



Australian
Institute of
Architects

Notice of Annual General Meeting and explanatory notes

The Royal Australian Institute of Architects
Limited

ACN 000 023 012

Date: 16 May 2017
Time: 12.30pm
Place: Queensland Chapter
70 Merivale Street, Brisbane

Notice of annual general meeting

The 88th annual general meeting of Members of
The Royal Australian Institute of Architects Limited (ACN 000 023 012)
will be held at the Queensland Chapter, 70 Merivale Street, Brisbane at 12.30pm on 16 May 2017.

Business

1. Minutes

To adopt the minutes of the 87th Annual General Meeting of the Institute held in Melbourne on 13 May 2016.

2. Financial statements and reports

To receive the Institute's financial statements for the year ended 31 December 2016.

3. Auditor's Report

To receive the auditor's certificate and report on the Institute's financial statements for the year ended 31 December 2016.

4. Board Report

To receive the Board's report on the Institute's transactions and accounts for the year ended 31 December 2016.

5. Remuneration of Directors

To consider and vote on the amount in aggregate available for the remuneration of directors, as follows:

That, for the purposes of Article 31C and for the financial year to 31 December 2018, the Members approve the amount of \$50,000 inclusive of superannuation (if applicable) as the maximum amount in the aggregate available to pay fees or benefits to directors.

6. Special Resolution: Constitution

To consider and vote on a resolution under Article 87 to amend the Institute's current Memorandum and Articles of Association, in the alternate as follows:

A. *That, under section 136(2) of the Corporations Act 2001, the Memorandum and Articles of Association of the Institute are replaced by the proposed '**Charitable**' Constitution attached as Attachment A to this Notice of Meeting.*

OR, failing that resolution:

B. *That, under section 136(2) of the Corporations Act 2001, the Memorandum and Articles of Association of the Institute are replaced by the proposed '**Revised**' Constitution attached as Attachment B to this Notice of Meeting.*

7. Other business

To announce the appointment of the new officers of the Institute, elected by the Institute's National Council at its meeting in May 2017.

By order of the Board

Date 18 April 2017

Signed



Name

Ian Wilson

Company Secretary

Voting and proxies

Forms of voting

Members will be able to cast their vote either:

- *In person* at the meeting; or
- By submitting a *proxy form*.

The Director Legal Advisory and Governance will tally the votes at the AGM.

Proxies

A Member who is entitled to attend and vote at the meeting may appoint in writing a proxy to attend and vote on their behalf.

Members entitled to vote: **LFRAIA, FRAIA, Member Level 1** and **Affiliate Level 1**.

An appointed proxy does not need to be a Member of the Institute.

Instructions How to Vote by Proxy

To vote by proxy, please complete and sign the attached proxy form and return it to the Institute as soon as possible.

For the appointment of your proxy to be effective: your nominated proxy (or attorney) must sign the form and you must return the authority under which the proxy form is signed (or a certified copy of the authority) to the Institute **by no later than 5pm (AEST Melbourne time) on 14 May 2017**.

Proxies may be lodged with the Company Secretary by the following methods:

By mail: The Company Secretary
The Royal Australian Institute of Architects Limited
Level 1, 41 Exhibition Street,
Melbourne Vic 3000

By fax: (03) 8620 3864. Attention to the Company Secretary.

By email: to the Company Secretary, at constitution@architecture.com.au

Directing your Proxy How to Vote

A proxy may decide whether to vote on any motion, except where the proxy is required by law or the Constitution to vote, or abstain from voting, in their capacity as proxy. You can direct your proxy how to vote on an item of business. If you direct your proxy how to vote, the proxy must vote on that item only in accordance with your direction. If you do not direct your proxy how to vote on an item of business, the proxy may vote as they think fit.

Proxies Held by Chairperson

If a Member appoints the chairperson of the meeting as the Member's proxy and does not specify how the chairperson is to vote on an item of business, the chairperson will vote, as proxy for that Member, in favour of that item on a poll.

Further Information

For questions or further information, please contact us at constitution@architecture.com.au.

Explanatory notes

Note: These Explanatory Notes should be read together with the attached Notice of Meeting, proxy form and all attached schedules.

1. Financial statements and reports

- 1.1 The Corporations Act 2001 (Cth) requires the financial report (which includes the financial statements and directors' declaration) to be put before the annual general meeting.
- 1.2 There is no requirement in the Corporations Act nor the Institute's constitution for Members to approve the financial report.
- 1.3 Members will be given a reasonable opportunity at the meeting to ask questions and make comments on these reports.

2. Remuneration of Directors

- 2.1 Under Article 31C, the National Council has the delegated power to determine whether all or the independent directors are to be remunerated, and the amount of that remuneration.
- 2.2 However, it is for the Members in general meeting to decide on the maximum amount or 'pool' of money that the Institute will set aside for the remuneration of directors. This way, the Members set the 'pool' out of which the National Council can remunerate directors.
- 2.3 In 2016, National Council resolved that, for financial year 2017, the amount of \$48,000 inclusive of superannuation (if applicable) was to be the maximum amount in the aggregate available for directors' remuneration.

3. Special Resolution: Constitution

- 3.1 The Members are asked to consider and vote on a special resolution to amend the Institute's current Memorandum and Articles of Association (**the M&AA**) under Article 87.
- 3.2 This special resolution is set out as alternative resolutions. The Members are asked to vote on the wording and effect of resolution 6A. If that vote does not pass, the Members are then asked to vote on the wording and effect of resolution 6B.
- 3.3 Members will be given a reasonable opportunity at the meeting to ask questions and make comments on these reports.

Recommendation: In Favour

- 3.4 The proposal for the Members to adopt the Charitable Constitution has the unqualified support of the National President, the Chief Executive Officer, the Company Secretary, the Director Legal Advisory and Governance.
- 3.5 The Board and National Council unanimously recommend to the Members that they vote in favour of special resolution 6A to replace the Institute's M&AA with a revised easy-to-understand Constitution, in the form of the proposed 'Charitable' Constitution (see Attachment A) that best positions the Institute to apply for tax-exempt charitable status.

Background Summary

- 3.6 It is unanimous that the Institute should adopt 'best practice' in governance. However:
 - (a) The Institute's M&AA are considered an out-dated form of company constitution. Modern constitutions no longer adopt the 'memorandum' and 'articles' structure.

- (b) The Institute is a company that is governed by the *Corporations Act 2001* (Cwth). The Articles do not reflect the requirements of the Act and regulations and do not contain provisions that must be included.
- (c) The language of the Articles are difficult to understand by a lay person, contain ambiguities and inconsistent usage of terms. Numbering and location of Article provisions don't always reflect a logical, easily-accessible order.
- (d) The current 'Objects' in the Memorandum of Association state the purpose for which the Institute was created and exists. The current Objects, as written, are unlikely to support an application to the Australian Charity and Not-for-Profit Commission (**the ACNC**) to register the Institute for tax-exempt charitable status.

4. Why do we need a 'Charitable' Constitution?

4.1 The case in favour of the Members of the Institute adopting a modern form of constitution is straightforward:

1. Better Governance = less cost; less risk. A revised constitution document:

- will be more easily understood by Members.
- will be compliant with all corporations law requirements.
- will assist the staff and officers of the Institute to carry out the Objects and key governance procedures of the Institute.
- can assure better governance and less procedural and compliance risk.

2. ACNC registration = tax exemptions. A revised document is an opportunity to also shape the Institute's key governance document to reflect our activities and support registration as a tax-exempt charitable status with the ACNC and the material benefits that come with that.

Note: tax-exempt charitable status with the ACNC is not the same as being registered as a deductible gift recipient (**DGR**) entity. The Australian Institute of Architects Foundation continues to be the entity that was established for the purposes of having DGR status.

5. Why do we need to revise the Constitution at all?

5.1 As currently written, the M&AA document is not a 'best practice' constitution document for a contemporary industry organisation like the Institute. For the following reasons:

- ✘ **Difficult to interpret and administer governance.** Legal Counsel has identified a number of inconsistencies and ambiguities in the current Memorandum and Articles document. These make it difficult to interpret the document and give clear, confident advice to the Institute and its officers. In turn, this creates uncertainty (at best) and potential reputational or compliance risk (at worst) when staff and officers need to administer the principles and procedures in this document.
- ✘ **Not best practice.** The 'memorandum and articles of association' form of document does not represent best practice documentation for company constitutions. Since 2001, the 'Constitution' form of document that reflects Corporations Act requirements is considered best practice. There are also important legal requirements that are missing from the current document. As above, this can mean uncertainty and risk. As a key document, it doesn't reflect the current strategic direction and purpose of the Institute.
- ✘ **Not adapted for ACNC:** Preliminary advice says that the current Memorandum and the Objects are not well adapted to position the Institute as a registered ACNC not-for-profit. Being registered with the ACNC also means becoming eligible for favourable tax-exemptions.

For an organisation like the Institute, there are significant tax benefits that will flow to improve its financial standing and operations and ultimately benefit Members.

6. ACNC tax-exempt charitable status

- 6.1 If the Institute is successfully registered as a charity with the ACNC, the following tax concessions from the ATO apply:
- (a) **Income tax exemptions** = lower or nil tax liability on all future surpluses.
 - (b) **GST concessions** = GST credits on gifts, on some sales, volunteer reimbursements.
 - (c) **Fringe benefits tax rebates** = lower cost of benefits paid to staff and officers.

7. Benefits of tax-exempt charitable registration with the ACNC

- 7.1 Ultimately, tax-exempt status means the Institute effectively gets the benefit of a lower cost of running its operations. Lower cost means more money is retained by the Institute (instead of being paid to the tax office). This means the Institute has more money to then invest into member products, resources and services, or to deliver discounts on Members' annual subscriptions.
- 7.2 Achieving ACNC registration and tax-exempt status would be an unambiguous mutual win for the Institute as an organisation and for Members.
- 7.3 Note: ACNC registration does not mean DGR status and the Institute does not currently intend to apply for DGR status as part of or following this proposed application.

8. How can we achieve ACNC tax-exempt charitable status?

- 8.1 This first step is to adopt a form of constitution that best positions the Objects to reflect its charitable and public-benefit purposes and activities. This is what this item of business is intended to achieve.
- 8.2 Changes to the Memorandum and Articles of Association need a special resolution (Article 87). A special resolution must be voted on by Members at a general meeting and get at least 75% of the eligible member votes. The 2017 AGM is a good opportunity to put the proposed constitution documents to the Members to vote on.
- 8.3 At the 2017 AGM, Members will be asked to vote on 2 draft versions of the proposed, revised constitution. The wording of the resolution is phrased as an either/or alternative resolution. The Members can vote to adopt either:
- (a) the comprehensively revised Constitution including changes to position the Institute for an application for tax-exempt charitable status (**the 'Charitable' Constitution**);
- OR, *if that vote fails*, Members are asked to vote to adopt:
- (b) the simple, revised Constitution without the improvements or changes for tax-exempt charitable status (**the 'Revised' Constitution**).
- 8.4 Legal Counsel has asked a law firm with expertise in the Not-For-Profit sector to prepare a revised, modern-form of constitution document that best serves the Institute and its Members and positions the Institute's key governance document to adopt charitable objects. In turn, this better positions the Institute for ACNC tax-exempt status. This is the proposed 'Charitable' Constitution included as Attachment A.
- 8.5 At a minimum, **the 'Revised' Constitution** document (Attachment B):
- ✓ Reflects the terms of the current Memorandum and Articles that are unique to the Institute and essential to our governance structure.

- ✓ As far as possible, uses wording (such as the 'Objects' of the Institute) that will be familiar to Members.
 - ✓ Includes a table setting out the characteristics of the different categories of Membership.
 - ✓ Is practical and easy to understand.
 - ✓ Is compliant with all relevant legislation and regulations.
- 8.6 In addition, the revised '**Charitable Constitution**' goes further and:
- ✓ addresses and improves those key parts of the M&AA which currently could hinder a successful application to the ACNC.
- 8.7 The next step is to apply to the ACNC for registration on the ACNC Register. There is no guarantee that the ACNC will accept registration. A successful application will depend on factors like the stated objects and activities of the specific organisation that is applying. This is why it's important that our key constitutional document reflects the intended charitable purposes that align with the ACNC legislation and that our activities continue to reflect those charitable purposes. See paragraph 2.1 of the draft 'Charitable' Constitution.
- 8.8 Even if there are no guarantees of getting tax-exempt status, the benefits if we do far outweigh any downside of improving our constitution and applying to the ACNC.
- 8.9 If our ACNC application is accepted, the third step is to apply to the Australian Taxation Office for tax-exempt status. Typically the ATO accepts these applications on the back of an ACNC registration.

9. How can I understand the proposed changes?

- 9.1 It is important that Members understand the effect of the changes in the revised constitution document we are proposing and to be reassured that their substantive rights and interests in the Institute won't be reduced. To assist members, our legal advisers have also prepared:
- (a) **An explanatory letter** that *explains* the process of drafting the proposed Constitution; *confirms* that the proposed Constitution does not substantively change the effect or intent of the Constitution; and *summarises* significant changes in the proposed Constitution.
 - (b) **A comparison table** explaining clause-by-clause exactly what has changed, and how the revised sections relate to the replaced sections (and numbering).
- 9.2 Members are encouraged to read through the draft constitutions in full, but we appreciate that members are often short on time. If that's the case for you, we strongly encourage you to read, at a minimum, the explanatory letter and comparison table in Attachment C and Attachment D.
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Proxy form for annual general meeting

I _____
of _____ (business address)

being a Corporate Member of The Royal Australian Institute of Architects (ACN 000 023 012), with the
Institute membership number _____ appoint:

Name _____
of _____

or, failing that person, the Chairperson of the Meeting to act as my proxy at the General Meeting of the
Institute to be held at 12.30pm on 16 May 2017 [**Note: this proxy must be received by the Institute no
later than 5pm on 14 May 2017**] and at any adjournment of that meeting.

Signature of Member _____

Date: _____ 2017

SECTION B (optional)

I direct my proxy to vote as follows (if applicable):

Resolution No.	Particulars	For	Against	Abstain
1.	To adopt the minutes of the 87th Annual General Meeting of the Institute held in Melbourne on 13 May 2016.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	That, for the purposes of Article 31C and for the financial year to 31 December 2018, the Members approve the amount of \$50,000 inclusive of labour costs as the maximum amount in the aggregate available to National Council to pay fees or benefits to directors.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.A	That, under section 136(2) of the Corporations Act 2001, the Memorandum and Articles of Association of the Institute are replaced by the proposed ' Charitable ' Constitution attached as Attachment A to this Notice of Meeting. OR, failing that resolution:	<input type="checkbox"/> AND	<input type="checkbox"/> AND	<input type="checkbox"/> AND
6.B	That, under section 136(2) of the Corporations Act 2001, the Memorandum and Articles of Association of the Institute are replaced by the proposed ' Revised ' Constitution attached as Attachment B to this Notice of Meeting.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*You may direct your proxy on how to vote by putting an "X" in the appropriate box.

Notes to proxy form

1. Members entitled to vote: **LFRAIA, FRAIA, Member Level 1** and **Affiliate Level 1**.
2. A proxy does not need to be a Member of the Institute.
3. For the appointment of your proxy to be effective: your nominated proxy (or attorney) must sign the form and you must return the authority under which the proxy form is signed (or a certified copy of the authority) to the Institute **by no later than 5pm (AEST Melbourne time) on 14 May 2016**, to the Company Secretary:

By mail: The Company Secretary
 The Royal Australian Institute of Architects Limited
 Level 1, 41 Exhibition Street,
 Melbourne Vic 3000

By fax: (03) 8620 3864. Attention to the Company Secretary.

By email: to the Company Secretary, at constitution@architecture.com.au

4. A proxy may decide whether to vote on any motion, except where the proxy is required by law or the Constitution to vote, or abstain from voting, in their capacity as proxy. You can direct your proxy how to vote on an item of business. If you direct your proxy how to vote, the proxy must vote on that item only in accordance with your direction. If you do not direct your proxy how to vote on an item of business, the proxy may vote as they think fit.
 5. If a Member appoints the chairperson of the meeting as the Member's proxy and does not specify how the chairperson is to vote on an item of business, the chairperson will vote, as proxy for that Member, in favour of that item on a poll.
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Attachment A. draft 'Charitable' Constitution

Attachment B. draft 'Revised' Constitution

Attachment C. Explanatory Letter

Attachment D. Comparison Table of Changes