution.
- (b) A director may consent to a resolution by:
  - (1) signing the document containing the resolution (or a copy of that document);
  - (2) giving the company notice agreeing to the resolution and either setting out its terms or otherwise clearly identifying them; or
  - (3) telephoning the secretary or the chair and signifying assent to the resolution and clearly identifying its terms.
- (c) The resolution is taken as passed when the last director required to constitute at least 75% of the directors signs or consents to that resolution within the time period specified in rule 11.6(a)(2).

## 11.7 Minutes and records

- (a) The directors must ensure:
  - (1) minutes of general meetings, directors meetings and committee meetings (including all resolutions proposed); and
  - (2) records of resolutions passed by members, directors and committees without a meeting,are recorded and kept as part of the company's records. The records must be made within one month after the relevant meeting is held or resolution passed.
- (b) The minutes of a meeting must be signed within a reasonable time by the chair of the meeting or the chair of the next meeting.

## 12 Secretary

---

- (a) The directors must appoint at least one secretary who ordinarily resides in Australia and who may also be a director.



- (b) The secretary must provide consent to the appointment.
- (c) The secretary can be removed by the directors.

## 13 Indemnity and insurance

---

### 13.1 Persons to whom the indemnity and insurance apply

The indemnity and insurance referred to in this rule 13 applies to Indemnified Officers.

### 13.2 Indemnity

- (a) The company must indemnify, on a full indemnity basis and to the full extent permitted by law, each Indemnified Officer against all losses or liabilities (including costs and expenses) incurred by the person as an officer of the company.
- (b) This indemnity:
  - (1) is a continuing obligation and is enforceable by an Indemnified Officer even though that person has ceased to be an officer of the company; and
  - (2) is enforceable without that person having first to incur any expense or make any payment.

### 13.3 Insurance

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any Indemnified Officer against any liability incurred by the person as an officer of the company where the directors consider it appropriate to do so.

### 13.4 Savings

Nothing in this rule 133:

- (a) affects any other right or remedy that an Indemnified Officer may have in respect of any loss or liability referred to in this rule 133; or
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom this rule 133 does not apply.

## 14 Notice

---

### 14.1 Notice from the company

The company may give notice and any communication:

- (a) personally;

- (b) by post to the person's nominated address;
- (c) by email or other electronic means; or
- (d) by notifying the person by email or other electronic means, that the notice or communication or publication is available at a specified electronic address.

## 14.2 Notice to the company

Notice may be given to the company:

- (a) by personal service at its registered address;
- (b) by post to its registered address; or
- (c) by sending it to the company's principal email address, or if there is no principal email address, to the email address of the secretary.

## 14.3 Time of service

- (a) A notice from the company properly addressed and posted is taken to be served at 10.00am on the day that is three Business Days after the date it was posted.
- (b) Where the company sends a notice by email or other electronic means, the notice is taken as served at the time it is sent.
- (c) If service under rule 14.3(b) is on a day which is not a Business Day or is after 4.00pm (addressee's time), the notice is regarded as having been received at 9.00am on the following Business Day.

## 14.4 Other communications and documents

Rules 14.1 to 14.3 apply, as far as they can, with any necessary changes, to the service of any communication or document.

# 15 Definitions and interpretation

---

## 15.1 Definitions

| Term                    | Meaning                                                                                                                                   |
|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ACNC Act</b>         | the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth).                                                            |
| <b>Business Day</b>     | Monday to Friday inclusive, excluding New Years' Day, Australia Day, Good Friday, Easter Monday, ANZAC Day, Christmas Day and Boxing Day. |
| <b>Corporations Act</b> | the <i>Corporations Act 2001</i> (Cth).                                                                                                   |



- Indemnified Officer**
- 1 each person who is or has been a director, secretary or executive officer of the company; and
  - 2 any other officer or former officer of the company as the directors in each case decide.

---

**Term** a fixed term expiring on a date that is three (3) years from the date of a director's appointment.

---

## 15.2 Interpretation

In this constitution:

- (a) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (b) a word or expression defined or used in the Corporations Act, covering the same subject, has the same meaning in this constitution;
- (c) a reference to a document being 'signed' or to 'signature' includes that document being executed under hand or under seal or by any other method and, in the case of a communication in electronic form, includes the document being authenticated in accordance with the Corporations Act or any other method approved by the directors;
- (d) a reference to a member present at a general meeting is a reference to a member present in person or by proxy, attorney or representative; and
- (e) the singular includes the plural and the plural includes the singular.

## 16 Corporations Act and ACNC Act

---

- (a) The replaceable rules set out in the Corporations Act do not apply to the company.
- (b) If at any time, the company is not a registered charity under the ACNC Act, the Corporations Act applies and (unless it is a replaceable rule) overrides any part of this constitution, or policy of the company, which is inconsistent with the Corporations Act.



## Signing page

### Executed as a deed

---

Party 1

**Signed seal and delivered by**

Sign here \_\_\_\_\_

Print name \_\_\_\_\_

In the presence of

Sign here \_\_\_\_\_

Witness

Print name \_\_\_\_\_ Dated \_\_\_\_\_

---

Party 2

**Signed seal and delivered by**

**THE SOUTHERN HIGHLANDS COMMUNITY FOUNDATION**

by

Sign here \_\_\_\_\_

Chair/Director

Print name \_\_\_\_\_

In the presence of

Sign here \_\_\_\_\_

Deputy Chair/Director

Print name \_\_\_\_\_ Dated \_\_\_\_\_