

## ANNEXURE A - EXPLANATORY MEMORANDUM

### BACKGROUND

This Explanatory Memorandum acts as a guide to the proposed Constitutional changes and provides background to the resolutions presented at the API 2022 AGM. Members are encouraged to read this Explanatory Memorandum and the proposed new Constitution recommended by API (**New Constitution**) in full.

At the 2021 Annual General Meeting, Members proposed a series of motions, seeking to amend the Australian Property Institute (**API**) Constitution. As a result, the then Chair of API committed to a governance review of the organisation. A comprehensive review, including extensive consultation with Members and State Committees, was completed by Griffin Legal Pty Ltd and a report into the governance issues and accompanying recommendations for change was prepared (**Governance Report**). At the 2022 Annual General Meeting, it is proposed for Members to vote in favour of a motion to accept the changes made to the New Constitution.

### CONSULTATIONS

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A series of consultations have been held over the past 6 months, seeking engagement with and contributions from Members in respect of the governance review. Throughout the governance review process, Members were provided with the opportunity to indicate their support or lack of support for specific governance reforms which were selected by both the Board and Members. Members were also invited to provide general feedback. There were seven different consultation methods used, these were:

- (a) online survey sent to State Committee Members in October 2021;
- (b) online survey sent to all Members between November to March 2021;
- (c) direct consultation during State Committee Meetings between October to February 2021;
- (d) Focus Group;
- (e) one-on-one meetings;
- (f) webinar hosted for all Members to attend in March 2022; and
- (g) the Governance Review inbox, which remained open throughout the duration of the governance review process.

At this stage, it is intended that Voting Members will decide on whether to proceed with the New Constitution at the Annual General Meeting to be called for Wednesday, 25 May 2022 (**AGM**). If approved, the New Constitution will come into effect from the conclusion of the AGM.

### FEEDBACK SUMMARY

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The governance review has had broad engagement. In total, API received over 140 responses from Members through the various consultation methods listed above. From the start of the governance review, API were determined to keep Members at the forefront of change. As a membership organisation, API's governance structures must best cater for the future of the organisation and its Members.

## PROPOSAL

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It is proposed that API adopts a new Constitution to modernise, streamline and refine the corporate governance structure of API. The New Constitution is designed to prepare API for future governance requirements, to meet Member expectations and to comply with the *Corporations Act 2001* (Cth).

## PROPOSED CONSTITUTION

In preparing the New Constitution, Members have been consulted to ensure transparency, accountability and input. Key changes to the Constitution are summarised below. This table does not detail every change made, noting the New Constitution was prepared with a view to streamline and simplify language. It is recommended that Members read the New Constitution in its entirety.

New clause	Topic	Current clause	Description of Change	Reason for Change
<b>Membership</b>				
5.2 and 5.4	Membership Categories	5.1 – 5.6	Clause 5.1 sets out the categories of Membership and specifies the categories which have voting rights (Life Fellows, Fellows and Associates). New clause 5.2 provides that the Board can create new categories of Membership provided those new categories do not obtain voting rights.	This approach provides increased clarity around Membership criteria while maintaining that any changes to voting rights, including introducing a new category of Voting Member, must be a decision of the Voting Members.
5.4 and 5.6	Becoming a Member	5.3 and 5.5	The membership application process has been simplified. Members must apply to become a member and agree to comply with any requirements set out in a Policy.	This provides for a simplified Membership application process and allows for additional requirements to be included in Membership applications as required from time to time.
5.7	Cessation of Membership	5.9	This clause has been expanded to reflect that a person will cease to be a Member on bankruptcy, or becoming of unsound mind or a person whose property is liable to be dealt with under a law relating to mental health.	This ensures that Members who may not have the capacity to cease their Membership with API can have their Membership brought to an end.

New clause	Topic	Current clause	Description of Change	Reason for Change
<b>Directors</b>				
9.2	Eligibility of Directors	9.2	The director eligibility clause has been simplified to provide that a person is eligible to hold a position as Director if they are a Voting Member, are eligible to stand for election under any applicable Policies and are not disqualified from being a director of a company.	This change has been incorporated to simplify and clarify the director eligibility requirements, to modernise the Constitution.
8.2(a)	Director Term	9.4	Director terms have been increased to 3 years. Transitional provisions have also been included at clause 29, to reflect arrangements for all current Directors following the introduction of the new Constitution. The transitional provisions mean that if a current Director is re-elected to the Board after introduction of the Constitution, their prior service counts towards the Maximum Term and they cannot remain on the Board for more than 6 years.	This change has been made to reflect Member feedback, which noted a preference for a Director term of 3 years.
8.2(c)	Director Term	9.7(a)	Maximum term of service has been amended to be two (2) terms (being a maximum of 6 years on the Board, if re-elected after 3 years).	This change has been made to reflect Member feedback. The majority of Members felt that 6 years maximum service was appropriate. With Director terms increasing to 3 years, this becomes a 2-term rather than a 3-term limit.
8.2(d)	Director Term	9.7(c)	The Constitution reduces the gap in service after serving a maximum term from six (6) years to two (2) years. Clause 8.2(d) specifies that a Director must have a gap in service of two (2) years following service of their maximum term, before they can be re-elected.	This change has been made consistent with Member feedback. The majority of members felt the previous 6-year gap was too long and created a risk that good Directors will lose interest and move on during the gap. The majority of Members felt a 2 or 3 year gap was appropriate. The API Board endorses a 2-year gap in service before a maximum-term Director can be re-elected.

New clause	Topic	Current clause	Description of Change	Reason for Change
8.1(b)& 10.1(a)	Appointed Directors	9.9(a)	The Constitution has been amended to increase the number of Appointed Directors from two (2) to three (3).	The API Board endorses an additional appointed Director to help address skill shortages on the Board. The Appointed Director positions can, but are not required, to always be filled. Appointed Directors will hold office for a term determined by the Board, which must not be longer than 3 years.
8.1	No more than 2 per State cap	9.1(c)	The current Constitution provides that not more than 2 Elected Directors who reside in the one State are eligible to be elected. The new Constitution provides that no more than two (2) Elected Directors can reside in the same State. The new change means that if an Elected Director changes the State in which they reside during their Term, they may no longer be eligible to remain on the Board if the State they move to has 2 other Elected Directors.	This change strengthens the cap of no more than 2 Elected Directors being from the same State/Territory.
8.2(f)	Calculating Maximum Term	N/A	In calculating the time spent on the Board, casual vacancies will be counted towards the maximum 6-year term on the Board, as well as time served as either an Elected or Appointed Director.	This is to clarify that any capacity served on the Board will be counted towards the Maximum Term.
8.4	Suspension of Directors	N/A	A new clause has been inserted which allows a Director to be suspended, however if suspended a vote must be put to Members who will make a decision of whether to remove the Director.	This allows greater flexibility in managing a Director who is not complying with their duties. It ensures the Board can act to protect the best interests of the Company, including holding a meeting in the absence of a director and ultimately be required to put the decision to Members as to whether a Director should be removed.
11.5	Duties of the Board	N/A	This clause sets out the duties of Directors in exercising their powers.	This aligns with the requirements under the <i>Corporations Act 2001</i> .

New clause	Topic	Current clause	Description of Change	Reason for Change
<b>Use of technology at meetings of Directors and meetings of Members</b>				
13.2 & 14.14	Use of technology for meetings of Directors and meetings of Members	8.17; 11.12 & 11.14	The Constitution has been amended to clarify the use of technology at Board meetings and General Meetings.	These clauses have been updated in accordance with the <i>Corporations Amendment (Meetings and Documents) Act 2022 (Cth)</i> .
14.5(b) and 14.1	Electronic Voting	N/A	The Constitution has been amended to include a clause specifically allowing the Board to determine that electronic voting may be used.	These clauses have been updated in accordance with the <i>Corporations Amendment (Meetings and Documents) Act 2022 (Cth)</i> .
14.3(b)	Member Motions	8.3(b) and 8.3(c)(iii)	The Board has retained a clause for Voting Members to submit a resolution for an AGM and clarified the manner in which this can be done, noting uncertainty in some years regarding the application of the present clause. The new clause specifies that only 20 Members are required to sign off on the resolution for it to be put forward at an AGM, notwithstanding that the <i>Corporations Act</i> requires the a much higher standard, of 100 voting members or 5% of the total voting members to otherwise sign of on the resolution.	In recognition of the best interest of Members, the Board supports members being able to put forward appropriate resolutions at an AGM. The Board has determined that 20 Voting Members is a sufficient threshold to pass to submit such a resolution. This is significantly less than the 100 voting members (or 5% of the total voting members) which the <i>Corporations Act</i> presently requires, and more significantly more favourable to Members.
<b>General</b>				
4.2	Payments	4.2	Permissible payments have been expanded to expressly refer to payment of fees and reimbursements to directors for services rendered as a director, as well as payment to any employees who are also members.	These changes have been made to expressly refer to the ability for individuals to receive payment from API in their service as a director or employee.

New clause	Topic	Current clause	Description of Change	Reason for Change
17	Proxies	8.12	Presently a Voting Member can appoint any person to be their proxy. The new Constitution provides that a proxy appointed by a Voting Member must also be a Voting Member of API.	This is to ensure that all those exercising votes are Voting Members of API, rather than individuals who may not understand the operations of API, noting the significant trust placed in a proxy to vote on another Member's behalf.
24.1(b) and 24.2	Financial reports	N/A	<p>Clause 24.1(b) compels API to provide a copy of the Financial Reports at the same time it issues Notice of an AGM. In other words, API must issue Financial Reports at least 21 days prior to an AGM.</p> <p>Clause 24.2 mirrors the Corporations Act and sets out the right of Voting Members to elect to receive copies of API's Financial Reports by the earlier of 21 days before an AGM, or 4 months after the end of the financial year.</p>	<p>An ordinary resolution was passed at the 2021 AGM, indicating member support for an explicit entitlement to copies of Financial Reports. API's practice has been to provide a copy of the Financial Reports with the notice of AGM – which is provided at least 21 days prior to the AGM. API's AGM must be held within 5 months of the end of the Financial Year (i.e. by end of May) meaning that the Notice of AGM is generally sent out in early May.</p> <p>In the event a Member wishes to receive a copy of the Financial Reports before the notice of the AGM, they may make a request to API and elect to receive those reports within 4 months of the end of Financial Year (i.e. by the end of April). This will result in Members being able to elect to receive the financial reports a few days earlier than they otherwise would receive them.</p>
<b>Deletions from the Constitution</b>				
N/A	Vision and purpose statement	Schedule 1	Removal of Vision and Purpose Statement	This change is consistent with Member feedback. Members supported extracting the Vision and Purpose statement out of the Constitution and into an external document, noting API's vision and purpose may change over time.

New clause	Topic	Current clause	Description of Change	Reason for Change
8.7	Director remuneration report	7.7(a)(i)	Removal of requirement for external report to be commissioned on appropriate remuneration for Directors	This amendment has been made as a cost saving for API. Members are still required to approve remuneration of Directors and such payment must also comply with the requirements of the <i>Corporations Act 2001</i> .

By order of the Board.

***Diana D'Ambra***

Chair

Australian Property Institute Limited

**Attachment:           New Constitution**