

**CONSTITUTION  
OF  
PORT STEPHENS KOALA & WILDLIFE  
PRESERVATION SOCIETY LIMITED**

Australian Company Number 614 265 833  
Australian Business Number 27 614 265 833

A company limited by guarantee.

Adopted at the AGM 1 November 2023

## Table of contents

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Preliminary</b>..... 4</p> <p>1. Name of the company ..... 4</p> <p>2. Type of company ..... 4</p> <p>3. Limited liability of members ..... 4</p> <p>4. The guarantee ..... 4</p> <p>5. Definitions ..... 4</p> <p><b>Charitable purposes and powers</b> .. 4</p> <p>6. Object ..... 4</p> <p>7. Powers..... 6</p> <p>8. Not-for-Profit ..... 6</p> <p>9. Amending the constitution..... 6</p> <p><b>Members</b> ..... 6</p> <p>10. Membership and register of members 6</p> <p>11. Classes of members and Friends of Port Stephens Koalas ..... 7</p> <p>12. Who can be a member..... 8</p> <p>13. How to apply to become a member.... 8</p> <p>14. Directors decide whether to approve membership ..... 8</p> <p>15. When a person becomes a member .. 9</p> <p>16. When a person ceases to be a member ..... 9</p> <p>17. Membership Fees ..... 9</p> <p><b>Dispute resolution and disciplinary procedures</b>..... 9</p> <p>18. Dispute resolution ..... 9</p> <p>19. Disciplining members..... 10</p> <p><b>General meetings of members</b>.... 11</p> <p>20. General meetings called by directors 11</p> <p>21. General meetings called by members 12</p> <p>22. Annual general meeting ..... 12</p> <p>23. Notice of general meetings ..... 13</p> <p>24. Quorum at general meetings..... 13</p> <p>25. Auditor's right to attend meetings ..... 14</p> <p>26. Representatives of members ..... 14</p> <p>27. Using technology to hold meetings .. 14</p> <p>28. Chairperson for general meetings .... 15</p> | <p>29. Role of the chairperson ..... 15</p> <p>30. Adjournment of meetings ..... 15</p> <p><b>Members' resolutions and statements</b>..... 15</p> <p>31. Members' resolutions and statements ..... 15</p> <p>32. Company must give notice of proposed resolution or distribute statement ..... 16</p> <p>33. Circular resolutions of members..... 16</p> <p><b>Voting at general meetings</b>..... 17</p> <p>34. How many votes a member has..... 17</p> <p>35. Challenge to member's right to vote. 17</p> <p>36. How voting is carried out..... 17</p> <p>37. When and how a vote in writing must be held..... 17</p> <p>38. Appointment of proxy ..... 18</p> <p>39. Voting by proxy ..... 19</p> <p><b>Directors</b>..... 19</p> <p>40. Number of directors ..... 19</p> <p>41. Election and appointment of directors 19</p> <p>42. Election of chairperson ..... 21</p> <p>43. Term of office..... 21</p> <p>44. When a director ceases being a director ..... 21</p> <p><b>Powers of directors</b>..... 22</p> <p>45. Powers of directors ..... 22</p> <p>46. Delegation of directors' powers ..... 22</p> <p>47. Payments to directors ..... 22</p> <p>48. Execution of documents..... 22</p> <p><b>Duties of directors</b> ..... 23</p> <p>49. Duties of directors ..... 23</p> <p>50. Conflicts of interest ..... 23</p> <p><b>Directors' meetings</b>..... 24</p> <p>51. When the directors meet..... 24</p> <p>52. Calling directors' meetings ..... 24</p> <p>53. Chairperson for directors' meetings . 24</p> <p>54. Quorum at directors' meetings ..... 24</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

CONSTITUTION OF PORT STEPHENS KOALA & WILDLIFE PRESERVATION  
SOCIETY LIMITED

|                                                        |    |
|--------------------------------------------------------|----|
| 55. Using technology to hold directors' meetings ..... | 24 |
| 56. Passing directors' resolutions .....               | 24 |
| 57. Circular resolutions of directors.....             | 25 |

**Secretary .....** 25

|                                           |    |
|-------------------------------------------|----|
| 58. Appointment and role of secretary ... | 25 |
|-------------------------------------------|----|

**Minutes and records .....** 25

|                                        |    |
|----------------------------------------|----|
| 59. Minutes and records .....          | 25 |
| 60. Financial and related records..... | 26 |

**By-laws .....** 26

|                   |    |
|-------------------|----|
| 61. By-laws ..... | 26 |
|-------------------|----|

**Notice .....** 26

|                                            |    |
|--------------------------------------------|----|
| 62. What is notice .....                   | 26 |
| 63. Notice to the company .....            | 26 |
| 64. Notice to members.....                 | 27 |
| 65. When notice is taken to be given ..... | 27 |

**Financial year.....** 27

|                                    |    |
|------------------------------------|----|
| 66. Company's financial year ..... | 27 |
|------------------------------------|----|

**Indemnity, Insurance, and Access**

**.....** 27

|                     |    |
|---------------------|----|
| 67. Indemnity ..... | 27 |
|---------------------|----|

|                    |    |
|--------------------|----|
| 68. Insurance..... | 28 |
|--------------------|----|

|                                          |    |
|------------------------------------------|----|
| 69. Directors' access to documents ..... | 28 |
|------------------------------------------|----|

**Winding up .....** 28

|                                                          |    |
|----------------------------------------------------------|----|
| 70. Surplus assets not to be distributed to members..... | 28 |
|----------------------------------------------------------|----|

|                                          |    |
|------------------------------------------|----|
| 71. Distribution of surplus assets ..... | 28 |
|------------------------------------------|----|

**Definitions and interpretation .....** 29

|                       |    |
|-----------------------|----|
| 72. Definitions ..... | 29 |
|-----------------------|----|

|                                                               |    |
|---------------------------------------------------------------|----|
| 73. Reading this constitution with the Corporations Act ..... | 29 |
|---------------------------------------------------------------|----|

|                         |    |
|-------------------------|----|
| 74. Interpretation..... | 30 |
|-------------------------|----|

## Preliminary

### 1. Name of the company

The name of the company is Port Stephens Koala & Wildlife Preservation Society Limited (the company).

### 2. Type of company

The company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

### 3. Limited liability of members

The liability of members is limited to the amount of the guarantee in Clause 4.

### 4. The guarantee

Each member must contribute an amount not more than \$10 (the guarantee) to the property of the company if the company is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- a. debts and liabilities of the company incurred before the member stopped being a member, or
- b. costs of winding up.

### 5. Definitions

In this constitution, words and phrases have the meaning set out in Clauses 72 and 74.

## Charitable purposes and powers

### 6. Object

The company's object is to pursue the following charitable purpose(s):

- a. The principal purpose of the Company is:
  - i. the protection and enhancement of the natural environment or a significant aspect of the natural environment: or
  - ii. the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.
- b. Without limiting the principal purpose of the Company, the other objects of the Company pursuant to that principal purpose are:
  - i. The preservation and care of all natural species of animals including but not exclusive to koalas.
  - ii. The preservation and expansion of habitat of wildlife.
  - iii. To provide information and educational material, to increase public and Governmental awareness of the local habitat of wildlife.
  - iv. To effectively monitor the number and welfare of such wildlife population.

CONSTITUTION OF PORT STEPHENS KOALA & WILDLIFE PRESERVATION  
SOCIETY LIMITED

- v. To create a central repository of data and information in the Hunter region and to make such information available to interested parties and organisations.
  - vi. To work in liaison with relevant organisations to assist in research into local and threatened species and institute long term plans.
  - vii. To carry out any other activities deemed to be necessary for the benefit of all wildlife and their habitat through conservation, protection, and preservation.
  - viii. To actively seek donations of money or property from the community for such purposes.
- c. Establishment of Public Fund. To Establish and maintain a Public Fund, such Fund to be called Port Stephens Wildlife Fund for the specific purpose of supporting the environmental objectives of the Port Stephens Koala & Wildlife Preservation Society Ltd. The fund is established to receive all gifts of money or property for this purpose and any money received because such gifts must be credited to its bank account. The fund must not receive any other money or property into its account, and it must comply with subdivision 30-E of the Income Tax Assessment Act 1997. The Public Fund shall have the following Rules:
- i. The objective of the fund is to support the organisation's environmental purposes.
  - ii. Members of the public are to be invited to make gifts of money or property to the fund for the environmental purposes of the organisation.
  - iii. Money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the fund.
  - iv. A separate bank account is to be opened to deposit money donated to the fund, including interest accruing thereon, and gifts to it are to be kept separate from other funds of the organisation.
  - v. Receipts are to be issued in the name of the fund and proper accounting records and procedures are to be kept and used for the fund.
  - vi. The fund will be operated on a not-for-profit basis.
  - vii. A committee of management of no fewer than three persons will administer the fund. The committee will be appointed by the directors of the company. A majority of the members of the committee are required to be 'responsible persons' as defined by the Guidelines to the Register of Environmental Organisations.
- d. Requirements of the Public Fund. The organisation must inform the Department responsible for the environment as soon as possible if:
- i. there has been any departure from the model rules for public funds located in the Guidelines to the Register of Environmental Organisations; or
  - ii. it changes its name or the name of its public fund; or
  - iii. there is any change to the membership of the management committee of the public fund; or
  - iv. there has been any departure from the model rules for public funds located in the Guidelines to the Register of Environmental Organisations.
- e. Ministerial Rules The organisation agrees to comply with any rules that the Treasurer and the Minister with responsibility for the environment may make to ensure that gifts made to the fund are only used for its principal purpose.

- f. Conduit Policy. Any allocation of funds or property to other persons or organisations will be made in accordance with the established purposes of the organisation and not be influenced by the preference of the donors.
- g. Winding-up. In case of the winding-up of the Fund, any surplus assets are to be transferred to another fund with similar objectives that is on the Register of Environmental Organisations.
- h. Statistical Information. Statistical information requested by the Department on donations to the Public Fund will be provided within four months of the end of the financial year. An audited financial statement for the organisation and its public fund will be supplied with the annual statistical return. The statement will provide information on the expenditure of public fund monies and the management of public fund assets.

## 7. Powers

Subject to Clause 8, the company has the following powers, which may only be used to carry out its purpose(s) set out in Clause 6:

- a. the powers of an individual, and
- b. all the powers of a company limited by guarantee under the Corporations Act.

## 8. Not-for-Profit

- a. The income and property of the organisation shall be used and applied solely in promotion of its objects and no portion shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to members, directors, or trustees of the organisation, except as provided in Clauses 8.8.b.8.b.i and 8.8.b.8.b.ii.
- b. Clause 8.8.a does not stop the company from doing the following things, provided they are done in good faith:
  - i. paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the company, or
  - ii. making a payment to a member in carrying out the company's charitable purpose(s).

## 9. Amending the constitution

- a. Subject to Clause 9.9.b, the members may amend this constitution by passing a special resolution.
- b. The members must not pass a special resolution that amends this constitution if passing it causes the company to no longer be a charity.

## Members

### 10. Membership and register of members

- a. The members of the company are:
  - i. initial members, and
  - ii. any other person that the directors allow to be a member, in accordance with this constitution.

CONSTITUTION OF PORT STEPHENS KOALA & WILDLIFE PRESERVATION  
SOCIETY LIMITED

- b. The company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
  - i. for each current member:
    - a) name
    - b) address
    - c) any alternative address nominated by the member for the service of notices, and
    - d) date the member was entered on to the register.
  - ii. for each person who stopped being a member in the last 7 years:
    - a) name
    - b) address
    - c) any alternative address nominated by the member for the service of notices, and
    - d) dates the membership started and ended.
- c. Subject always to the rights of members under the Corporations Act and to the Company's privacy obligations:
  - i. The Company will give current financial members access to the register of members upon written receipt of an application to the Secretary.
  - ii. Membership information obtained by a member must not be:
    - a) Used for any purpose without the express written approval of the Board.
    - b) Reproduced in part or full without the express written approval of the Board.
    - c) Used for personal gain or advantage, including electioneering.
    - d) Used to criticise other members.
    - e) Used to criticise individuals or organisations whom the Company has commercial arrangements in place.
    - f) Used in any way which contradicts or is inconsistent with this Constitution or the policies or procedures of the Company.

## 11. Classes of members and Friends of Port Stephens Koalas

- a. All members of the Company are ordinary members.
- b. Ordinary members have all rights granted to them under this Constitution and the Act including, without limitation, the right to attend and vote at general meetings and the right for the member's representative (as applicable) to propose a nominee for, or to be elected or appointed as, a director.
- c. The Board may designate, and remove that designation at the Board's discretion, persons who are not members of the Company as 'Friends of Port Stephens Koala Hospital (FOPSKH)'. A 'Friend of Port Stephens Koala Hospital':

- i. is not a member of the Company and is not subject to the residential restrictions or volunteering requirements of a member;
- ii. may receive information updates about the activities of the Company; and
- iii. has no rights to attend and vote at general meetings or to propose a nominee for, or to be elected or appointed as, a director.

## 12. Who can be a member

- a. A person who:
  - i. resides in Australia,
  - ii. is a casual employee of the Company engaged in any short-term activities for a finite time less than three months in duration in a financial year;
  - iii. is an employee of the Company engaged in activities different to their volunteer work; and
  - iv. supports the purposes of the Company.

is eligible to apply to be a member of the Company under Clause 13.

## 13. How to apply to become a member

A person (as defined in Clause 12.a) may apply to become a member of the Company by writing to the Secretary stating that they:

- a. want to become a member,
- b. support the purposes of the company,
- c. are not an employee of the Company,
- d. will provide their services as an active volunteer for the Company in a recognised volunteer capacity for a minimum of 50 hours per year (or such other period as approved by the Board in any approved capacity); and
- e. will at all times abide by this Constitution and the policies and procedures of the Company.

## 14. Directors decide whether to approve membership

- a. The directors must consider an application for membership within a reasonable time after the secretary receives the application.
- b. If the directors approve an application, the secretary must as soon as possible:
  - i. enter the new member on the register of members, and
  - ii. write to the applicant to tell them that their application was approved, and the date that their membership started (see Clause 15).
- c. If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected but does not have to give reasons.



- d. For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in Clause 13. In that case, by applying to be a member, the applicant agrees to those three matters.

## 15. When a person becomes a member

Other than initial members, an applicant will become a member when they are entered on the register of members.

## 16. When a person ceases to be a member

A person immediately ceases to be a member if they:

- a. die,
- b. are wound up or otherwise dissolved or deregistered (for an incorporated member),
- c. resign, by writing to the secretary,
- d. are expelled under Clause 19,
- e. have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member,
- f. fails to comply with any of the requirements for membership set out in Clause 12 and do not rectify that failure within fourteen (14) days (or such other period as the Board may determine) of service of a notice on the member by the Company specifying the failure and requiring that it be rectified,

## 17. Membership Fees

- a. Membership fees shall be as the Board prescribes from time to time.
- b. All membership Fees will be due and payable annually at the commencement of each financial year, or at such time as the Board may determine.
- c. If any Membership Fee remains unpaid for more than one (1) month after it is due, then the member will cease to be a member of the Company and the member's name will be removed from the register of members, provided that the Board may reinstate the member and restore their name on the register of members upon payment of all Membership Fees in arrears if the Board thinks fit to do so.
- d. Nothing in Clause 16 prevents the Board from granting an extension for the payment of Membership Fees in an individual case if the Board sees fit to do so.

## Dispute resolution and disciplinary procedures

### 18. Dispute resolution

- a. The dispute resolution procedure in this Clause applies to disputes (disagreements) under this constitution between a member or director and:
  - i. one or more members,
  - ii. one or more directors,
  - iii. one or more employees, or
  - iv. the company.

- b. A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under Clause 18 until the disciplinary procedure is completed.
- c. Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- d. If those involved in the dispute do not resolve it under Clause 18.c, they must within 10 days:
  - i. tell the directors about the dispute in writing,
  - ii. agree or request that a mediator be appointed, and
  - iii. attempt in good faith to settle the dispute by mediation.
- e. The mediator must:
  - i. be chosen by agreement of those involved, or
  - ii. where those involved do not agree:
    - a) for disputes between members, a person chosen by the directors, or
    - b) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the company has its registered office.
- f. A mediator chosen by the directors under Clause 18.18.e.18.e.ii.a):
  - i. may be a member or former member of the company,
  - ii. must not have a personal interest in the dispute, and
  - iii. must not be biased towards or against anyone involved in the dispute.
- g. When conducting the mediation, the mediator must:
  - i. allow those involved a reasonable chance to be heard,
  - ii. allow those involved a reasonable chance to review any written statements,
  - iii. ensure that those involved are given natural justice, and
  - iv. not make a decision on the dispute.

## 19. Disciplining members

- a. In accordance with this Clause, the directors may resolve to warn, suspend or expel a member from the company if the directors consider that:
  - i. the member has breached this constitution, or
  - ii. the member's behaviour is causing, has caused, or is likely to cause harm to the company.
- b. At least 14 days before the directors' meeting at which a resolution under Clause 19.a will be considered, the secretary must notify the member in writing:
  - i. that the directors are considering a resolution to warn, suspend or expel the member,

- ii. that this resolution will be considered at a directors' meeting and the date of that meeting,
  - iii. what the member is said to have done or not done,
  - iv. the nature of the resolution that has been proposed, and
  - v. that the member may provide an explanation to the directors, and details of how to do so.
- c. Before the directors pass any resolution under Clause 19.a, the member must be given a chance to explain or defend themselves by:
- i. sending the directors a written explanation before that directors' meeting, and/or
  - ii. speaking at the meeting.
- d. After considering any explanation under Clause 19.c, the directors may:
- i. take no further action,
  - ii. warn the member,
  - iii. suspend the member's rights as a member for a period of no more than 12 months,
  - iv. expel the member,
  - v. refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this Clause), or
  - vi. require the matter to be determined at a general meeting.
- e. The directors cannot fine a member.
- f. The secretary must give written notice to the member of the decision under Clause 19.d as soon as possible.
- g. Disciplinary procedures must be completed as soon as reasonably practical.
- h. There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this Clause.

## General meetings of members

### 20. General meetings called by directors

- a. The directors may call a general meeting.
- b. If members with at least 5% of the votes that may be cast at a general meeting make a written request to the company for a general meeting to be held, the directors must:
  - i. within 21 days of the members' request, give all members notice of a general meeting, and
  - ii. hold the general meeting within 2 months of the members' request.
- c. The percentage of votes that members have (in Clause 20.20.b) is to be worked out as at midnight before the members request the meeting.
- d. The members who make the request for a general meeting must:

- i. state in the request any resolution to be proposed at the meeting,
  - ii. sign the request, and
  - iii. give the request to the company.
- e. Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

## 21. General meetings called by members

- a. If the directors do not call the meeting within 21 days of being requested under Clause 21.21.b, 50% or more of the members who made the request may call and arrange to hold a general meeting.
- b. To call and hold a meeting under Clause 21.21.a the members must:
  - i. as far as possible, follow the procedures for general meetings set out in this constitution,
  - ii. call the meeting using the list of members on the company's member register, which the company must provide to the members making the request at no cost, and
  - iii. hold the general meeting within three months after the request was given to the company.
- c. The company must pay the members who request the general meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

## 22. Annual general meeting

- a. A general meeting, called the annual general meeting, must be held:
  - i. within 18 months after registration of the company, and
  - ii. after the first annual general meeting, at least once in every calendar year.
- b. Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
  - i. a review of the company's activities,
  - ii. a review of the company's finances,
  - iii. any auditor's report,
  - iv. the election of directors, and
  - v. the appointment and payment of auditors, if any.
- c. Before or at the annual general meeting, the directors must give information to the members on the company's activities and finances during the period since the last annual general meeting.
- d. The chairperson of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the company.

## 23. Notice of general meetings

- a. Notice of a general meeting must be given to:
  - i. each member entitled to vote at the meeting,
  - ii. each director, and
  - iii. the auditor (if any).
- b. Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- c. Subject to Clause 23.23.d, notice of a meeting may be provided less than 21 days before the meeting if:
  - i. for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand, or
  - ii. for any other general meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- d. Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
  - i. remove a director,
  - ii. appoint a director in order to replace a director who was removed, or
  - iii. remove an auditor.
- e. Notice of a general meeting must include:
  - i. the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this),
  - ii. the general nature of the meeting's business,
  - iii. if applicable, that a special resolution is to be proposed and the words of the proposed resolution,
  - iv. a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
    - a) the proxy does not need to be a member of the company,
    - b) the proxy form must be delivered to the company at its registered address, or the address (including an electronic address) specified in the notice of the meeting, and
    - c) the proxy form must be delivered to the company at least 48 hours before the meeting.
- f. If a general meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

## 24. Quorum at general meetings

- a. For a general meeting to be held, at least 4 members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum

is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).

- b. No business may be conducted at a general meeting if a quorum is not present.
- c. If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
  - i. if the date is not specified – the same day in the next week,
  - ii. if the time is not specified – the same time, and
  - iii. if the place is not specified – the same place.
- d. If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## 25. Auditor's right to attend meetings

- a. The auditor (if any) is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- b. The company must give the auditor (if any) any communications relating to the general meeting that a member of the company is entitled to receive.

## 26. Representatives of members

- a. An incorporated member may appoint as a representative:
  - i. one individual to represent the member at meetings and to sign circular resolutions under Clause 33, and
  - ii. the same individual or another individual for the purpose of being appointed or elected as a director.
- b. The appointment of a representative by a member must:
  - i. be in writing,
  - ii. include the name of the representative,
  - iii. be signed on behalf of the member, and
  - iv. be given to the company or, for representation at a meeting, be given to the chairperson before the meeting starts.
- c. A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- d. The appointment may be standing (ongoing).

## 27. Using technology to hold meetings

- a. The company may hold a general meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.

- b. Anyone using this technology is taken to be present in person at the meeting.

## 28. Chairperson for general meetings

- a. The elected chairperson is entitled to chair general meetings.
- b. The members present and entitled to vote at a general meeting may choose a director or member to be the chairperson for that meeting if:
  - i. there is no elected chairperson, or
  - ii. the elected chairperson is not present within 30 minutes after the starting time set for the meeting, or
  - iii. the elected chairperson is present but says they do not wish to act as chairperson of the meeting.

## 29. Role of the chairperson

- a. The chairperson is responsible for the conduct of the general meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- b. The chairperson does not have a casting vote.

## 30. Adjournment of meetings

- a. If a quorum is present, a general meeting must be adjourned if a majority of members present direct the chairperson to adjourn it.
- b. Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## Members' resolutions and statements

### 31. Members' resolutions and statements

- a. Members with at least 5% of the votes that may be cast on a resolution may give:
  - i. written notice to the company of a resolution they propose to move at a general meeting (members' resolution), and/or
  - ii. a written request to the company that the company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (members' statement).
- b. A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- c. A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- d. Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- e. The percentage of votes that members have (as described in Clause 31.31.a) is to be worked out as at midnight before the request or notice is given to the company.

- f. If the company has been given notice of a members' resolution under Clause 31.31.a.31.a.i, the resolution must be considered at the next general meeting held more than two months after the notice is given.
- g. This Clause does not limit any other right that a member has to propose a resolution at a general meeting.

### 32. Company must give notice of proposed resolution or distribute statement

- a. If the company has been given a notice or request under Clause 31:
  - i. in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the company's cost, or
  - ii. too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the company in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a general meeting, the members may pass a resolution that the company will pay these expenses.
- b. The company does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
  - i. it is more than 1,000 words long,
  - ii. the directors consider it may be defamatory,
  - iii. Clause 32.32.b.32.b.ii applies, and the members who proposed the resolution or made the request have not paid the company enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members, or
  - iv. in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the members.

### 33. Circular resolutions of members

- a. Subject to Clause 33.33.c, the directors may put a resolution to the members to pass a resolution without a general meeting being held (a circular resolution).
- b. The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members and set out the wording of the resolution.
- c. Circular resolutions cannot be used:
  - i. for a resolution to remove an auditor, appoint a director or remove a director,
  - ii. for passing a special resolution, or
  - iii. where the Corporations Act or this constitution requires a meeting to be held.
- d. A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in Clause 33.33.e or Clause 33.33.f.
- e. Members may sign:



- i. a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
  - ii. separate copies of that document, as long as the wording is the same in each copy.
- f. The company may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## Voting at general meetings

### 34. How many votes a member has

Each member has one vote.

### 35. Challenge to member's right to vote

- a. A member or the chairperson may only challenge a person's right to vote at a general meeting at that meeting.
- b. If a challenge is made under Clause 35.a by a member, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

### 36. How voting is carried out

- a. Voting must be conducted and decided by:
  - i. a show of hands
  - ii. a vote in writing,
  - iii. using an electronic voting system, or
  - iv. another method chosen by the chairperson that is fair and reasonable in the circumstances.
- b. Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- c. On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- d. The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.
- e. Electronic voting of resolutions and appointment of directors may be undertaken using a system approved by the board that provides members to assess the resolution or nominees and then vote on their preference. Those without the technology to use this process of voting may be sent written equivalent to their registered postal address with sufficient time to respond.

### 37. When and how a vote in writing must be held

- a. A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
  - i. at least five members present,

- ii. members present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
  - iii. the chairperson.
- b. A vote in writing must be taken when and how the chairperson directs unless Clause 37.c applies.
- c. A vote in writing must be held immediately if it is demanded under Clause 37.37.a:
- i. for the election of a chairperson under Clause 37.37.b, or
  - ii. to decide whether to adjourn the meeting.
- d. A demand for a vote in writing may be withdrawn.

### 38. Appointment of proxy

- a. A member may appoint a proxy to attend and vote at a general meeting on their behalf.
- b. A proxy does not need to be a member.
- c. A proxy appointed to attend and vote for a member has the same rights as the member to:
  - i. speak at the meeting,
  - ii. vote in a vote in writing (but only to the extent allowed by the appointment), and
  - iii. join in to demand a vote in writing under Clause 38.38.a.
- d. An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
  - i. the member's name and address,
  - ii. the company's name,
  - iii. the proxy's name or the name of the office held by the proxy, and
  - iv. the meeting(s) at which the appointment may be used.
- e. A proxy appointment may be standing (ongoing).
- f. Proxy forms must be received by the company at the address stated in the notice under Clause 38.38.d.23.e.iv or at the company's registered address at least 48 hours before a meeting.
- g. A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- h. Unless the company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
  - i. dies,
  - ii. is mentally incapacitated,
  - iii. revokes the proxy's appointment, or

- iv. revokes the authority of a representative or agent who appointed the proxy.
- i. A proxy appointment may specify the way the proxy must vote on a particular resolution.

### 39. Voting by proxy

- a. A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- b. When a vote in writing is held, a proxy:
  - i. does not need to vote, unless the proxy appointment specifies the way they must vote,
  - ii. if the way they must vote is specified on the proxy form, must vote that way, and
  - iii. if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

## Directors

### 40. Number of directors

- a. The company must have at least six and no more than nine directors, including:
  - i. The President position and six general board directors will be voted for by members.
  - ii. Two director positions are to be held by senior management personnel from Port Stephens Council (or any properly appointed replacement Local Government Authority). Should Port Stephens Council not propose or nominate two directors, the position(s) will be available for election.

### 41. Election and appointment of directors

- a. The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the company.
- b. Apart from the initial directors and directors appointed under Clause 41.41.k), the members may elect a director by a resolution passed in a general meeting.
- c. Each of the directors must be appointed by a separate resolution, unless:
  - i. the members present have first passed a resolution that the appointments may be voted on together, and
  - ii. no votes were cast against that resolution.
- d. A candidate for election as a director must comply with the following nomination requirements, and failure to do so will result in the candidate being ruled ineligible to stand for election by the Board, whose decision will be final:
  - i. Nominations must be made in writing on the Company's nomination form and signed by two (2) financial members of the Company and be endorsed with the consent signature of the candidates.
  - ii. Nominations must be given to the secretary at least seven (7) days before the date fixed for the holding of the annual general meeting at which the election is to take place.

CONSTITUTION OF PORT STEPHENS KOALA & WILDLIFE PRESERVATION  
SOCIETY LIMITED

- iii. The candidate must provide with the nomination form a biography of a maximum of 100 words, a recent colour photograph in digital form and a statement of their reasons for standing for election not exceeding 300 words, which information will be circulated to all financial members by the Returning Officer at least five (5) days prior to the date fixed for the holding of the annual general meeting.
- iv. The candidate must not, and must not authorise, encourage permit any other person to, lobby the members in connection with their candidacy (other than in the manner provided for in paragraph 3 above) including, without limitation, involving themselves in the vicinity of the Koala/Sanctuary Hospital, or any other activity either directly or indirectly intended to promote their candidacy (such as, by way of example, distributing documents, making public statements, advertising or by other means of public dissemination, including any social media platforms); and the candidate must not, and must not authorise, encourage or permit any other person to, make derogatory or defamatory statements or inferences about the Company, any other candidate, a member or an organisation with whom the Company has commercial arrangements in place.
- e. If insufficient nominations are received to fill all vacancies, the candidates nominated are taken to be elected and further nominations are to be received from the floor at the Annual General Meeting.
- f. If insufficient further nominations are received, any vacant positions are to be taken to be casual vacancies.
- g. If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- h. If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
- i. The ballot for the election of directors is to be conducted at the Annual General Meeting in such usual and proper manner as the directors may determine, and in this regard, the directors will appoint a Returning Officer who is not a candidate for election a minimum of twenty-one (21) days before the date fixed for the annual general meeting.
- j. A person is eligible for election as a director of the company if they:
  - i. are a member of the company, or a representative of a member of the company (appointed under Clause 26)
  - ii. are nominated by two members or representatives of members entitled to vote (unless the person was previously elected as a director at a general meeting and has been a director since that meeting),
  - iii. give the company their signed consent to act as a director of the company, and
  - iv. are not ineligible to be a director under the Corporations Act or the ACNC Act.
- k. The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
  - i. is a member of the company, or a representative of a member of the company (appointed under Clause 26)
  - ii. gives the company their signed consent to act as a director of the company, and
  - iii. is not ineligible to be a director under the Corporations Act or the ACNC Act.

- I. If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a general meeting, but for no other purpose.

## 42. Election of chairperson

Should the elected President decline the chairperson role in the board meetings then directors must elect a director as the company's chairperson.

## 43. Term of office

- a. At each annual general meeting:
  - i. any director appointed by the directors to fill a casual vacancy or as an additional director must retire, and
  - ii. at least one-third of the remaining directors must retire.
- b. The directors who must retire at each annual general meeting under Clause 43.43.a.a.ii will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.
- c. Other than a director appointed under Clause 41.41.e, a director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- d. Each director must retire at least once every three years.
- e. A director who retires under Clause 43.43.a may nominate for election or re-election, subject to Clause 43.43.f.
- f. A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a special resolution.

## 44. When a director ceases being a director

- a. A director ceases being a director if they:
  - i. give written notice of resignation as a director to the company.
  - ii. Die.
  - iii. are removed as a director by a resolution of the members.
  - iv. stop being a member of the company,
  - v. are a representative of a member, and that member stops being a member,
  - vi. are a representative of a member, and the member notifies the company that the representative is no longer a representative,
  - vii. are absent for 3 consecutive directors' meetings without approval from the directors, or
  - viii. become ineligible to be a director of the company under the Corporations Act or the ACNC Act.

## Powers of directors

### 45. Powers of directors

- a. The directors are responsible for managing and directing the activities of the company to achieve the purpose(s) set out in Clause 6.
- b. The directors may use all the powers of the company except for powers that, under the Corporations Act or this constitution, may only be used by members.
- c. The directors must decide on the responsible financial management of the company including:
  - i. any suitable written delegations of power under Clause 45, and
  - ii. how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- d. The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a general meeting.

### 46. Delegation of directors' powers

- a. The directors may delegate any of their powers and functions to a committee, a director, an employee of the company (such as a chief executive officer) or any other person, as they consider appropriate.
- b. The Directors may make any delegation subject to such conditions as they may from time to time determine and revoke such delegation at any time.
- c. Any person or body to whom powers and functions are delegated must submit progress reports of activities to the Directors at each Directors' meeting and whenever otherwise required by the Directors.
- d. The delegation must be recorded in the company's minute book.

### 47. Payments to directors

- a. The company must not pay fees to a director for acting as a director.
- b. The company may:
  - i. pay a director for work they do for the company, other than as a director, if the amount is no more than a reasonable fee for the work done, or
  - ii. reimburse a director for expenses properly incurred by the director in connection with the affairs of the company.
- c. Any payment made under Clause 47.47.b must be approved by the directors.
- d. The company may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

### 48. Execution of documents

- a. The company may execute a document without using a common seal if the document is signed by:
  - i. two directors of the company, or

- ii. a director and the secretary.

## Duties of directors

### 49. Duties of directors

- a. The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
  - i. to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company,
  - ii. to act in good faith in the best interests of the company and to further the charitable purpose(s) of the company set out in Clause 6,
  - iii. not to misuse their position as a director,
  - iv. not to misuse information they gain in their role as a director,
  - v. to disclose any perceived or actual material conflicts of interest in the manner set out in Clause 50,
  - vi. to ensure that the financial affairs of the company are managed responsibly, and
  - vii. not to allow the company to operate while it is insolvent.

### 50. Conflicts of interest

- a. A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
  - i. to the other directors, or
  - ii. if all the directors have the same conflict of interest, to the members at the next general meeting, or at an earlier time if reasonable to do so.
- b. The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- c. Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under Clause 50.50.d:
  - i. be present at the meeting while the matter is being discussed, or
  - ii. vote on the matter.
- d. A director may still be present and vote if:
  - i. their interest arises because they are a member of the company, and the other members have the same interest,
  - ii. their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the company (see Clause 68),
  - iii. their interest relates to a payment by the company under Clause 67 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act,

- iv. the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
- v. the directors who do not have a material personal interest in the matter pass a resolution that:
  - a) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the company, and
  - b) says that those directors are satisfied that the interest should not stop the director from voting or being present.

## Directors' meetings

### 51. When the directors meet

The directors may decide how often, where and when they meet.

### 52. Calling directors' meetings

- a. A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- b. A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

### 53. Chairperson for directors' meetings

- a. The elected chairperson is entitled to chair directors' meetings.
- b. The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the elected chairperson is:
  - i. not present within 30 minutes after the starting time set for the meeting, or
  - ii. present but does not want to act as chairperson of the meeting.

### 54. Quorum at directors' meetings

- a. Unless the directors determine otherwise, the quorum for a directors' meeting is a minimum of 4 directors.
- b. A quorum must be present for the whole directors' meeting.

### 55. Using technology to hold directors' meetings

- a. The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- b. The directors' agreement may be a standing (ongoing) one.
- c. A director may only withdraw their consent within a reasonable period before the meeting.

### 56. Passing directors' resolutions

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.



## 57. Circular resolutions of directors

- a. The directors may pass a circular resolution without a directors' meeting being held.
- b. A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in Clause 57.57.c or Clause 57.57.d.
- c. Each director may sign:
  - i. a single document setting out the resolution and containing a statement that they agree to the resolution, or
  - ii. separate copies of that document, as long as the wording of the resolution is the same in each copy.
- d. The company may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- e. A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in Clause 57c or Clause 5757.d.

## Secretary

### 58. Appointment and role of secretary

- a. The company must have at least one secretary.
  - i. A secretary must be appointed by the directors (after giving the company their signed consent to act as secretary of the company) and may be removed by the directors.
  - ii. The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- b. The role of the secretary includes:
  - i. maintaining a register of the company's members,
  - ii. maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions, and
  - iii. those responsibilities as required by the *Corporations Act* and the *Australian Charities and Not-For-Profit Commission*.

## Minutes and records

### 59. Minutes and records

- a. The company must, within one month, make and keep the following records:
  - i. minutes of proceedings and resolutions of general meetings,
  - ii. minutes of circular resolutions of members,
  - iii. a copy of a notice of each general meeting, and
  - iv. a copy of a members' statement distributed to members under Clause 32.
- b. The company must, within one month, make and keep the following records:

- i. minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
  - ii. minutes of circular resolutions of directors.
- c. To allow members to inspect the company's records:
- i. the company must give a member access to the records set out in Clause 59.59.a, and
  - ii. the directors may authorise a member to inspect other records of the company, including records referred to in Clause 59.59.b and Clause 59.59.a.
- d. The directors must ensure that minutes of a general meeting or a directors' meeting are signed within a reasonable time after the meeting by:
- i. the chairperson of the meeting, or
  - ii. the chairperson of the next meeting.
- e. The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

## 60. Financial and related records

- a. The company must make and keep written financial records that:
- i. correctly record and explain its transactions and financial position and performance, and
  - ii. enable true and fair financial statements to be prepared and to be audited.
- b. The company must also keep written records that correctly record its operations.
- c. The company must retain its records for at least 7 years.
- d. The directors must take reasonable steps to ensure that the company's records are kept safe.

## By-laws

### 61. By-laws

- a. The directors may pass a resolution to make by-laws to give effect to this constitution.
- b. Members and directors must comply with by-laws as if they were part of this constitution.

## Notice

### 62. What is notice

- a. Anything written to or from the company under any Clause in this constitution is written notice and is subject to Clauses 63 to 65, unless specified otherwise.
- b. Clauses 63 to 65 do not apply to a notice of proxy under Clause 38.38.f.

### 63. Notice to the company

- a. Written notice or any communication under this constitution may be given to the company, the directors, or the secretary by:

- i. delivering it to the company's registered office,
- ii. posting it to the company's registered office or to another address chosen by the company for notice to be provided,
- iii. sending it to an email address or other electronic address notified by the company to the members as the company's email address or other electronic address, or

## 64. Notice to members

- a. Written notice or any communication under this constitution may be given to a member:
  - i. in person,
  - ii. by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices,
  - iii. sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any), or
  - iv. if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- b. If the company does not have an address for the member, the company is not required to give notice in person.

## 65. When notice is taken to be given

- a. A notice is taken as given:
  - i. delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered,
  - ii. sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs,
  - iii. sent by email, fax, or other electronic method, is taken to be given on the business day after it is sent, and
  - iv. given under Clause 64.64.a.64.a.iv is taken to be given on the business day after the notification that the notice is available is sent.

## Financial year

### 66. Company's financial year

The company's financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

## Indemnity, Insurance, and Access

### 67. Indemnity

- a. The company indemnifies each officer of the company out of the assets of the company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the company.

- b. In this Clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- c. In this Clause, 'to the relevant extent' means:
  - i. to the extent that the company is not precluded by law (including the Corporations Act) from doing so, and
  - ii. for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- d. The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the company.

## 68. Insurance

To the extent permitted by law (including the Corporations Act), and if the directors consider it appropriate, the company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the company against any liability incurred by the person as an officer of the company.

## 69. Directors' access to documents

- a. A director has a right of access to the financial records of the company at all reasonable times.
- b. If the directors agree, the company must give a director or former director access to:
  - i. certain documents, including documents provided for or available to the directors, and
  - ii. any other documents referred to in those documents.

## Winding up

### 70. Surplus assets not to be distributed to members

If the company is wound up, any surplus assets must not be distributed to a member or a former member of the company, unless that member or former member is a registered charity described in Clause 72.73.b.

### 71. Distribution of surplus assets

- a. Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets (including 'gift funds' defined in Clause 71.71.d) that remain after the company is wound up must be distributed to one or more charities:
  - i. with charitable purpose(s) similar to, or inclusive of, the purpose(s) in Clause 6,
  - ii. which also prohibit the distribution of any surplus assets to its members to at least the same extent as the company, and
  - iii. that is or are deductible gift recipients within the meaning of the Income Tax Assessment Act 1997(Commonwealth).
- b. The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the company may apply to the Supreme Court to make this decision.

- c. If the company's deductible gift recipient endorsement is revoked (whether or not the company is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of 7171.a, as decided by the directors.
- d. For the purpose of this Clause:
  - i. 'gift funds' means:
    - a) gifts of money or property for the principal purpose of the company,
    - b) contributions made in relation to a fund-raising event held for the principal purpose of the company, and
    - c) money received by the company because of such gifts and contributions.
  - ii. 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the Income Tax Assessment Act 1997 (Cth).

## Definitions and interpretation

### 72. Definitions

In this constitution:

**ACNC Act** means the Australian Charities and Not-for-profits Commission Act 2012 (Commonwealth).

**company** means the company referred to in Clause 1.

**Corporations Act** means the Corporations Act 2001 (Commonwealth).

**elected** chairperson means a person elected by the directors to be the company's chairperson under Clause 42.

**general meeting** means a meeting of members and includes the annual general meeting, under Clause 22.22.a.

**initial member** means a person who is named in the application for registration of the company, with their consent, as a proposed member of the company.

**member present** means, in connection with a general meeting, a member present in person, by representative or by proxy at the venue or venues for the meeting.

**registered charity** means a charity that is registered under the ACNC Act.

**special resolution** means a resolution:

- a. of which notice has been given under Clause 23.e.iii, and
- b. that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution, and

**surplus assets** means any assets of the company that remain after paying all debts and other liabilities of the company, including the costs of winding up.

### 73. Reading this constitution with the Corporations Act

- a. The replaceable rules set out in the Corporations Act do not apply to the company.

CONSTITUTION OF PORT STEPHENS KOALA & WILDLIFE PRESERVATION  
SOCIETY LIMITED

- b. While the company is a registered charity, the ACNC Act and the Corporations Act override any Clauses in this constitution which are inconsistent with those Acts.
- c. If the company is not a registered charity (even if it remains a charity), the Corporations Act overrides any Clause in this constitution which is inconsistent with that Act.
- d. A word or expression that is defined in the Corporations Act or used in that Act and covering the same subject, has the same meaning as in this constitution.

**74. Interpretation**

- a. In this constitution:
  - i. the words ‘including’, ‘for example’, or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
  - ii. reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

The following person(s), being the person(s) who consented to become a member of the Company in the application for the registration of the Company, agree to the terms of this Constitution.

.....

.....

.....

.....