

RULES OF HOLDFAST QUAYS MARINA ASSOCIATION INCORPORATED

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ASSOCIATIONS INCORPORATION ACT 1985

RULES OF

HOLDFAST QUAYS MARINA ASSOCIATION INCORPORATED

1. The name of the incorporated Association is **HOLDFAST QUAYS MARINA ASSOCIATION INCORPORATED** referred to herein as "the Association".
2. In these Rules, unless the contrary intention appears:

Act means the Associations Incorporation Act 1985.

authorised representative means a natural person appointed to represent a corporate member or a multiple member by notice in writing signed for or on behalf of the member, and given to the public officer of the Association (or as otherwise required under these Rules).

Berth Lease means an underlease of a Marina Berth granted by the Association as underlessor as described in Rule 3.2, but does not include a Short Term Licence.

Chairperson means the chairperson of the Committee elected or appointed pursuant to these Rules.

Committee means the committee of management of the Association.

corporate member means a member who is not a natural person.

financial year means each period of 12 months or less as described in Rule 11.

Headlease means the lease of the Marina entered into, or to be entered into by the Association as headlessee.

Lessee means the underlessee under a Berth Lease.

Marina means the marina described in Rule 3.1, which is to be leased by the Association under the Headlease.

Marina Berth means a separate berth in the Marina.

meeting means a general meeting of members of the Association convened in accordance with these Rules.

member means a member of the Association.

multiple member means a member comprised of more than one natural people and/or corporations.

person includes a corporation and any other body and can include more than one person.

Regulations means the Associations Incorporation Regulations 2008.

Short Term Licence means any licence, hiring agreement or other right of use or occupation of a Marina Berth, which does not exceed twelve (12) months (including any rights of renewal or extension).

3. **BACKGROUND**

- 3.1 The Association has or will enter into a headlease (**Headlease**) of a portion of the area known as the Patawalonga Basin (being a portion of the area included in Certificate of Title Volume 5798 Folio 64) in which a marina (**Marina**) has been developed or is in the process of being developed.
- 3.2 Each individual Marina Berth will be leased by the Association, by means of a registered underlease (Berth Lease) and each lessee under a Berth Lease will be a member of the Association.
- 3.3 The Association will maintain and administer the Marina for the benefit of the members.

4. **OBJECTS AND PURPOSES**

The Association is established for the purpose of providing for the sport, recreation and amusement of its members through the maintenance and administration of the Marina and associated facilities for the benefit of its members. The Association does not and may not have the objective of:

- 4.1 securing a pecuniary profit for any of its members;
- 4.2 engaging in trade or commerce;

and may not do so otherwise than in a manner which is consistent with Section 18(6) of the Act.

5. **POWERS**

The Association shall have all the powers conferred by Section 25 of the Act.

6. **MEMBERSHIP**

- 6.1 The members of the Association will be each and every Lessee of a Marina Berth for so long as they remain a Lessee of a Marina Berth. However, the Lessee of a Marina Berth does not become a member until the Berth Lease commences.
- 6.2 A member cannot resign from membership of the Association but a member's membership of the Association will cease when they cease to be the Lessee of the relevant Marina Berth. For this purpose, a member will be taken to cease to be a Lessee of a Marina Berth if and when:
 - 6.2.1 the Berth Lease expires;
 - 6.2.2 the Berth Lease is terminated for any reason; or
 - 6.2.3 the member assigns the Berth Lease to another person.
- 6.3 A person who takes an assignment of a Berth Lease will be a member of the Association from the date that assignment takes effect until that person ceases to be a Lessee of the Marina Berth (as described in Rule 6.2).

7. SUBSCRIPTIONS

- 7.1 The subscription fees for membership shall be such sum (if any) as the members determine from time to time in general meeting and will be payable annually on 1 July or at such other time as the Committee determines from time to time.
- 7.2 Any member:
- 7.2.1.1 whose subscription fees are outstanding for more than 14 days after the due date for payment; or
 - 7.2.1.2 who fails to provide copies of certificates of currency for such insurance as is required from time to time under that member's Berth Lease,
- shall have their access to the Marina and lock suspended until such time as the subscription fees are paid and/or the certificates of currency are provided (as applicable).
- 7.3 Any member whose subscription is outstanding for more than three months after the due date for payment shall cease to be a member of the Association, provided always that the Committee may reinstate such a person's membership on such terms as it thinks fit.

8. THE COMMITTEE

- 8.1 The affairs of the Association shall be managed and controlled exclusively by a Committee which, in addition to any powers and authorities conferred by these Rules, may exercise all such powers and do all such things as are within the objects of the Association, and are not by the Act or by these Rules required to be done by the Association in general meeting.
- 8.2 The Committee shall have the power to appoint such officers and employees as are required to carry out the objects of the Association, including a public officer required by the Act, and may delegate any of its powers to such officers and employees.
- 8.3 The Committee shall consist of:
- 8.3.1 a Chairperson,
 - 8.3.2 a Secretary,
 - 8.3.3 a Treasurer; and
 - 8.3.4 at least one other Committee member but not more than seven other Committee members.
- 8.4 The first Committee of the Association will be:
- Chairperson – Robert Lawrence Boorman
 - Secretary – Ferguson Kennedy Simpson
 - Treasurer – Howard Brandwood Young
 - Committee Member – Brent Blanks

The first Committee shall hold office until the first annual general meeting after incorporation at which time each office shall become vacant. The new members of the Committee shall be elected at the first annual general meeting. At the second annual general meeting one half of the members of the Committee, who shall be chosen by ballot, shall retire from the Committee but shall be eligible for reappointment. At each subsequent annual general meeting at least two of the longest serving members of the Committee shall retire and shall be eligible for reappointment.

- 8.5 With the exception of the members of the first Committee and the Secretary, all members of the Committee must (subject to Rule 8.6) be members of the Association.
- 8.6 A corporate member and a multiple member may appoint a natural person, by written notice to the Chairperson of the Committee, to be its representative member of the Committee.
- 8.7 The Committee may appoint a natural person to fill a casual vacancy, and such a Committee member shall hold office until the next annual general meeting of the Association and shall be eligible for reappointment.
- 8.8 A retiring Committee member shall be eligible to stand for re-election without nomination but no person, except a retiring Committee member, shall be eligible to stand for election unless a member of the Association has nominated him at least twenty-eight days before the meeting by delivering the nomination of that person to the secretary of the Association. The nomination shall be signed by the proposer and by the nominee to signify a willingness to stand for election.
- 8.9 Notice of all persons seeking election to the Committee shall be given to all members of the Association with the notice calling the meeting at which the election is to take place.
- 8.10 If only the required number of persons is nominated to fill existing vacancies, the Secretary shall report accordingly to the annual general meeting, and the Chairperson shall declare such persons duly elected as Committee members.

9. **DISQUALIFICATION OF COMMITTEE MEMBERS**

The office of Committee member shall become vacant if:

- 9.1 the Committee member is disqualified by the Act;
- 9.2 the Committee member is expelled under these Rules;
- 9.3 the Committee member is permanently incapacitated by ill health;
- 9.4 the Committee member is absent without apology from more than two consecutive Committee meetings, or more than two Committee meetings in a financial year;
- 9.5 the Committee member is no longer the duly appointed representative of a corporate member or multiple member;
- 9.6 subject to Rule 8.5, the Committee member ceases to be a member of the Association or the member of the Association who has appointed the Committee member to be its representative under Rule 8.6 ceases to be a member of the Association.

9.7 Removal of Committee member

- 9.7.1 The Association in general meeting may, by resolution, remove any member of the Committee before the expiration of the Committee member's term of office and appoint another Committee member in his or her place to hold office until the expiration of the term of the first-mentioned member.
- 9.7.2 A member of the Committee who is the subject of a proposed resolution referred to in Rule 9.7.1 may make representations in writing to the Chairperson of the Association (not exceeding a reasonable length) and may request that the representations be provided to the members of the Association.
- 9.7.3 The Chairperson may give a copy of the representations to each member of the Association or, if they are not so given, the Committee member may require that they be read out at the meeting.

10. PROCEEDINGS OF COMMITTEE

- 10.1 The Committee shall meet together for the despatch of business at such intervals as may be determined by the Committee from time to time but no less than once every three months with a minimum of four meetings per annum.
- 10.2 Questions arising at any meeting shall be decided by a majority of votes, and in the event of equality of votes the Chairperson shall have a casting vote in addition to a deliberative vote.
- 10.3 A quorum for a meeting of the Committee shall be three members.
- 10.4 A member of the Committee having a pecuniary interest in a contract with the Association must disclose that interest to the Committee as required by the Act, and shall not vote with respect to that contract.
- 10.5 **Meetings using technology**
 - 10.5.1 A Committee meeting may be held with one or more of the Committee members taking part by telephone or video conference. Such Committee members are regarded as present at the Committee meeting if such Committee members are able to hear the proceedings of the entire Committee meeting and to be heard by all others attending the Committee meeting.
 - 10.5.2 Without limiting Rule 10.5.1, a Committee meeting may be called or held using any technology consented to by all Committee members. The consent may be a standing one and can only be withdrawn by a Committee member on seven days' notice.
 - 10.5.3 A Committee meeting conducted in accordance with Rule 10.5.1 or 10.5.2 is deemed to be held at a place determined by the Committee members, provided that at least one of the Committee members present at the Committee meeting was at such place for the duration of that Committee meeting.

10.6 **Circular resolutions**

- 10.6.1 The Chairperson may put a resolution to the Committee members to pass a resolution without a Committee meeting being held (**a circular resolution**).
- 10.6.2 A circular resolution is passed if all Committee members entitled to vote on the resolution agree to the circular resolution in the manner set out in Rule 10.6.3.
- 10.6.3 The Chairperson may send a circular resolution by electronic mail to Committee members and members may agree by sending a responding electronic mail to that effect, including the text of the resolution in their reply.

11. **FINANCIAL YEAR**

The first financial year of the Association shall be the period ending on 30 June 2000, and thereafter a period of 12 months ending on 30 June in each year.

12. **BORROWING POWERS**

- 12.1 Subject to this Rule the Association may borrow money from banks or other financial institutions upon such terms and conditions as the Committee sees fit, and may secure the repayment thereof by charging the property of the Association.
- 12.2 Subject to section 53 of the Act the Association may invite and accept deposits of money from any person on such terms and conditions as may be determined by the Committee from time to time.

13. **RULES**

- 13.1 Subject to approval by a resolution of the members of the Association, these Rules may be altered (including an alteration to name), or be rescinded and replaced by substituted Rules. Such an alteration shall be registered with the Commission as required by the Act.
- 13.2 The registered Rules shall bind the Association and every member to the same extent as if they had respectively signed and sealed them, and agreed to be bound by all of the provisions thereof.

14. **THE SEAL**

- 14.1 The Association shall have a common seal.
- 14.2 Every use of the seal shall be recorded in the minute book of the Association.
- 14.3 The affixing of the seal shall be witnessed by two (2) members of the Committee.
- 14.4 The seal shall be kept in the custody of the Chairperson of the Committee or such other person as the Committee may from time to time decide.

15. **MEETINGS**

- 15.1 The Committee may call a special general meeting of the Association at any time, and shall call an annual general meeting in accordance with the Act.

- 15.2 The first annual general meeting shall be held within six (6) months after the date on which the Headlease commences, and thereafter within five (5) months after the end of each financial year.
- 15.3 Upon a requisition in writing of not less than one half of the total number of members of the Association, the Committee shall within one month of the receipt of the requisition, convene a special general meeting for the purpose specified in the requisition.
- 15.4 Every requisition for a special general meeting shall be signed by the members making the same and shall state the purpose of the meeting.
- 15.5 If a special general meeting is not convened within one month as required by Rule 15.4, the requisitionists may convene a special general meeting. Such a meeting shall be convened in the same manner as a meeting convened by the Committee, and for this purpose the Committee shall ensure that the requisitionists are supplied free of charge with particulars of the members entitled to receive a notice of meeting. The reasonable expenses of convening and conducting such a meeting shall be borne by the Association.
- 15.6 Subject to Rule 15.7, at least fourteen days' notice of any general meeting shall be given to members. The notice shall set out where and when the meeting will be held and particulars of the nature and order of the business to be transacted at the meeting. In the case of an annual general meeting, the order of the business at the meeting shall be the consideration of the accounts and reports of the Committee and the auditors, the appointment of auditors and Committee members (if required), and any other business requiring consideration by the Association in general meeting.
- 15.7 Notice of a meeting at which a special resolution is to be proposed shall be given at least 21 days prior to the date of the meeting.
- 15.8 A notice may be given by the Association to any member by serving the member with the notice personally, or by sending it by post to the address appearing in the register of members.
- 15.9 Where a notice is sent by post, service of the notice shall be deemed to be effected if it is properly addressed and posted to the member by ordinary prepaid mail.

16. **PROCEEDINGS AT MEETINGS**

- 16.1 Twenty percent (20%) or more of the members present personally, by authorised representative or by proxy shall constitute a quorum at any general meeting.
- 16.2 If within thirty minutes after the time appointed for the meeting a quorum of members is not present, a meeting convened upon the requisition of members shall lapse. In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place and if at such adjourned meeting a quorum is not present within 30 minutes of the time appointed for the meeting the members present shall form a quorum.
- 16.3 The Chairperson of the Committee or if there shall be no Chairperson, then the vice-Chairperson of the Committee or in their absence, or on their declining to take, or retiring from the chair, one of the Committee members chosen by meeting shall preside as Chairperson at every general meeting of the Association.

- 16.4 If there is no such Chairperson or vice-chairperson present within five minutes after the time appointed for holding the meeting, the members present may choose one of their number to be the Chairperson.
- 16.5 The Chairperson may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 16.6 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as if that meeting were an original meeting of members.
- 16.7 Questions arising at any general meeting shall be decided by a majority of votes, and in the event of equality of votes the Chairperson shall have a casting vote in addition to a deliberate vote.
- 16.8 At any general meeting, a declaration by the Chairperson of the meeting that a resolution has been carried or lost, shall unless a poll is demanded, be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, the resolution.
- 16.9 If a poll is demanded by the Chairperson of the meeting or by three or more members present personally, by their authorised representative or by proxy, it shall be taken in such manner as the Chairperson directs. The result of such poll shall be the resolution of the meeting, except that in the case of a special resolution a majority of not less than three quarters of the members who being entitled to do so vote personally, by their authorised representative or by proxy at the meeting is required.
- 16.10 A poll demanded on the election of a Chairperson of a meeting or on any question of an adjournment, shall be taken at the meeting and without adjournment.

16.11 Conduct at general meetings

The Chairperson may, following a majority vote of all members present, refuse admission to a general meeting to a person, or require a person to leave a general meeting and not return, if:

- 16.11.1 the person refuses to permit examination of an article in the person's possession;
- 16.11.2 the person is in possession of an article (including an electronic or recording device, placard or banner) which the Chairperson considers to be dangerous, offensive or liable to cause disruption; or
- 16.11.3 the Chairperson otherwise considers the person is causing or may cause undue disruption or interference with the efficient and proper conduct of the meeting.

17. MINUTES

- 17.1 Proper minutes of all proceedings of meetings of the Association and of meetings of the Committee, shall be entered within one month after the relevant meeting in minute books kept for the purpose.

17.2 The minutes kept pursuant to this Rule shall be signed by the Chairperson of the meeting at which the proceedings took place or by the Chairperson of the next succeeding meeting.

17.3 Where minutes are entered and signed they shall until the contrary is proved be evidence that the meeting was convened and duly held, that all proceedings held at the meeting shall be deemed to have been duly held, and that all appointments made at a meeting shall be deemed to be valid.

18. VOTING RIGHTS

Each member will have one vote in respect of each Marina Berth leased by that member.

19. PROXIES

A member shall be entitled to appoint in writing a natural person who is also a member of the Association to be his or her proxy, and attend and vote at any meeting of the Association.

20. ACCOUNTS

The Association shall keep such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the Association.

21. WINDING UP

The Association may be wound up in the manner provided for in the Act.

22. APPLICATION OF SURPLUS ASSETS

If after the winding up of the Association there remains "surplus assets" as defined in the Act, such surplus assets shall be distributed to such institution or institutions as approved by the members, prior to winding up provided that in no circumstances will the surplus assets be distributed to the members or any of them.

