

8 January 2026

Our Reference number: TS:24276

BY EMAIL: lesley@woodfordcarrlaw.com.au

Lesley Woodford-Carr
Woodford-Carr & Associates
PO Box 714
PARADISE POINT QLD 4216

Dear Ms Woodford-Carr:

**RE: THE SOVEREIGN ISLANDS GATEWAY COMPANY LIMITED ACN 005 013 230
NOTICE OF ANNUAL GENERAL MEETING FOR MEETING ON 15 JANUARY 2026**

As you know, we act on behalf of Ms Wei Zhang and Mr Yiu Andy Kwok in Supreme Court of Queensland Proceedings Number 4645 of 2025 (**the Proceeding**) against Sovereign Islands Gateway Company Limited (**the Company**). Ms Zhang is the registered owner of Lot 274 on Survey Plan 136228, being 14 King James Court, Paradise Point Queensland (**the Property**), and Mr Kwok previously owned the Property.

We understand that you act on behalf of the Company. Please let us know if this is no longer the case.

We refer to the following documents:

1. the Notice of Annual General Meeting issued by the Company on 17 December 2025 (**the Notice of Meeting**) of the Company, purporting to call a general meeting on 15 January 2026, including the documents attached to the Notice of Meeting, which includes but is not limited to a proposed new constitution (**the Proposed Constitution**);
2. the existing constitution of the Company (**the Current Constitution**), which we understand was approved at the 2022 Annual General Meeting of the Company;
3. the registered lease, dealing number 601395910, between the Gold Coast City Council as lessor and the Company as lessee of Lot 511 on Registered Plan 215032 (**the Lease**).

Our clients have significant concerns in relation to the Notice of Meeting and the terms of the Proposed Constitution. Our clients consider that the Proposed Constitution is not in the best interests of the members of the Company and appears to be drafted in a way which significantly and unreasonably:

1. increases the powers and discretions held by the board of directors from the position in the Current Constitution;
2. reduces the rights of members from the position in the Current Constitution; and
3. increase the obligations, liabilities and risk of members from the position in the Current Constitution,

without any reasonable explanation as to the basis for such significant changes. Further, the Proposed Constitution is generally vague, ambiguous, and various clauses in the Current Constitution have been removed without explanation of why they have been removed.

Summary of Key Concerns

The Notice of Meeting and the Proposed Constitution present serious issues to the members of the Company, including the following non-exhaustive matters, which are discussed in further detail in this letter:

1. **Timing of Meeting** – the amount of notice given to members of the AGM is unreasonable and appears designed to stifle due and proper consideration by members.
2. **Breach of Special Resolution Notice Requirements** - the Notice of Meeting does not comply with the *Corporations Act 2001* (Cth) in relation to the notice requirements for the amendment of the Current Constitution. Even if the members voted in favour of 'motion 2', which seeks to amend the Current Constitution, (which appears unlikely given the multitude of issues with the Proposed Constitution) any such resolution would be void and of no effect as the Company has failed to observe and comply with the requirements of the Corporations Act in relation to proposing special resolutions.
3. **Misleading and Deceptive Statements** - the explanatory memorandum included in the Notice of Meeting is misleading and deceptive in relation to the nature and extent of the changes proposed to the Current Constitution.
4. **Incorrect Company Type** - the Proposed Constitution erroneously records that the Company is "*a public company limited by guarantee*", when the Company is in fact recorded with ASIC as a public company limited by shares and guarantee.
5. **Breach of Lease** - the Proposed Constitution would cause the Company to be in breach of the Lease.
6. **Increased Risk of Claims Against Company** - the Proposed Constitution would give rise to claims against the Company pursuant to section 68 of the *Property Law Act 2023* (Qld).
7. **Impact on Ability to Raise Contributions** - the Proposed Constitution will reduce the Company's ability to raise levies against new lot owners in the future, which will increase the levies payable by existing lot owners.
8. **Oppressive Terms** - the Proposed Constitution contains multiple clauses which in their application would be oppressive, unfairly prejudicial, and/or unfairly discriminatory against a member or members, or contrary to the interests of the members as a whole.
9. **Inadequate Terms to Replace the Replaceable Rules** –the Proposed Constitution either does not expressly incorporate replaceable rules or provide alternative terms in relation to several key governance matters.

Questions Arising on the Proposed Constitution

In addition to the above problems, the Proposed Constitution raises the following unexplained issues:

1. **Increased Liability** - the guarantee of each member has increased from \$1.00 to \$100.00 (clause 5 of the Proposed Constitution). On what basis does the Company consider it appropriate to increase the guarantee one hundred fold?
2. **Corporate Members Would Become Ineligible For Membership** – It is unclear what would happen with current corporate members of the Company as:
 - a. the Current Constitution allows a corporation which owns a lot to be admitted as a member (clause 12.1) and for that corporation to appoint a representative to attend and vote at a general meeting (clause 23.5);
 - b. by the terms of the Proposed Constitution, it appears that only a natural person may be a member, as clause 9.1 states that a person is only eligible if “*the person is the registered Owner of a Lot*” or “*where the registered Owner is a corporation, the person is a director, officer, or controller of that corporation*”, and questions necessarily arise as to whether:
 - c. all current corporate members of the Company will become ineligible for membership under the Proposed Constitution and those members will cease to be members of the Company;
 - d. how those corporate members will vote at the Company’s general meetings in the future given that there is no right in the Proposed Constitution for a corporate member to appoint a representative.
3. **Application for Membership** – what is the form approved by the board for a person to apply for membership (as referred to in clause 10.1(a) of the Proposed Constitution) and why is there now an application fee of \$100 for new members to apply to the Company (clause 10.1(c) of the Proposed Constitution)?
4. **Discretion to Refuse Membership** - why does the board consider it is reasonable and in the best interests of members to introduce the ability for the board to have broad discretion to admit or refuse to admit an applicant (clause 11 of the Proposed Constitution), what factors would the board consider in exercising such discretion to admit or refuse to admit an applicant, and would the application fee of \$100 be refunded if an applicant’s membership is refused?
5. **Broad Power to Suspend or Expel Members** - why does the board consider it is reasonable and in the best interests of members for the board to be provided with the broad ability to suspend or expel members (clause 26 of the Proposed Constitution) with no right of appeal? If the Board were to exercise such capricious powers, what would happen to that member’s shareholding in the Company?
6. **Addition of a Member Indemnity** - why does the board consider it is reasonable and in the best interests of members to introduce a broad indemnity (clause 24 of the Proposed Constitution) to be provided by the members in favour of the Company?

7. **Expanded Powers of Board and Finality of Decisions** - why does the board consider it is reasonable and in the best interests of members:
- a. for the board to be provided with “...*absolute and unfettered discretion to manage the affairs of the Company and to exercise all powers conferred upon it by this Constitution, including (without limitation) the power to admit, refuse, suspend, or expel Members and to determine all matters relating to membership*” (clause 43 of the Proposed Constitution);
 - b. for the board not to have any requirement to provide reasons for any decision made by the board (clause 44 of the Proposed Constitution);
 - c. for decisions of the board to be final and binding on the Company and members (clause 45 of the Proposed Constitution); and
 - d. to limit challenges to the board’s decisions, including decisions which are “*unreasonable, harsh, or incorrect*” (clause 46 of the Proposed Constitution)?
8. **Changes to Delegation Powers** - why has the board’s power of delegation (clause 28.3 in the Current Constitution) been changed from requiring a power of attorney, which would require a formal document setting out the terms, to a general delegation that does not require a power of attorney?
9. **Removal of Conflicts of Interest Requirements** - why have the requirements surrounding director conflicts of interest in the Current Constitution (clause 30) been removed from the Proposed Constitution? This is particularly troubling given the recent disclosure by the Company that a director (now resigned) had an undeclared interest in a subcontractor of the Company.
10. **Removal of Director Record Keeping Obligations** - why have the requirements for the directors to take reasonable steps to ensure that the Company’s records are kept safe in the Current Constitution (clause 33.4) and to ensure that the Company’s financial reports to be prepared and distributed to all members at least once per annum in the Current Constitution (clause 33.5) been removed from the Proposed Constitution?
11. **Removal of Reserve Fund** - why has the provision in the Current Constition (clause 34) to allow for a reserve fund been removed from the Proposed Constitution?
12. **Current Members and Shareholders** – the Notice of Meeting provides the following statement:

“Clarification Regarding Attendance at 2025 AGM

References to “owners represented” do not imply that those individuals are Members of the Company within the meaning of clause 12 of the Constitution.

A person is only a Member if their application has been approved by the Board and their name entered into the Register of Members. Ownership of a lot alone does not confer membership or any entitlement to attend, vote, or appoint a proxy at Company meetings.

Attendance by a lot owner who is not a Member does not form part of the quorum and does not confer voting rights”,

Given the wording in clauses 48 to 52 of the Proposed Constitution and the significance of membership, it is incumbent on the Company to explain and identify:

- a. who are the current members of the Company?
- b. who is entitled to attend and vote at the proposed AGM?
- c. who are the current shareholders of the Company?
- d. which lot owners does the Company consider are members of the Company?
- e. Which lot owners does the Company consider not to be members of the Company?
- f. are there any present members of the Company who are not the registered owner of the lot?
- g. if there are 10,000 shares on issue but only 100 issued, who owns the 100 shares; and
- h. which lot owners have a share issued to them?

Problems with the Notice of AGM and the Proposed Constitution

1. Timing of Notice of Meeting and Annual General Meeting

The amount of notice (17 December 2025) given to members of the AGM scheduled to be held on 15 January 2026, is unreasonable where:

1. the Notice of Meeting proposes, by Motion 2, to amend (significantly) the Current Constitution;
2. the proposed changes to the Current Constitution significantly alter the rights and obligations of members and the rights of the board of directors, and are matters which members may reasonably wish to acquire legal advice in relation to prior to the annual general meeting;
3. the Notice of Meeting was issued just prior to the date which the majority of most law firms close for several weeks;
4. the period of 17 December 2025 to 15 January 2026 is during a time when many members may reasonably be expected to be on holidays;
5. the meeting is scheduled on a date which is only a few days after most law firms re-open; and
6. in the circumstances it is reasonably foreseeable that it will be difficult, if not impossible, for members to obtain legal advice on Motion 2 and the Proposed Constitution prior to the annual general meeting.

2. Breach of Requirements for Special Resolution to Alter Constitution

Clause 19 of the Current Constitution provides that:

The Company may only by Special Resolution in General Meeting alter the provisions of this Constitution.

Clause 21.7(c) of the Current Constitution provides that:

21.7 A notice of a meeting of Members must:

...
(c) *If a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and state the words of the resolution; ...*

Those clauses are consistent with sections 136(2) and 249L(1)(c) of the Corporations Act, respectively.

The Notice of Meeting records the following proposed motion for voting (**Motion 2**):

"2. Amendment of Constitution of Sovereign Islands Gateway Company Limited A.C.N. 005 013 230

That the Constitution of Sovereign Islands Gateway Company Limited A.C.N. 005 013 230 be amended in accordance with the draft Amended Constitution attached."

The Notice of Meeting does not identify that Motion 2 is intended to be passed as a special resolution at the annual general meeting, as required by clause 21.7(c) of the Current Constitution and section 249L(c) of the Corporations Act.

Section 250MA of the Corporations Act provides that a resolution will only have effect as a special resolution if:

- (a) the notice of meeting includes the information required by section 249L(1)(c) of the Corporations Act;
- (b) is passed by at least 75% of members entitled to vote on the resolution and
- (c) the resolution is otherwise valid.

Given the Company's failure to comply with clause 21.7(c) of the Current Constitution and section 249L(c) of the Corporations Act, Motion 2 cannot be passed on 15 January 2026 and any purported resolution to that effect would be invalid and of no effect.

3. Company Type

As evidenced by the current ASIC search of the Company, the Company is a public company limited by shares and guarantee.

The Proposed Constitution incorrectly states that the Company is "*a public company limited by guarantee*".

The Company cannot change its company type by simply recording a different company type in its constitution. Any attempt to change the Company from a company limited by shares and guarantee to a company limited by guarantee would be void and of no effect.

4. Misleading and Deceptive Statements in Explanatory Memorandum

The Notice of Meeting includes an explanatory memorandum (the **Explanatory Memorandum**) which includes the following statements:

“This Explanatory Memorandum has been prepared to help members understand the business to be put to members at the forthcoming annual general meeting.”

“2. Amendment of the Constitution of Sovereign Islands Gateway Company Limited A.C.N. 005 013 230

The Board proposes that the Constitution of Sovereign Islands Gateway Company Limited be amended and replaced with a revised Constitution.

The current Constitution contains legacy drafting which, over time, has given rise to ambiguity by mixing concepts of “shares”, “members”, and “contributions”, and by not clearly separating membership from ownership of a Lot. The proposed revised Constitution is intended to remove those ambiguities and modernise the governance framework of the Company.

In particular, the revised Constitution makes it explicit that:

- the Company is a company limited by guarantee, not by shares;*
- membership is personal, discretionary, and non-proprietary;*
- ownership of a Lot confers a right to apply for membership, but does not of itself confer membership; and*
- membership is not property and does not confer any equitable or beneficial interest in the Company or its assets.*

There is currently litigation on foot in the Supreme Court of Queensland (Proceeding No. BS 4645/25). That proceeding concerns the proper construction and application of the existing Constitution and is listed for trial on 31 March and 1 April 2026.

The proposed revised Constitution is not intended to affect that proceeding, which will be determined by reference to the Constitution in force at the relevant times. Rather, the proposed amendment is brought to clarify the Company’s governance arrangements going forward, to reduce ambiguity, and to minimise the risk of similar disputes arising in the future.

The Board recommends that members approve the proposed amendment.”

The Explanatory Memorandum appears to inform members that there is ambiguity in the Current Constitution, and the Proposed Constitution removes such ambiguity by making it explicit that:

1. the Company is a company limited by guarantee, not by shares;
2. membership is personal, discretionary, and non-proprietary;
3. ownership of a Lot confers a right to apply for membership, but does not of itself confer membership; and
4. membership is not property and does not confer any equitable or beneficial interest in the Company or its assets,

and that the Proposed Constitution modernises the governance framework of the Company.

This is misleading and deceptive as a reasonable member would believe that:

1. the Company is a public company limited by guarantee and the Proposed Constitution corrects an error in the Current Constitution, when the Current Constitution correctly provides under clause 2 that the Company is a public company limited by shares and guarantee and the Proposed Constitution incorrectly states under clause 4 that the Company is a public company limited by guarantee;
2. the correct construction of the Current Constitution is that membership is intended to be personal, discretionary, and non-proprietary, and the Proposed Constitution corrects ambiguity when:
 - a. such interpretation is not consistent with the express wording of clauses 11, 12, 13, 16, 17, 18 and 20 of the Current Constitution which evidence that membership is intended to be transferable, non-discretionary and propriety;
 - b. such interpretation is not consistent with the requirements of the Lease (as discussed further below), and

therefore the passing of the Proposed Constitution would seek to alter the members rights from currently being transferable, non-discretionary and propriety under the Current Constitution to being personal, discretionary, and non-proprietary under the Proposed Constitution; and

3. under the Current Constitution, it was intended for membership of a lot to only confer a right to apply for membership which is subject to the discretion of the board of directions, and the Proposed Constitution corrects ambiguity, when under clause 12 of the Current Constitution it is clear that there is no discretion provided requirements are met, as clause 12 expressly states the board "*will admit to Membership of the Company any natural person or corporation that...*" has met the requirements in clause 12, without the provision of any discretion to the board to reject membership.

Further, the Explanatory Memorandum does not inform members of:

1. the significant changes to members rights, liabilities or obligations; or
2. the significantly increased powers and discretions of the board of directors,

and the exclusion of any such explanation for such fundamental changes with the limited false explanation (that it is to 'remove ambiguity' and 'modernise governance') is misleading and deceptive.

5. Proposed Constitution Constitutes a Breach of the Lease

Clause 3.05(a) of the Lease provides as follows:

"The lessee shall not without the written consent of the lessor use or permit the demised premises to be used for purposes other than or not relevant to:-

- (i) *the provision of security services of a nature and extent to be determined by the lessee for the benefit of the residents and registered proprietors from time to time of lots on The Sovereign Islands (who are current with their due and reasonable contributions to the lessee to the cost of the operation of the function of the lessee) and the provision of security, traffic information and connected, related or ancillary purposes contemplated below PROVIDED THAT the lessee must not prevent or impede unduly access to any public road by anything done or purportedly done in the provision of any such service..."*

Clause 3.13 of the Lease provides as follows:

- (a) *At all times throughout the currency of this lease the lessor shall have a right to appoint from time to time a director to the Board of Directors of the lessee should the lessor see fit to do so.*
- (b) *The lessee covenants that it will not at any time during the currency of this lease amend or permit the amendment of its Memorandum and Articles of Association without the written approval of the lessor in any way which might derogate from the right conferred on the lessor by sub-clause 3.13(a).*
- (c) *The lessee covenants that at the time Lewiac Pty Limited ceases to be the registered proprietor of any land within The Sovereign Islands the shares in the lessee and the control of the lessee, subject to the lessor's right to appoint a director, shall vest in the registered proprietors from time to time of the lots in the Sovereign Islands conferring on each registered proprietor from time to time who is current with his due and reasonable contributions to the lessee specified in sub-clause 3.05(a), equal voting rights with each other such registered proprietor at general meetings of the lessee.*

Clause 3.15 of the Lease provides as follows:

- (a) *The lessee shall ensure that at all times throughout the currency of this lease the lessee shall maintain and collect from its shareholders regular contributions to a fund which fund shall be kept separate from any other moneys of the lessee and which fund is to cover the operations of the lessee so far as they relate to the use of the demised premises and the operation of the security gate system and the payment of expenses involved in maintenance, wages, and insurance and payable by the lessee pursuant to the terms of this lease and the costs of operation by the lessee of the use permitted by Clause 3.05 and all matters incidental thereto...*

As required by the Lease, the Current Constitution contains the requirement (clause 24.2) for the Gold Coast City Council to have the power to appoint and remove, by memorandum in writing, not more than 1 Director of the Company at any time.

The Proposed Constitution has removed this requirement, which if passed would be in breach of clause 3.13(b) of the Lease.

Pursuant to clause 3.13(c) of the Lease, from the time Lewiac Pty Ltd ceased to be the registered proprietor of land within The Sovereign Islands, the shares in the Company and control of the Company were required to be vested in the registered proprietors of lots in the Sovereign Islands from time to time conferring on each registered proprietor from time to time who are current with their due and reasonable contributions to the Company, equal voting rights with each other such registered proprietor at the general meetings of the Company.

Accordingly, when considering the Current Constitution together with the requirements of the Lease and deeds signed by members, it is abundantly clear that:

1. it was intended that any registered proprietor in the Sovereign Islands could apply to be a member of the Company as long as they paid their reasonable contributions;
2. the shares of the Company should have been vested in the members when Lewiac Pty Ltd ceased being the registered proprietor of the land within the Sovereign Islands; and

3. each lot owner within the Sovereign Islands must be a member of the Company, as required by the Lease with the Gold Coast City Council;
4. the members should all have shares issued and those shares should be transferable as provided in the Current Constitution.

The Proposed Constitution would be in breach of clause 3.13(c) of the Lease, as it seeks to limit the members to those approved by the board, when clause 3.13(c) of the Lease expressly requires the Company to allow the shares and control of the Company to be vested to all registered proprietors from time to time and equal voting rights to be provided to any registered proprietor who pays contributions.

The Company's apparent position that some registered lot owners are not members or shareholders of the Company is untenable and would appear to constitute a repudiation of the Lease with the Gold Coast City Council.

6. Increased Risk of Claims Due to Contracts for the Benefit of Third Parties

The Proposed Constitution would also give rise to claims by persons who are registered proprietors in the Sovereign Islands and apply for membership, but are rejected by the board of directors. This is because any registered proprietor whose application for membership is rejected could bring a claim against the Company pursuant to section 68 of the *Property Law Act 2023* (Qld), as:

1. the Lease is a contract between the Gold Coast City Council and the Company;
2. clause 3.13(c) contains a promise by the Company to the Gold Coast City Council that the Company will vest shares and control of the Company in the registered proprietors from time to time, and confer equal voting rights to any registered proprietor that pays reasonable contributions with each other such registered proprietor at general meetings of the Company (the **Promise**);
3. the Promise is for the benefit of third parties, being each of the registered proprietors of Sovereign Islands lots who are not a party to the Lease; and
4. therefore the Promise is enforceable by any registered proprietor of a Sovereign Islands lot.

7. Impact on Ability to Raise Contributions

Pursuant to section 140 of the Corporations Act, a company's constitution has effect as a contract between the company and each of its members. A company constitution cannot bind a person who is not a member of that company.

The Current Constitution is drafted to ensure that, in respect of each lot, there is always a person who is a member of the Company responsible for paying the contributions to the Company under clause 14 of the Current Constitution, which membership persists until the Company approves the transfer of membership (clauses 13.1 and 17.1).

The Proposed Constitution provides that a member immediately ceases to be a member if the member ceases to be the registered owner of a lot (clause 13) and that person remains liable for levies accrued prior to cessation (clause 14(c)).

The effect of this is that if an owner sold their lot, their membership would immediately cease and there would be no lot owner responsible for levies unless and until the new lot owner applied for membership and membership was approved by the board (which would be at the board's sole discretion). If the new owner did not apply for membership, the board has no legal basis to charge contributions to the new owner or the old owner, and this would result in the other members being required to pay increased levies due to the decreased number of members.

The Proposed Constitution seeks to provide that the board determines levies payable by lot owners (clause 16.1) and liability for levies applies irrespective of membership status (clause 16.3); however, lot owners who are not members would not be bound to the Proposed Constitution and clauses 16.1 and 16.3 would have no legal effect on lot owners who are not members.

The only way new lot owners would be bound to pay levies is if they applied for membership and became members of the Company.

8. Oppressive, Unfairly Prejudicial, and/or Unfairly Discriminatory Terms

Clauses 8 to 12 of the Proposed Constitution are oppressive, unfairly prejudicial and/or unfairly discriminatory to members, for example as:

1. a new owner would have to pay a \$100 application fee where the board could reject the application at its discretion; and
2. these provisions may affect the sales prices or ability for members to sell their houses, as an incoming buyer may want assurances they would be accepted as a member, but the board would have absolute discretion to reject a potential buyer which could be discriminatorily applied by the board to either punish the current owner or to keep certain people out of the Sovereign Islands.

Clauses 13 to 15 of the Proposed Constitution are oppressive, unfairly prejudicial and/or unfairly discriminatory to members, as they provide that membership is personal and non-transferable and ceases immediately upon a person ceasing to be a registered member of a lot, which means for example:

1. where a member has lost capacity (which could be temporary for example due to a surgery) their lawful power of attorney or an administrator appointed by QCAT could not take their place as a member as they would not be the registered proprietor, unlike clause 18.3 of the Current Constitution which allows for this;
2. where a member has died and their personal legal representative has transferred the property to the personal legal representative to hold on behalf of the estate, the legal personal representative would not be recognised as a member as membership would not transfer automatically as it currently would under clauses 18.1 or 18.3 of the Current Constitution; and
3. where a member has been subject to a family law property order requiring the transfer of the property to a former partner, the share would not transfer and the former partner would need to apply to the Company for membership with no assurance whether they would be accepted or not, creating uncertainty in family law proceedings as to the rights and obligations surrounding the property;

Clause 18.4 of the Proposed Constitution is oppressive, unfairly prejudicial and/or unfairly discriminatory to members, as it provides that no member has standing to enforce rights under

the Lease, when a person who is a registered proprietor would have rights under section 68 of the *Property Law Act 2023* (Qld) to enforce such rights discussed above.

Clause 24 of the Proposed Constitution is oppressive, unfairly prejudicial and/or unfairly discriminatory to members, as it provides broad indemnities to the Company for various matters “*unless the Member obtains a final judgment wholly in the Member’s favour*” which means that even if the member brought a justified proceeding or demand against the Company or a director, if the matter was resolved or settled before a final judgment the Company would be indemnified notwithstanding that the member was correct. For example, if a member was injured due to the negligence of the Company and brought a claim against the Company, and the Company settled with the member prior to a final judgement the member would be required to indemnify the Company.

Clause 25 of the Proposed Constitution is oppressive, unfairly prejudicial and/or unfairly discriminatory to members, as it provides the board with complete discretion to determine if a member has commenced or pursued proceeding that are vexatious, frivolous, misconceived, or an abuse of process and provides the Company may recover its costs as a debt, when the board should not have any discretion to determine such matters unilaterally and they would need to be determined by a court of appropriate jurisdiction.

Clause 26 of the Proposed Constitution is oppressive, unfairly prejudicial and/or unfairly discriminatory to members, as:

1. it seeks to provide the board with broad power (which it does not currently have) to suspend or expel a member if the board determines the member has breached the Proposed Constitution, acted contrary to the interests of the Company, engaged in conduct detrimental to the operations or reputation of the Company, or failed to comply with any lawful direction, policy, or by-law of the Company;
2. there is no ability for a member to remedy such defaults;
3. the power could be exercised no matter how minor the default at the complete discretion of the board, which means for example if a member was a day late paying levies the board could expel them which is unreasonable;
4. it is provided that the decision of the board is final and binding and is not subject to internal appeal, which is completely unreasonable as such discretion could be applied unreasonably, unfairly or discriminatorily and members should have a way to ensure that powers are exercised fairly.

Clauses 43 to 47 the Proposed Constitution is oppressive, unfairly prejudicial and/or unfairly discriminatory to members as they seek to provide absolute power and discretion to the board in relation to several matters, with no obligation to provide reasons, and limit challenges even if they are due to decisions which are unreasonable, harsh or incorrect. This means that if the board acted in good faith based on information they believed was correct but it was later found that the decision was based on wrong information, the member could not challenge the decision.

9. Inadequate Terms to Replace the Replaceable Rules

Clause 40.1 of the Proposed Constitution provides that the replaceable rules do not apply, except to the extent that they are expressly incorporated by the Proposed Constitution or are mandatory by law.

The Proposed Constitution is missing numerous clauses from the Current Constitution, with no explanation for their removal, which were included in the Current Constitution as a substitute for the replaceable rules, and there is no express statement in the Proposed Constitution that the applicable replaceable rule applies, leaving many governance matters of the Company where no rule would apply, including but not limited to the following examples:

1. **Alternate Directors** - clause 25 of the Current Constitution includes terms in relation to the appointment of alternate directors in substitution of section 201K of the Corporations Act; however, there is no similar term in the Proposed Constitution;
2. **Remuneration of Directors** – clause 27.20 of the Current Constitution provides restrictions on payments that may be made to directors in replacement of section 202A of the Corporations Act; however, there is no similar term in the Proposed Constitution;
3. **Resignation of Directors** – clause 26 of the Current Constitution provides various ways in which directors would vacate office, which includes by resigning in writing to the Company in replacement of section 203A of the Corporations Act; however, there is no similar term in the Proposed Constitution;
4. **Company Secretary** – clause 31 of the Current Constitution provides terms and conditions of the office for secretaries of the Company in replacement of section 204F of the Corporations Act; however, there is no similar term in the Proposed Constitution;
5. **Chairing of Meetings of Members** – clause 22.3 of the Current Constitution provides terms in relation to the chairing meetings of members in replacement of section 249U of the Corporations Act; however, there is no similar term in the Proposed Constitution.

Withdrawal of Motion for Proposed Constitution

Due to the matters outlined above, it is evident that the Proposed Constitution is not in the best interests of the members of the Company, Motion 2 is invalid and the Proposed Constitution would be void, and accordingly the motion to pass the Proposed Constitution should be withdrawn.

There is no ambiguity in the Current Constitution, and it is clear that all members should have been issued shares. If shares have not been issued to members of the Company as is required by the Current Constitution and the Lease, the appropriate action should be for the board to rectify that failure by issuing a share to each member in respect of each lot, rather than to seek to change the Current Constitution to remove the requirement for shares to be issued (which would be of no effect and in breach of the Lease).

Notice of Challenge

Our clients hereby place the Company on notice that they will approach the court to set aside any motion which purports to adopt the Proposed Constitution and we will provide this letter to the court on the question of costs in those circumstances.

Our clients continue to reserve all of their rights.

Yours faithfully
NAUTILUS LAW GROUP

By Email

Tyler Smith

SOLICITOR