**Dolphin Sands Ratepayers Association Inc (DSRA)**

**DSRA Constitution Review**

**Discussion Paper**

**Terms of Reference**

At the GM held on 27 January 2018 it was resolved that the DSRA Constitution be reviewed and proposals for amendment be developed.

A working party comprised of Robyn Moore, Leigh Sealy and Brett Harrison was established.

A full copy of the terms of reference is annexed and marked “A”.

**Statutory Framework**

The relevant legislation and regulations governing an incorporated association are-

Associations Incorporation Act 1964 (Act)

Associations Incorporation Regulations (Regs)

Associations Incorporation (Model Rules) Regulations 2017 ( MRs)

More information regarding incorporated associations can be found at the following site-

<http://www.consumer.tas.gov.au/registrations/incorporated_associations>

**Background**

Dolphin Sands Ratepayers Association Inc was incorporated on 10 December 2001.

A copy of the original constitution lodged with the Commissioner for Corporate Affairs is annexed and marked “B”.

A copy of the Association Extract, recently obtained, which amongst other matters records all documents lodged with the Commissioner is annexed and marked with the “C”.

Annexed and marked “D” is a copy of the constitution provided by the former committee and believed by all parties to be the “current constitution” as amended. The current constitution has a number of references to amended clauses and the date of the amendments.

The Extract at annexure “C” appears to only refer to documents lodged amending the financial year of DSRA.

Pursuant to s18 of the Act, the Rules (read constitution) can only be changed by special resolution and any amendment to the Rules must be lodged with the Commissioner within one month of alteration. Unless lodged with the Commissioner an amendment to a constitution has no effect.

It is not clear at the present time whether any of the amendments as shown in the “current constitution” apart from the changes of financial year have been lodged with the Commissioner.

The original constitution differs markedly in a number of areas from the “current constitution”. See for example the different Office Bearers specified in each version of the constitution. Also see the audit requirement in the original constitution along with different clauses relating to dissolution.

It is not possible at the present time to trace all of the amendments as noted in the “current constitution” nor is it known whether clause 11 of the constitution as it relates to amendment of the constitution has been complied with.

A further issue arises as to the validity of clause 11 of the constitution and any amendments of the constitution made pursuant to that clause.

Section 18 of the Act specifies that any Rules of an association may be modified only by special resolution. Section 23 of the Act states that a resolution is a special resolution if it is passed by a majority of not less than three-quarters of such members of an association as may be present in person at a general meeting.

Clause 11 of the constitution refers to only a majority of two-thirds being required to pass an amendment to the constitution. Arguably clause 11 is ultra vires the Act. That is the constitution cannot purport to alter the Act.

**Model Rules**

The Act and the MRs have been established to assist and guide associations which seek to be incorporated . Associations are not required to build their rules from the ground up, they can adopt and modify the MRs.

Pursuant to section 16 of the Act unless an associations constitution is inconsistent with the MRs or unless the constitution excludes or modifies the MRs then the MRs are deemed to form part of the constitution.

On that basis the MRs apply to DSRA in addition to the terms of the constitution. There are no exclusions of the MRs in the DSRA constitution. To the extent that the DSRA constitution differs from the MRS then the DSRA constitution prevails.

It is against this somewhat interesting background of not knowing what is the valid version of the constitution that should be used that the working party has undertaken its review and developed a range of recommendations.

The working party notes that if DSRA was being incorporated in 2018 in all likelihood the MRs would form the basis of the rules of the new association, modified to suit the specific requirements of DSRA.

The MRs represent a far more comprehensive set of rules than the existing DSRA constitution, no matter which version is referred to and as already noted they already apply to DSRA.

Annexed and marked “E” is a copy of the MRs with the clauses of the “current constitution” pasted into the relevant MRS as best as possible. This annexure is included for ease of matching existing clauses of the constitution to the MRs.

**Recommendation**

The working party recommends that DSRA adopts a “Greenfields” approach and develops a revised constitution based on the MRs, modified to suit DSRA circumstances and needs.

Annexed and marked “F” is a marked up version of the MRs showing a number of possible modifications to the MRs and highlighting a number of areas where the committee should consider seeking community input.

It is recommended that MRs ultimately deemed not suitable for DSRA are not deleted but simply noted as “not adopted”. Any modifications made to the MRs should be noted as “modified” with the modification inserted.

The rationale for the above recommendation is to enable future committees and members to be able keep track of any subsequent approved changes to Rules and avoid the current situation of not knowing what version of the constitution is valid.

**Community/ Membership input**

The specific areas which the working party has identified to date that should be subject to community consultation are-

1. Association name- is Dolphin Sands Ratepayers Association still relevant or should it be more inclusive, such as Dolphin Sands Ratepayers and Residents Association, or perhaps Dolphin Sands Community Association?
2. Depending on the outcome of the above are the Objects and Purpose as stated in the constitution still appropriate and relevant? Is it necessary or relevant to have specific “Objects and Purpose”? In considering this issue it should be noted that the MRs contain a list of additional objects and purposes which supplement basic objects.
3. Is the concept of “Territory “as defined in the current constitution necessary and or relevant. What does it really mean? Can it be excluded from the new constitution?
4. Office Bearers- the constitution has a combined office of Treasurer/Secretary. Should this be split into two separate positions and elected committee members reduced to two?

The current constitution specifies that office is held for two years with certain positions going to election on even years and other positions going to election on odd years. Presumably this aids in the continuity of knowledge within the committee on a year to year basis. Should this system be retained or should all positions be subject to annual election?

1. Membership of the association and voting rights- Pursuant to the current constitution all residents and ratepayers are deemed to be members of the association. However only financial members may vote on an association issue.

This is perhaps the most challenging aspect of the review of the constitution.

1. Is DSRA a ratepayers association or is it a “community” association?
2. Should membership and therefore voting rights be limited to only financial members?
3. Is membership to be defined by reference to property ownership and or residency?
4. If membership is to be related to ownership and or residency how many memberships should be specified per property? Is it perhaps limited to one per property or should the concept of universal suffrage be embraced?
5. Can both a landlord and tenant be members?
6. How do you balance equity and administrative convenience?
7. Should it be the case of one property, one membership, one vote? For tenanted properties this can be an issue to be resolved between landlord and tenant as to who has membership and voting rights without the need for the association to be involved.
8. Should it be the case that anyone who can establish that they are a property owner or a resident can take out membership and vote? How does equity prevail when title might be held in multiple names and possibly all title holders are able to join and vote versus the situation where title is held in one name and therefore only one membership and one vote. Likewise a property might be tenanted by 4 people who are able to establish that they are all residents and therefore entitled to membership. How does the association establish the bona fides of any party wishing to take out membership. Administrative convenience has to cut in somewhere!
9. It is understood that an amendment to the constitution in relation to clause 5 Membership was purportedly passed at the GM held in January 2017. That amendment appears not to have been made in accord with clause 11 of the constitution and the amendment was not registered with the Commissioner of Corporate Affairs and is therefore of no effect.

That amendment purported to allow up to two memberships per property, being either a ratepayer and spouse or partner, a resident and spouse or partner, or a ratepayer and spouse or partner.

Membership fees were altered at the same GM to allow a second vote to be purchased for payment of an additional $5. It is understood that the intention was that the additional $5 fee related to the spouse or partner membership alteration mentioned above. Again this raises the issue of equity if a property owner/ resident has no partner or spouse.