

Dear Members,

At the 2019 UDIA NSW AGM, the now Immediate Past President proposed that as part of the planning process for the upcoming year, the Articles of Association which govern the operation of UDIA NSW be updated. This was to involve a full review of the Articles to modernise a document that is more than 50 years old, allowing UDIA to take advantage of modern technology and better enable members to engage with the UDIA.

The current Articles were drafted in the 1970s and have only had two amendments made since then, the first in the early 2000s and most recently in 2016 to enable electronic voting. It is clear that other constitutions viewed through this project have been updated in full 2-3 times in that period.

As such the Articles are effectively antiquated in the majority of their clauses, make reference to outdated and/or obsolete technology, contain references to outdated legislation and do not incorporate contemporary corporate governance.

As the governing document for the UDIA NSW Council, in recent years it has increasingly acted as a restraint to Council's work on behalf of Members, rather than an enabler. Council's in previous years have increasingly come up against restrictions within our current Articles that inhibit modern business practices, and do not assist in empowering Council to achieve UDIA's objectives.

Since the approval at the 2019 AGM to pursue this project, it has been led by UDIA NSW Council, a Steering Committee comprised of a cross section of our membership and Colin Biggers Paisley (CBP) who were engaged to provide legal and governance advice. The schedule overleaf is a summary of material amendments to the Constitution developed by CBP as part of the review. These were developed initially in consultation with Council and since then as the project has progressed with our Steering Committee to capture additional points in contemporary corporate governance.

While there were broad COVID complications which delayed the project, as highlighted at the 2020 AGM, UDIA has worked with Council, the Steering Committee and CBP to bring forward a draft constitution for exhibition and via special resolution, to be adopted at the 2021 AGM.

I appreciate that the new Constitution could represent wholesale change to our long-standing members, that is why the Steering Committee (Emily McLaughlin, Brendan Maier, Holly Reynolds, Michael Corcoran, Laurie Rose AM, Jacqueline Vozzo, and Ben McDonald) was developed to reflect a broad cross section of our membership, to protect what is unique and part of the UDIA DNA, and amend what holds us back as an organisation to effectively advocate on your behalf.

Again, I wish to thank the Steering Committee for their time and dedication to this project, CBP for their professional advice and drafting and particularly the Immediate Past President Michael Sheargold for shepherding this project through both in his term as President and since.

Please let the UDIA office know if you would like further information on the project and further details on the new Constitution. We welcome your comments by Friday 6th August 2021.

Yours sincerely,



Stephen McMahon
President

**Summary of proposed changes to the Memorandum and Articles of Association of Urban Development Institute of Australia (New South Wales Division)
ACN 001 172 363
July 2021**

The table below summarises the key changes between the proposed new Constitution and the current Memorandum and Articles of Association of Urban Development Institute of Australia (New South Wales Division) ACN 001 172 363 (**Institute**). The table provides a summary of material changes only and does not cover all changes.

In addition to those changes referred to in the table, as a general comment, the new Constitution modernises the Institute's constituent document to bring it in line with current market practice for companies limited by guarantee under the *Corporations Act 2001* (Cth) (**Corporations Act**).

Proposed New Clause	Heading	Description of proposed change	Reason for proposed change
Objects			
3	Objects	<p>The current Memorandum of Association sets out a detailed, prescriptive list of objects for which the Institute is established. As was common in Memorandum of Associations drafted around the same time, the objects operate as a list of powers or things the Institute may do. In other words, the Institute's activities must fall within an object to be valid.</p> <p>The proposed list of objects in the new Constitution were developed by the Steering Committee to reflect the Institute's core values and reasons for existence. The list is not exhaustive and is significantly simpler than what is contained in the Memorandum of Association.</p>	<p>It is important that the Institute's objects accurately and effectively communicate the reasons for which it was established and continues to operate.</p> <p>The objects are drafted broadly given the requirement that all income and property of the Institute must be applied solely towards their promotion so as not to unduly restrict the Institute's current or future activities.</p>
Membership			
10	Classification of Membership	<p>The amendments remove the <i>Honorary member</i> and <i>Affiliated member</i> classifications of membership. <i>Life member</i>, <i>Corporate member</i>, <i>General member</i> and <i>Associated member</i> classifications of membership are retained.</p> <p>The amendments also permit the Board, subject to the Corporations Act (particularly Chapter 2F), to resolve to amend, remove or add membership classifications at any time. If the Board so resolves, it must give written notice to all members within 7 days after the date of the resolution.</p>	<p>These amendments remove legacy classifications of membership that are no longer in use.</p> <p>The amendments also provide flexibility by giving the Board the discretion to amend existing classifications and create sub-classifications in the future without having to amend the Constitution, if the Directors resolve to do so.</p>
11	Application for Membership	<p>The amendment provides that the Representative nominated by an applicant for membership who is a body corporate or firm is nominated for notice and voting at general meeting purposes only.</p> <p>Proposed new clauses 38.4 and 41.1 clarify that the nomination of a Representative is distinct from the director nomination and electoral processes.</p>	<p>To simplify the director nomination and electoral processes by providing that a director may, but does not have to be, a Member's Representative.</p> <p>The changes are also proposed to overcome director succession issues which have arisen in respect of the Institute's current Memorandum and Articles of Association.</p>
15	Date for Payment	<p>The amendment allows the Board to permit Members to pay annual subscriptions in instalments.</p>	<p>To provide greater flexibility for Members and the Board than offered under the current Memorandum and Articles of Association.</p>
20	Disciplining Members	<p>If any Member:</p> <ul style="list-style-type: none"> (a) wilfully refuses or neglects to comply with the provisions of this Constitution or the Code of Ethics; or (b) does any act or omission which in the opinion of the Board is unbecoming of a Member, prejudicial to the interests of the Institute or reasonably likely to cause harm to the Institute or its reputation, <p>the Board has power by resolution to censure, suspend or expel the Member from the Institute and, in the case of expulsion, to erase the Member's name from the Register.</p>	<p>The intent is to simplify the Member disciplinary process and to include by reference the Institute's Code of Ethics, which is a document setting out the standard of conduct expected of all Members.</p>
Meetings			
22-25	Meetings	<p>The proposed changes clarify that the Institute must hold meetings of Members (including annual general meetings) in accordance with the Constitution and requirements of the Corporations Act.</p>	<p>These changes are consistent with the current requirements of the Corporations Act and reflect current practice for these types of companies.</p>

Proposed New Clause	Heading	Description of proposed change	Reason for proposed change
		The amendments also provide that the Institute may use technologies that give Members as a whole a reasonable opportunity to participate to facilitate meetings held in two or more places.	The use of technologies to hold meetings and show of preference voting reflects inclusive practices and also provides greater flexibility if the Institute elects or is required to hold meetings by electronic means, especially in the context of proposed legislative reform.
Directors and Chief Executive Officer			
38	Board composition	Each Director of the Institute must be a Member (other than an <i>Associated Member</i>), the Representative of a Member <u>or</u> a person otherwise nominated by a Member (other than an <i>Associated Member</i>) as a candidate for election as a Director of the Institute.	To simplify the director nomination and electoral processes by providing that a director may, but does not have to be, a Member's Representative. The changes are also proposed to overcome director succession issues which have arisen in respect of the Institute's current Memorandum and Articles of Association.
44	Election of President and Vice Presidents	The Directors must, by annual resolution, elect one of their number to the office of President and may elect so many other Directors to the office of Vice President as the Board determines. A person may not be elected as President or Vice President for more than six years and may only fill the office of President or Vice President for as long as that person is a Director of the Institute.	To clarify that the President and each Vice President must be re-elected annually by resolution of the Board.
45	Term of Office and Rotation	The amendments provide that each Director's term of office will, unless elected President, continue until the second annual general meeting of the Institute after his or her appointment. Any person retiring as a Director at the second annual general meeting after his or her appointment is eligible for re-election, provided any Director re-elected twice is not eligible for re-election unless authorised by the Board.	To safeguard the preference to have two year terms and for half of the Board elected at each annual general meeting. Assuming the number of Directors on the Board remains 13 (including the immediate past President who serves as an ex-officio Director), at the annual general meeting next held after the adoption of the Constitution and at every annual general meeting thereafter, there must be six Board vacancies to be filled at the meeting.
46	Casual Vacancies and Additional Directors	In the event of a casual vacancy, the Member who nominated the relevant Director may nominate a replacement to fill the casual vacancy and the Board must confirm the appointment of that replacement Director. It is also proposed that a replacement Director appointed to fill a casual vacancy holds office for the remainder of the Director who left office then current term, but will be eligible for re-election. The current Memorandum and Articles of Association provide that a replacement Director holds office only until the closure of the next following annual general meeting.	To ensure that half of the Board is elected at each annual general meeting and that Directors are not elected out of cycle.
52	Business of the Board	The proposed Constitution allows the Board to delegate any of its powers and functions to the Executive (i.e. a committee of Directors formed by the President), a committee, a Director, a Secretary, an employee of the Institute (such as a chief executive officer) or any other person, as it considers appropriate.	This clause provides greater clarity to members that the Board has the right to delegate.
70	Chief Executive Officer	The proposed Constitution provides that the Directors may appoint a Chief Executive Officer on such terms as the Directors resolve and the Directors may delegate any of their powers (including the power to delegate) to the Chief Executive Officer.	This clause provides greater clarity to members that the Board has the right to delegate to the Chief Executive Officer.