

**THE ST CUTHBERTS RETIREMENT LIVING COMPLEXES INC CONSTITUTION
ORDINANCE 2017
Ordinance No. 11 of 2017**

An ordinance to replace the constitution of St Cuthberts Retirement Living Complexes Inc.

PREAMBLE

Whereas St Cuthberts Retirement Living Complexes Inc is a body corporate established commensurate with the Anglican Church of Australia (Bodies Corporate) Act 1938 and is the operator of independent living accommodation for retirees at Tweed Heads; and

Whereas the affairs of St Cuthberts Retirement Living Complexes Inc are currently governed in accordance with St Cuthbert's Retirement Living Complexes Constitution Ordinance 1993 as amended in 1998 and 2009; and

Whereas it is expedient to replace the existing constitution to reflect the governance standards now considered fundamental; and

Whereas by the provisions of the Anglican Church of Australia (Bodies Corporate) Act 1938 and the Bodies Corporate (Delegation of Powers) Ordinance 1988, the Bishop-in-Council is empowered during the recess of Synod to exercise certain powers and such recess now exists;

Therefore, the Bishop-in-Council in pursuance of such powers and in the name of the Synod hereby ordains directs and rules as follows:

CONSTITUTION REPLACED

1. The affairs of St Cuthberts Retirement Living Complexes Inc. shall be conducted in accordance with the Constitution in the Schedule hereunder replacing the Constitution in operation prior to the passing of this Ordinance.

COMMENCEMENT

2. This Ordinance shall come into effect upon receiving the assent of the Bishop.

SHORT TITLE

3. This Ordinance may be cited as the St Cuthberts Retirement Living Complexes Constitution Ordinance 2017.

ASSENT

We hereby certify that this Ordinance was passed by Bishop-in-Council on the Fourteenth day of September, 2017 and that the Ordinance as printed is in accordance with the Ordinance as passed.

A. J. Byer
.....
Acting Chair of Committees

[Signature]
.....
Registrar

I assent to this Ordinance.

Sarah Grafton
.....
Bishop

14 September 2017
.....
Date

SCHEDULE

THE ANGLICAN DIOCESE OF GRAFTON ST CUTHBERT'S RETIREMENT LIVING COMPLEXES INC. CONSTITUTION

1. Title

This is the constitution for St Cuthbert's Retirement Living Complexes Inc.

2. Definitions

Anglican Church means the Anglican Church of Australia.

AFGD means the Anglican Funds Grafton Diocese.

Bishop means the present Bishop of Grafton, his or her successors in office and any person formally appointed to exercise the powers of the Bishop during any vacancy or absence from the Diocese.

Bishop-in-Council means the Council appointed to assist and advise the Bishop in the conduct of the Synod business or any body delegated by the Bishop-in-Council to exercise some or all of its rights and powers under this constitution.

Board means St Cuthbert's Retirement Living Complexes Board as constituted hereunder.

Bodies Corporate Act means the Anglican Church of Australia (Bodies Corporate) Act 1938 as amended.

Body Corporate means the body corporate incorporated for the St Cuthbert's Retirement Living Complexes under the Bodies Corporate Act.

Chair means the person holding the office of the Chairperson of the Board.

Church Trust Property has the same meaning as in the Anglican Church of Australia Trust Property Act 1917 as amended.

Complexes means the St Cuthbert's Retirement Living Complexes Inc. including Elizabeth Morley Court and St Cuthbert's Court.

Corporate Trustees means The Corporate Trustees of the Diocese of Grafton.

Deputy Chair means the person holding the office of the Deputy Chair of the Board.

Diocese means the region identified as the Diocese of Grafton by the Anglican Church or the entities which comprise the Anglican Church within that geographical region, as the case requires.

Financial Year means the calendar year from 1 January to 31 December.

Landlord and Tenants Act means the NSW Landlord and Tenants Act 1989 as amended and the NSW Landlord and Tenants (Amendments) Act 1948 as amended and the NSW Residential Tenancies Act (2010) as amended.

Maintenance Account means the account established for recurrent charges on residents for the maintenance and upkeep of the Complexes in compliance with Part 7 of the Retirement Villages Act.

Manager means the person appointed by the Board who manages the Complexes with Staff in accordance with directions and policies of the Board.

Member means a person who is a member of the Board.

Member of the Anglican Church of Australia means a baptised person who attends the public worship of the Anglican Church and who declares that he/she is a communicant member of the Anglican Church and is not a member of any other church.

Ordinance means any Ordinance adopted by the Synod or Bishop-in-Council of the Diocese of Grafton.

Resident(s) means a person or couple who has/have contracted to purchase a licence to occupy a unit within the Complexes under the Retirement Villages Act.

Retirement Villages Act means the NSW Retirement Villages Act 1999 as amended and the NSW Retirement Villages Regulation 2009 as amended.

Retirement Village means St Cuthbert's Retirement Living Complexes Inc.

Secretary means the person appointed by the Board to hold the office of (Honorary) Secretary of the Board.

Staff means the staff employed by the Board who work in the Complexes under the direction of the Manager.

Synod means the Synod of the Diocese.

Tenant(s) means a person or couple who has/have signed a lease to rent a unit in the Complexes under the Landlords and Tenants Act.

Treasurer means the person appointed by the Board to hold the office of Treasurer of the Board.

3. Transitional

- 3.1. This constitution replaces the constitution of the Board which was in force immediately before the adoption of this constitution.
- 3.2. Any action undertaken in accordance with the requirements of the previous constitution continues to be in effect following the adoption of this constitution as if properly done in accordance with this constitution.
- 3.3. Every person holding office as a Member, Chair and Deputy Chair before the adoption of this constitution may continue in office until the latter of 30 June 2018 or the expiration of their current term. Members will then be eligible for reappointment on the following basis:
 - a) each Member who has served less than 9 years on the Board will be eligible to be reappointed for further terms provided no term shall cause the Member to exceed 9 years on the Board, and
 - b) each Member who has served 9 years or more on the Board will not be eligible for reappointment.
- 3.4. Any required reduction in Members, in accordance with this constitution, shall be achieved through natural attrition and the Bishop-in-Council will consider the requirement to comply with clause 6.2.2 when considering submissions for the reappointment of Members.

4. Aims and Objectives

4.1. Aim

The aim of St Cuthbert's Retirement Living Complexes Inc. is to provide affordable not-for-profit independent living complexes for retired singles and couples who have reached the age of 60 years.

4.2. Diocesan Vision and Values

Without limiting clause 4.1, the Board and the Manager must conduct the affairs of the Complexes so as to reflect the vision and values of the Diocese as expressed from time to time.

4.3. Objectives

The objectives of the Board are:

- 4.3.1 To provide effective governance, standards and monitoring systems to enable the Complexes' staff to ensure the independent living of residents and their guests in a safe and ordered way, allowing personal freedom, with a minimum of intrusion on the rights and privacy of all.
- 4.3.2 To maintain all facilities and grounds in good condition.
- 4.3.3 To provide a 24 hour emergency call service.

5. Board Authority, Powers and Duties

5.1. Board Powers

- 5.1.1. Under the St Cuthbert's Retirement Living Complexes Incorporation Ordinance 1993 the Board is constituted as a Body Corporate under the Bodies Corporate Act and subject to this constitution shall exercise the powers of a body corporate constituted under the Bodies Corporate Act.
- 5.1.2. The Board shall govern, control and supervise the Complexes' business affairs and financial accounts in accordance with the provisions of any relevant Act of Parliament, Diocesan Policy and this constitution.
- 5.1.3. In exercising powers and duties under this constitution, Members must act in good faith and in the best interests of the complexes.
- 5.1.4. In addition, Members are authorised to act in the best interests of the Diocese and are taken to be acting in good faith and in the best interests of the Retirement Village and the residents in doing so, provided the Retirement Village is not insolvent at the time and does not become insolvent as a result.
- 5.1.5. The Bishop-in-Council may determine whether a particular act or omission will be taken to be, or not to be, in the best interests of Diocese.

5.2. Board Accountability

- 5.2.1. The Board shall be accountable to the Synod and the Bishop-in-Council for the governance and stewardship of the Retirement Village.
- 5.2.2. Subject to the requirements of any relevant Act of Parliament, the Bishop-in-Council is entitled to have access to, and take copies of, all financial reports or financial records, Board papers and reports, registers and other information and records maintained by the Retirement Village.
- 5.2.3. The Board shall report to the Synod or the Bishop-in-Council as required by Diocesan Ordinance or Diocesan Policies and shall provide other information as requested by resolution of the Bishop-in-Council from time to time.

5.3. Board Responsibilities

The Board shall

- a) pursue the aims and objectives of the Retirement Village as stated in this constitution;
- b) govern, control and oversee the management of the Retirement Village in pursuit of the aims and objectives of the Retirement Village as stated in this constitution;
- c) provide oversight and monitor the performance of all aspects of the operations of the Retirement Village;
- d) ensure compliance with all laws and Diocesan Policies.

5.4. Property Management

- 5.4.1. All property of any kind held, used or to be used for the purposes of the Retirement Village is Church Trust Property.
- 5.4.2. The Board shall in accordance with section 24 of the Anglican Church Trust Property Act 1917 as amended govern and control the management and use of property for the purposes of the Retirement Village as expressed in the aims and objectives set out in this constitution.
- 5.4.3. The Board may
 - purchase, lease or otherwise acquire real property
 - sell, mortgage, exchange, lease or otherwise dispose of real propertyfor purposes of the Retirement Village provided that it has first obtained the approval of the Bishop-in-Council.
- 5.4.4. The Board may improve the property and premises utilised by the Retirement Village.
- 5.4.5. To fulfil the wishes of the founding benefactor, Mrs Elizabeth Morley, two units of the Board's choice in Elizabeth Morley Court shall be retained for occupation on a rental basis by persons who cannot afford to purchase a licence to occupy a unit.

5.5. Financial Management

- 5.5.1. The Board shall make financial arrangements and decisions for the present and future operation of the Retirement Village.
- 5.5.2. The Board shall establish and administer the accounts required by and in accordance with the Retirement Villages Act.
- 5.5.3. The Board shall set the selling price of a 'licence to occupy' for all Complexes' units and garages and establish a policy to review the selling price as well as establishing and reviewing the percentage of capital gain, if any, that is returned to departing residents.
- 5.5.4. The Board may invest money in accordance with the provisions of the Grafton Diocesan Governance Ordinance 2008 (as amended) and any other Diocesan Policy.
- 5.5.5. The Board may enter into contracts to further the aims and objectives of the Retirement Village with the one exception of a contract under Section 52A of the Conveyancing Act 1919.
- 5.5.6. The Board may lend and advance money or give credit to any person or body to further the aims and objectives of the Retirement Village.
- 5.5.7. The Board may open and operate bank accounts for the aims and objectives of the Retirement Village.
- 5.5.8. The Board must determine financial delegations and levels of authority to commit the Retirement Village to a liability, to sign contracts and other instruments by which the Retirement Village enters into legal relations or gives effect to them and to make payments on the Retirement Village's behalf.
- 5.5.9. The Board may receive donations and apply the proceeds for any purpose in support of the aims and objectives of the Retirement Village, taking into account any reasonable request of the donor.
- 5.5.10. The Board may approve fundraising strategies and structures to further the aims and objectives of the Retirement Village.

5.6. Delegation

5.6.1 The Board may delegate a function or power of the Board to a person or another body.

5.6.2 A delegation by the Board –

- a) is subject to any condition or limitation specified by the Board; and
- b) is revocable at will by the Board; and
- c) does not prevent the Board from acting in any particular matter itself.

5.7 Committees

5.7.1 The Board may appoint subcommittees and Members to chair those subcommittees.

5.7.2 The Board may co-opt non Members to serve on subcommittees.

6 Board membership

6.1 Principles of membership

6.1.1 The Members should have between them a broad range of interests, talents, qualifications and experience to assist the Board to meet its responsibilities to further the aims and objectives of the Retirement Village.

6.1.2 No person who is employed by the Board or who is a resident of the Complexes or a spouse or de facto of a resident shall be eligible for appointment to the Board.

6.2 Board membership

6.2.1 The Board shall be comprised of not less than six persons:

- a) Two persons appointed by the Bishop; and
- b) Up to nine persons nominated by the Board and approved by the Bishop-in-Council.

6.2.2 At least two-thirds of the Members must be adherents of a Christian church and at least half of the Members must be Members of the Anglican Church.

6.3 Appointment of Members

At the time of nomination for appointment or reappointment to the Board, all prospective Members must declare their support for the aims and objectives of the Retirement Village and the vision and values of the Diocese, in a format determined from time to time by the Bishop-in-Council.

6.4 Chair and Deputy Chair and other officers of the Board

6.4.1 The Chair of the Board must be a Member and shall be appointed as Chair by the Bishop, following consultation with the Board.

6.4.2 The Chair may be removed from the office of Chair by the Bishop, following consultation with the Board.

6.4.3 The Chair will be appointed initially to hold office for the balance of the Chair's term as a Member. The Bishop may reappoint the Chair, subject to the Chair continuing as a Member.

6.4.4 The Board shall elect a Deputy Chair from the Members to hold office for the balance of the Deputy Chair's term as a Member. The Deputy Chair is eligible for re-election, subject to the Deputy Chair continuing as a Member.

6.4.5 The Board may appoint a person to act as Secretary.

6.5 Term of Board membership

- 6.5.1 Subject to 6.5.3, a term of membership of the Board shall be 3 years
- 6.5.2 All Members are eligible for reappointment to a maximum of 3 terms or 9 years served in total, subject to transition clause 3.3.
- 6.5.3 Initial terms of appointment may be varied by determination of the Board to ensure that not all positions become vacant at the same time. Subsequent terms of appointment shall be 3 years.

6.6 Vacancies

- 6.6.1 A vacancy occurs when a Member
 - a) resigns; or
 - b) dies; or
 - c) becomes physically or mentally ill to a point that in the opinion of a majority of Members interferes with that Member's ability to continue to carry out the function, or
 - d) becomes bankrupt; or
 - e) is convicted of an indictable offence; or
 - f) if appointed by the Bishop, is removed from office by the Bishop; or
 - g) is ineligible to hold office in any church by reason of a determination of a person or body having responsibility for professional standards or for the protection of children;
 - h) is the subject of an adverse Working With Children Check; or
 - i) is absent without leave of the Board for three consecutive Board meetings.
- 6.6.2. When a vacancy occurs on the Board, or if the composition of the Board does not conform to clause 6.2.2, the Board must inform the Bishop-in-Council.
- 6.6.3. When a vacancy on the Board amongst Members appointed by the Bishop-in-Council continues for a period exceeding three months, the Bishop-in-Council may fill the vacancy on its own motion.
- 6.6.4. If the number of Members falls below six the Bishop-in-Council may temporarily suspend the operation of clauses of this Constitution relating to the composition of the Board and make such arrangements as it thinks fit to enable the Board to function.

6.7 Meetings of the Board

- 6.7.1 The Board will hold meetings at least nine times a year, at intervals not exceeding two months.
- 6.7.2 Meetings of the Board will be convened by either the Bishop or the Chair.
- 6.7.3. At least 7 days' written notice shall be given to the Bishop and to each Member specifying the date, time and place of meeting and the business to be transacted.
- 6.7.4 The Bishop, if present, may preside at meetings of the Board.
- 6.7.5 The person presiding at the Board meeting shall have a deliberative vote only and in the case of an equality of votes the motion will be considered to have been lost.
- 6.7.6 The Bishop will not have the right to vote regardless of the capacity in which he or she attends a meeting of the Board.
- 6.7.7 At meetings of the Board a majority of Members shall constitute a quorum.

6.7.8 The Board may:

- a) require the Manager to attend any of its meetings;
- b) exclude the Manager from all or part of any of its meetings;
- c) require any other staff member and invite any other person to attend the whole or part of any of its meetings.

6.8 The Manager and any other person required or invited to attend a meeting of the Board will not have the right to vote.

7 Accounts, Audit and Reporting

7.1 The Board shall comply with the requirements of any Diocesan Policy outlining the obligations of a Diocesan entity in regard to the preparation of annual budgets of income and expenditure, the keeping of accounts, the appointment of an auditor and reporting to the Synod and the Bishop-in-Council.

7.2 In general the Board will:

- a) prepare an annual budget of income and expenditure,
- b) ensure true accounts are kept in accordance with the relevant Australian Accounting Standards and other relevant professional and industry reporting standards,
- c) appoint a qualified auditor of the Retirement Village,
- d) provide timely and regular financial reports to the Diocese, and
- e) prepare and approve a business plan including financial forecasts.

7.3 Subject to the requirements of any relevant Act of Parliament, the Bishop-in-Council may require the Retirement Village to furnish additional information on its affairs.

8 Insurance

8.1 The Board shall effect insurance cover through the Diocesan Master Insurance Policies as part of the Anglican National Insurance Program or through such other insurer as may be approved by the Bishop-in-Council for, but not limited to, the following cover and for cover approved from time to time by the Bishop-in-Council, the premiums for which shall be paid from the Maintenance Account:

- a) Insurance of all Church Trust Property and contents managed by the Board;
- b) Public Liability;
- c) Business Interruption Insurance including increased cost of workings;
- d) Voluntary Workers cover; and
- e) Directors and Officers cover.

8.2 The Board shall effect Workers' Compensation Insurance, the premiums for which shall be paid from the Maintenance Account.

9 Common Seal

The Common Seal of the Retirement Village shall be affixed to a document only if so resolved by the Board. Such affixing shall be recorded in the appropriate register.

10 Liabilities of the Board

10.1 The Retirement Village shall not execute or deliver and shall not have power to execute or deliver any mortgage, charge, debenture, guarantee or indemnity unless the following clause is included therein -

"Notwithstanding anything contained herein to the contrary, each of the parties hereto acknowledge and agree that neither the Retirement Village nor the Board shall be liable to express or implied obligation beyond such amount (if any) as the Retirement Village may be able to pay to that party in the event of the Retirement Village being wound up."

or unless Bishop-in-Council authorises alternative wording having the same effect.

10.2 The Board and no other body has the function of ensuring that the Retirement Village properly discharges all its liabilities as and when they fall due.

10.3 The Board and its Members and each of them shall not represent to any person or persons or corporation that the Bishop, the Synod or the Bishop-in-Council thereof or any person or persons or any other corporate body or corporation holding Church Trust Property for the Anglican Church in the Diocese or any other corporate body constituted by or pursuant to the Bodies Corporate Act shall or may meet or discharge all or any part of any liability or liabilities which have been or may or will be incurred wholly or partly by or on behalf of the Board.

10.4 Members shall be indemnified for any loss or liability properly incurred by the Board for which they may become personally liable in so far as such liability was not incurred by reason of their misconduct or wilful default.

11 Winding Up

Should the Retirement Village cease to operate, the assets used by it, subject to the discharge of liabilities, shall be held in trust by the Corporate Trustees in equal shares for the Diocese of Grafton and for the general purposes of the Anglican Parish of Tweed Heads, as determined by its Rector and Parish Council.

12 Amendment to the Constitution

This constitution may be amended from time to time by the Bishop-in-Council, either at the request of the Board or at the initiative of the Bishop-in-Council.