

**Constitution of  
Ngarara Villas  
Residents' Association  
Incorporated**

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## 1 NAME OF SOCIETY AND BACKGROUND

### 1.1 Name of Society

The name of the Society will be the Ngarara Villas Residents' Association Incorporated.

### 1.2 Background

- (a) The Developer is developing the property at 14-16 Ngarara Road, Waikanae by creating a high quality residential subdivision.
- (b) Each Owner of a Lot will be a Member of the Society and each Owner consents to be a Member of the Society.
- (c) The Society will manage the collective interests of the Owners and will preserve the financial and lifestyle interests of the Owners by maintaining Common Facilities, regulating common access and other co-operative features at the Property and maintaining certain parts of each Developed Property.

## 2 DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

In this Constitution, unless the context otherwise requires:

*Access Lot* means the area of land within the Property which is to be set aside for right of way purposes and which are able to be used by an Owner (and their Invitees).

*Act* means the Incorporated Societies Act 2022.

*Bylaws* means bylaws made by the Society from time to time under rule 8.1 relating to the use and administration of the Common Facilities.

*Committee* means the Committee which is formed from time to time in accordance with rule 12.

*Common Facilities* shall include (by way of example, but which shall not be limited to) the Access Lot, common area lighting, communal gardens and walkways, rubbish bin storage areas, maintenance of any stormwater detention tanks, letterboxes, shared taps and any other facilities comprised within the Property and which are shared by Owners.

*Controlling Member* means the Developer or any assignee and/or successor in title that continues the promotion and carrying out of the development of the Property and that the Developer nominates as the Controlling Member.

*Default Interest Rate* means five (5)% above the 90 day bill rate disclosed on Reuters screen page BKBM on the date for payment.

*Developed Property* means a completely constructed and habitable dwelling comprised within the Property, and *Developed Properties* means one, any of all of the completely constructed and habitable dwellings comprised within the Property.

*Developer* means P&C Ngarara Limited.

*Easements* means any easements granted or to be granted over the Access Lot.

*Encumbrance* means the encumbrance instrument to be registered against the computer registers for each of the Lots in favour of the Society requiring each Owner to become and remain a Member and to perform the obligations of the Member as set out in this Constitution, in the form required by the Developer.

*Expense Year* means each 12 month period commencing on 1 November in one year and ending on 31 October in the following year.

*Invitee* means any Occupier, or any invitee, visitor or guest of either an Owner or an Occupier authorised or approved by an Owner or an Occupier (as the case may be) in accordance with this Constitution.

*Lot* means each fee simple residential lot for which a record of title will issue or has issued.

*Manager* means a manager appointed in accordance with this Constitution.

*Member* means each person who for the time being is a member of the Society under rule 5.

*Objects* means the objects of the Society as set out in rule 4.1.

*Occupier* means a person or persons occupying a Developed Property under any tenancy agreement, lease, licence or other occupancy right including a spouse, defacto partner, child or parent of a Member.

*Operating Expenses* means the total sum of all rates, taxes, costs and expenses incurred by the Society on behalf of the Owners collectively and properly assessed or assessable paid or payable in respect of the Society and the operation of the Society on behalf of the Owners and will include, but not be limited to, the following:

- (a) all rates (including water rates) levied by any Council which are at any time levied upon the Access Lot, the Common Facilities or upon the Society in respect of the Society's interest in the Access Lot or the Common Facilities or which are paid or payable by the Society as a result of the receipt of any money under this Constitution;
- (b) all premiums and costs payable by the Society in respect of all policies of insurance effected on the Access Lot and/or the Common Facilities for sums insured up to their full value on an indemnity covered basis against loss, damage or destruction by such risks as the Society may deem necessary or desirable, including consequential loss and public risk liability;
- (c) all premiums and costs payable by the Society in respect of all policies of insurance effected in respect of the Developed Properties for sums insured up to their full value on an indemnity covered basis against loss, damage or destruction by such risks as the Society may deem necessary or desirable, including consequential loss and public risk liability;

- (d) all costs associated with obtaining valuations required by the insurers for the purposes of maintaining the insurances required by items (b) and (c) above;
- (e) the cost of operating, supplying, servicing, maintaining, inspecting, testing and repairing of the Utilities from time to time provided to Owners or generally at the Property;
- (f) all charges for lighting and power incurred by the Society in connection with the Common Facilities;
- (g) all costs of repairs, maintenance, renovations and landscaping of the Common Facilities;
- (h) the cost of an annual exterior wash of each of the Developed Properties;
- (i) any other item of expense which the Society considers reasonably necessary to incur for the good management and appearance of the Common Facilities and/or each of the Developed Properties.

*Owner* means the person registered as the proprietor of a Lot. Where the same person is the registered proprietor of more than one Lot that person will constitute a separate Owner in respect of each Lot owned by that person.

*Property* means the property at 14-16 Ngarara Road, Waikanae which will comprise the Developed Property.

*Secretary* means the secretary and treasurer of the Society, appointed in accordance with this Constitution.

*Seller* means the vendor of a Developed Property and includes any mortgagee, receiver, liquidator, assignee or other entity exercising a power of sale under a New Zealand court order, act of Parliament, mortgage, charge or other document.

*Society* means the Ngarara Villas Residents' Association Incorporated.

*Special Resolution* means a resolution of the Society in general meeting passed by a majority of not less than 51% of such Members (which, for the purposes of this definition, includes the Controlling Member (if any)) entitled to vote in person or by proxy on the question.

*Utilities* means any of the following utilities and services:

- (a) access over any foot paths and roading within the Property, (including public or private access roads connecting any Lot to any road or access way and the Access Lot);
- (b) underground power cables, underground telephone and electronic data and computer media services, underground water lines and any other service lines connecting Developed Properties and Common Facilities within the Property to appropriate supply networks;
- (c) domestic and irrigation water systems (including bores, pumps, storage tanks, and reticulation) connecting Developed Properties and Common Facilities within the Property to the water supply system.

*working day* means a day on which registered banks are open for customary retail banking business in Wellington, but does not include a Saturday or a Sunday.

## 2.2 Interpretation

Unless the context otherwise requires, in this Constitution:

- (a) headings are inserted for convenience only and will be ignored in construing any matter;
- (b) words denoting the singular number only will include the plural and vice versa;
- (c) words denoting a gender will include all genders;
- (d) references to any legislation or to any provision of any legislation will be deemed to be references to that legislation or provision as from time to time amended, re-enacted or substituted and, unless otherwise stated, to New Zealand legislation and further, unless the context otherwise requires, will also include any statutory instruments or regulations issued under any such legislation or provision;
- (e) references to a party, person or entity includes a natural person, individual, firm, company, corporation, society, or other entity, whether incorporated or not and whether or not having a separate legal personality, and includes their respective successors, assigns, executors and administrators; and
- (f) written and in writing includes all means of reproducing words in a tangible and permanently visible form.

## 3 APPOINTMENT, ACKNOWLEDGEMENTS AND STATUS OF THIS CONSTITUTION

### 3.1 Appointment

The Members appoint the Society to manage their collective interests in relation to the Common Facilities and as Owners of individual Lots and agree to be bound by this Constitution.

### 3.2 Status of Rules

This Constitution will govern the use and enjoyment of the Property and a Developed Property and constitute a binding agreement between the Members for the use and enjoyment of the Property and a Developed Property.

### 3.3 Waiver of rights for breach

No Member will be entitled to take any action in law or otherwise against any other Member in respect of any matter or thing done or omitted to be done pursuant to this Constitution and the Encumbrance and the Members explicitly waive their rights to take any such action against their co-owners for any alleged breach of this Constitution or the Encumbrance. If a Member wishes to claim against another Member for an alleged breach of this Constitution or the Encumbrance the Member will raise the issue with the Committee or at a general meeting for determination of appropriate action to be taken (if any).

## 4 OBJECTS

### 4.1 General

The objects (*Objects*) of the Society are:

- (a) to maintain, preserve and enhance and otherwise deal with the Common Facilities for the benefit of the Members;
- (b) to own, lease, licence, maintain, administer or operate and continue to own, lease, licence, maintain, administer or operate the Common Facilities for the benefit of the Members;
- (d) to ensure the confirmed full and proper use of Common Facilities by Members and Occupiers;
- (e) facilitating the installation, maintenance and supply of Utilities to Developed Properties and to the Property;
- (f) the performance and enforcement by the Society of its obligations and rights under any agreements for supply of Utilities with any third parties;
- (g) to administer and enforce a scheme for the regulation and control of matters relating to the use, repair and landscaping of, maintenance of the exterior of and provision of services to the Developed Properties and to the Property;
- (h) the performance and enforcement by the Society of:
  - (i) its obligations and rights under the Encumbrance;
  - (ii) its obligations and rights as grantor under any easement (including but not limited to levying any grantee of the Easements in relation to that grantee's use of the Easements) or land covenant; and
- (i) the levying of Members for the purpose of meeting the Objects.

### 4.2 Interpretation of Objects

Each of the Objects, except where otherwise expressed or implied, will be an independent main Object and will in no way be limited or restricted by reference to or inference from any other Object or the name of the Society.

## 5 MEMBERSHIP

### 5.1 Initial Member

The Initial Member will be the Developer.

### 5.2 No Obligations

Despite anything to the contrary, in this Constitution, the Initial Member will have no rights, duties or obligations as a Member whether for the payment of any levy or charge or otherwise and no reference in this Constitution to a "Member" will be taken as including a reference to the Initial Member.

### 5.3 **Resignation**

The Initial Member (other than the Controlling Member) will be deemed to have resigned, without any act required on the Initial Member's part, as soon as more than 3 (three) Owners (other than the Controlling Member) are Members, and in any event, on or before the settlement of the sale of the last Lot by the Developer.

### 5.4 **Consent to be a member**

A person shall become a Member by completing the purchase of a Lot from the Developer (or any successor in title to the Lot). The completion of the settlement of the purchase of a Lot shall be deemed to be consent by that purchaser to become a Member.

### 5.5 **Owners to be Members**

Each Owner will be a Member and only Owners will be Members of the Society (other than the Initial Members), and for that purpose:

- (a) each Member for so long as they are an Owner will remain a Member in good standing of the Society and comply with this Constitution;
- (b) the Encumbrance will be noted against each Lot in favour of the Society, whereby the Owner is deemed to be a Member and covenants to become and remain a Member, and to perform the obligations of a Member as set out in this Constitution;
- (c) a Member will cease to be a Member immediately upon the registration of a transfer of the Owner's Lot to a new Owner or immediately after that Owner ceases to be the registered proprietor of a Lot, provided that such resignation will not relieve a person of any obligation or liability arising before that person ceased to be a Member; and
- (d) each Member will, immediately upon becoming a Member (and thereafter as any details change), provide the Society with the details necessary for maintenance of the register of Members pursuant to rule 5.6.

### 5.6 **Register of Members**

The Society will maintain a register of Members recording:

- (a) *For each Member:* Name, postal and email addresses, occupation, telephone number and facsimile number (at home and at work) and similar details for a third party to be contacted in the event of absence or emergency together with a completed direct debit authority for levies (if required).
- (b) *For each Occupier:* Name, postal and email addresses, occupation, telephone number and facsimile number (at home and at work) and similar details for a third party to be contacted in the event of absence or emergency.
- (c) *Membership:* The date upon which each Member became a Member.
- (d) *Mortgagee:* The name, contact person, telephone number and facsimile number of any person holding a mortgage or charge or other encumbrance over the Member's Lot.
- (e) *Voting:* Where there is more than one Owner of a Lot, which of such Owners is entitled to vote in accordance with rules 17.1 and 17.2 and where a Member

is a corporation or a trust and has appointed a representative under rule 5.10, the name and contact details of that representative.

- (f) *Other:* Any other particulars and documentation reasonably required by the Manager from time to time.

**5.7 No Notice of Trust**

No notice of any trust express, implied or constructive will be entered on the register of Members. Nothing in this rule will prevent a family or other trust from owning a Lot.

**5.8 Not assignable**

The rights, privileges and obligations of a Member are not assignable.

**5.9 Nomination**

Where a company is an Owner, that company will nominate in writing a person being an officer of that company to represent the company in matters requiring the involvement of the company as a member of the Society. Nothing in this rule will relieve such company of its obligations to comply with this Constitution.

**5.10 Developer as Controlling Member**

Until the development of the Property is fully completed as determined by the Developer, there will be a Controlling Member for the Society.

**5.11 Purpose of Controlling Member**

The purpose of having a Controlling Member is to ensure that the Developer can develop the Property as a high quality subdivision.

**5.12 Rights and resignation of Controlling Member**

The Controlling Member will have only the rights and obligations specified in this Constitution and will have no other rights or obligations of a Member in the Controlling Member's capacity as Controlling Member.

**5.13 More than one Owner**

If there is more than one Owner for a Developed Property:

- (a) such Owners will collectively constitute one Member and the liability of such Owners in relation to their membership of the Society will be joint and several; and
- (b) such Owners will nominate one Owner to be their agent and:
  - (i) such nominee will be deemed to be agent of and acting on behalf of all such Owners;
  - (ii) where this Constitution requires notice to be forwarded by the Society, the Society will be deemed to have discharged its obligation to notify the Owners if it has given notice to the nominee; and
  - (iii) if no nomination is made, the nominee will be deemed to be the Owner whose name appears first on the record of title for the relevant Lot.



5.15 **Fee for transfer costs**

The Society will be entitled from time to time to set such reasonable fees in relation to the issue of a membership or transfer of a membership as the Society in its sole discretion will determine. If the Society incurs any third party costs in relation to the issue of a membership (including, without limitation, solicitor-client costs), the applicant (in the case of an issue of a membership) or the Seller (in the case of a transfer of a membership) will meet those third party costs.

6 **USE OF THE DEVELOPED PROPERTY**

6.1 **Use of the Developed Property**

Subject to any Rules and the Encumbrance relating to the use of the Property and/or the Developed Property, each Member and each Occupier will be entitled to make full use of the Common Facilities within the Property.

7 **FIXING AND PAYMENT OF LEVIES**

7.1 **Levies**

The Society is responsible for setting the levies described in this rule 7 by a resolution of the Members or by the Committee passed in accordance with this Constitution. All levies must be set in a way that is fair and equitable to the Society and to all Members.

7.2 **Fixing levies**

Levies will be fixed in accordance with this rule 7.2. Levies may be fixed in any of the following ways or in any combination of them:

- (a) uniform annual charges;
- (b) variable usage charges (*variable charges*);
- (c) charges calculated on the basis of each Owner's Proportion (*Owner's Proportion charge*).

7.3 **Payment of levies**

From the first anniversary of the commencement date of the Society, each Member has the option to either, on the first day of each Expense Year, pay the annual levies as fixed by the Society or, on the first day of each month during the Expense year, pay 1/12<sup>th</sup> of the annual levies as fixed by the Society. For the first year of the existence of the Society a Member shall pay the annual levies as fixed by the Society in one sum, on demand being made by the Society.

7.4 **Society to provide financial statements**

- (a) The Society will, on application by a Member, provide a statement of the indebtedness of the Member to the Society calculated to the date specified in the Member's application. The statement will show:
  - (i) the Society's estimate of such Owner's Proportion of Operating Expenses for the current Expense Year;

- (ii) payments made by the Member on account of Operating Expenses in the current Expense Year;
  - (iii) payments due from the Member on account of Operating Expenses in the current Expense Year, and not paid by the Member; and
  - (iv) any accumulated unpaid default interest.
- (b) Within 10 working days after receiving a request from a prospective purchaser of a Developed Property, the Society will provide to the person that requested it, a copy of the most recent financial statements of the Society.
  - (c) A Member is not entitled to make more than two applications per annum for the information contemplated in clause 7.4(a).

#### 7.4 **Encumbrance**

In order to secure payment of the Owner's Proportion of the Operating Expenses, levies, special charges and any other sums due to the Society by any Member, the Encumbrance will be registered against each of the Lots.

### 8 **OBLIGATIONS OF MEMBERS**

#### 8.1 **Covenants and Bylaws**

Each Member agrees to comply promptly and fully with each and every Rule of the Society and any further covenants given in favour of the Society by such Member. No amendment to this Constitution will be made that results in there being any conflict between the provisions of this Constitution and the provisions of the covenants including the Encumbrance.

#### 8.2 **Assignment or subletting**

Any assignment or subletting of the type referred to in section 227(1)(b) of the Property Law Act 2007 will be a breach of this Constitution.

#### 8.3 **Payment of rates and insurance and compliance with obligations**

For clarity, each Member acknowledges that they are liable to pay rates levied by Kapiti Coast District Council and/or the Greater Wellington Regional Council (or their successors) for the Member's Developed Property and to otherwise comply with all legal obligations in respect of that Member's Lot (including, but not limited to, obligations arising under the Resource Management Act 1991 and the Building Act 2004).

### 9 **BREACH OF OBLIGATIONS**

#### 9.1 **Users**

A reference to an act or omission by any Member, will include any act or omission by any users of that Member's Developed Property (including, for the avoidance of doubt, an Occupier).

#### 9.2 **Obligations of Members in relation to Users of Member's Developed Property**

Each Member must:

- (a) procure that all tenancy agreements, leases, licences, agreements for sale and purchase and all other documents that relate to the Member's Developed

Property include a provision for the benefit of the Society that requires such Occupier of the Member's Developed Property to comply with this Constitution and any covenants given in favour of the Society by that Member including the Encumbrance;

- (b) attach a copy of this Constitution and the Encumbrance given in favour of the Society by that Member to all tenancy agreements, leases, licences, agreements for sale and purchase and all other agreements and documents that relate to the Member's Developed Property;
- (c) take all reasonable steps (including enforcing the terms of all leases, licences, agreements for sale and purchase and all other agreements and documents that relate to the Member's Developed Property) to ensure that all Occupiers of the Member's Developed Property comply with this Constitution.

### 9.3 **Consequences**

Without prejudice to the Society's other rights and remedies, upon any breach of this Constitution by a Member (or an Occupier) (*Offending Member*):

- (a) where damage has been caused to any part of the Developed Property or the Common Facilities (as the case may be) the Offending Member will immediately make good such damage at its own cost;
- (b) if such default continues for five working days after notice is given by the Society to the Offending Member to remedy the default, the Society may do anything, including paying money, necessary to remedy the default;
- (c) all money paid and expenses incurred by the Society (including any reasonable legal costs of the Society) in remedying, or attempting to remedy, any breach by an Offending Member of this Constitution, or incurred in the exercise, or attempted exercise, or enforcement or attempted enforcement of any power, right or remedy of the Society in respect of such breach, will be a debt due from the Offending Member to the Society;
- (d) if any money payable by an Offending Member to the Society is in arrears and unpaid for seven working days such money will be payable on demand and will bear interest at the Default Interest Rate, computed on a daily basis from the due date until the date of payment in full; and
- (e) if such default continues for 10 working days after notice is given by the Society to the Offending Member to remedy the default then the Society may give further notice to the Offending Member suspending, for such time as the Society may determine (acting reasonably), the Offending Member's right to use any or all of the Common Facilities and/or receive the supply of any Utilities or services.

## 10 **OBLIGATIONS OF THE SOCIETY**

- 10.1 The Society will be empowered to make and distribute to Members from time to time Bylaws for the use and administration of the Common Facilities. The initial Bylaws (rules) are contained in Schedule One of this Constitution.

## 10.2 **Repair of Common Facilities**

The Society will ensure the proper operation, maintenance, repair, renovation and replacement of the Common Facilities (as the case may be), and will undertake such capital improvements as are necessary for this purpose. Each Member agrees and allows the Society (or any person engaged under rule 10.2(b)) access to the Developed Property for the purposes of this rule. The Society will make good any damage caused by such access within a reasonable timeframe after the completion of any work.

## 10.3 **Services**

The Society will, inter alia, procure that suitably qualified individuals are engaged for the maintenance of the Common Facilities.

## 10.4 **Insurance**

The Society will effect and maintain all insurances as it considers prudent with respect to the Common Facilities and each of the Developed Properties.

## 10.5 **Privacy**

In operating the Society, the Society will have regard to the Privacy Act 1993. In particular, the Society will not supply personal details of a Member to any other person without the consent of the relevant Member, except where required to by law.

# 11 **LIMITATIONS OF THE SOCIETY**

## 11.1 **No indebtedness**

The Society will not borrow any money, other than short-term borrowing to cover any temporary shortfall in meeting the Society's obligations under this Constitution, except by Special Resolution.

## 11.2 **No investments**

The Society will hold all funds with a bank, and will not invest those funds other than by deposit with a bank, except by Special Resolution.

## 11.3 **Application of funds**

All money paid to the Society by Members in accordance with this Constitution will be applied exclusively for the purposes of:

- (a) owning, leasing, licensing, administering, maintaining, operating, replacing and renewing the Common Facilities, and carrying out any other obligations under this Constitution;
- (b) managing and administering the Society and administering and enforcing this Constitution;
- (c) providing and maintaining services, Utilities, facilities and benefits to Members; and
- (d) such further or other incidental matters as the Committee considers beneficial for Members.

## 12 OPERATION OF THE SOCIETY

### 12.1 Administration

The administration of the Society will be vested in the Society by general meeting, and will be delegated to a Committee. The Committee may exercise all the powers, authority and discretions of the Society as permitted by this Constitution and do on its behalf all such acts as the Committee deems necessary or expedient. The Committee's powers, authority and discretions are subject to any limits from time to time imposed by the Society.

### 12.2 Contact Person

There shall be a main contact person for the Society. The contact person of the Society can be amended from time to time by a resolution passed at a general meeting.

### 12.3 Administration

The administration of the Society will be delegated to a Committee. The Committee may exercise all the powers, authority and discretions of the Society as permitted by this Constitution and do on its behalf all such acts as the Committee deems necessary or expedient. The Committee's powers, authority and discretions are subject to any limits from time to time imposed by the Society.

### 12.4 Bank accounts

- (a) The Society will establish a bank account with a trading Bank normally operational in New Zealand and any drawings on that account will be made only under the authority of the Manager or such Committee member or members as approved for that purpose.
- (b) The Society will establish a sinking fund with a trading Bank normally operational in New Zealand in the name of the Society to hold contributions made by Members levied in accordance with rule 7 to meet the cost of capital improvements.

### 12.5 Deeds

Any contract which, if made between private persons, must be by deed and will, when made by the Society, be in writing and signed in accordance with the provisions of the Act.

### 12.6 Other documents

All other documents and written announcements requiring execution on behalf of the Society must be signed by the chairperson as appointed by the Members from time to time or, where authorised by the chairperson, another member of the Committee.

### 12.7 Composition

The Committee will comprise the following persons:

- (a) the chairperson as appointed by the Members from time to time;
- (b) the Secretary as appointed by the Members from time to time;
- (c) subject to rule 12.7(d), all Members of the Society will be Committee members unless the Society in general meeting shall decide otherwise.

- (d) while the Initial Members of the Society remain Members, a minimum of one and a maximum of three general Committee members, as nominated by the Controlling Member.

**12.8 Committee members**

The chairperson will be the nominee of the Controlling Member at its option (if there is one) or where there is no Controlling Member the chairperson will be as elected by the Committee at every annual general meeting. The secretary will be such person as the Committee will appoint from time to time. Subject to the provisions of this Constitution, the balance of the Committee will be elected by the Society at every annual general meeting, and may be elected at any other time by the Society in general meeting.

**12.9 Duration of membership**

A Committee member will hold the position until the date of cessation of Membership, or on the resignation of that Committee member from the Committee.

**12.10 Controlling Member**

Notwithstanding any other rule in this Constitution, the Controlling Member will remain as chairperson, for so long as they remain Controlling Member and the Society will not be entitled to remove the chairperson from that position for any reason whatsoever. For so long as the Controlling Member remains the sole Controlling Member, it will be entitled to exercise all the powers of the Committee referred to in in this Constitution.

**12.11 Duties of Secretary**

The duties of the secretary of the Committee will include (but shall not be limited to):

- (a) convening annual general meetings and other general meetings of the Society when required to do so in accordance with this Constitution and likewise convening meetings of the Committee;
- (b) giving all such notices as the Society in general meeting or the Committee may instruct or which the Society may be required to give to Members in the manner provided in this Constitution;
- (c) keeping minutes of all meetings of the Society and of the Committee and entering into the minute book the time, date and venue of the meeting and all business considered and resolved and passed at the meeting;
- (d) performing or supervising the performance of the clerical work for, and the maintenance of proper records of, the Society;
- (e) maintaining a membership register for the Society;
- (f) giving all such notices, certificates or information to the Registrar as may be required by the Act or by the Registrar pursuant to the Act;
- (g) issuing and receiving correspondence on behalf of the Society;
- (h) receiving all levies, charges and other money paid to the Society and issuing receipts;

- (i) opening and operating a current bank account in the name of the Committee;
- (j) making such deposits and investments in the name of the Society as the Committee may determine from time to time;
- (k) paying all accounts and making all advances passed for payment by the Committee;
- (l) keeping all financial records and security documents in safe custody;
- (m) compiling all financial statements immediately following each financial year as required by the Act and if required by special resolution the auditing or review of those records and the distribution of the financial statements (audited or reviewed as the case may be) and the distribution of the financial statements to Members as soon as reasonably practicable and in any case within five months of the end of the Expense Year; and
- (n) reporting to the Committee any Member who fails to pay levies, charges or other money properly payable by that Member within the prescribed period.

#### 12.12 **Reimbursement for expenses only**

Committee members will not be entitled to any remuneration for their services as such, but they will be entitled to reimbursement for reasonable expenditure by way of travelling and accommodation expenses and other out-of-pocket expenses incurred in connection with the business of the Society (other than for the purpose of attending meetings).

### 13 **POWERS OF THE COMMITTEE**

To achieve the Objects the Committee may (without limitation to the generality of rule 12.1):

- (a) undertake any capital improvements for the benefit of the Society and/or the Members as provided by an annual budget approved by the Members in general meeting;
- (b) manage any Common Facilities;
- (c) contract with, employ or otherwise procure the services of any person for the purpose of achieving the Objects;
- (d) enforce compliance with the Encumbrance registered against the Lots;
- (e) levy additional fees or special charges on the Members required in order to exercise its powers under this Constitution;
- (f) subject to rule 11.1, raise money from reputable established lending institutions in order to carry out the Objects; and
- (g) recover costs and expenses under the Easements and enforce the terms of the Easements on behalf of the Society.

**14 MANAGER**

The Committee may appoint, remove and replace a Manager from time to time to carry out such of the obligations of the Society, including administrative obligations and to exercise such of the discretions and powers of the Society, as the Committee sees fit.

**15 PROCEEDINGS OF THE COMMITTEE****15.1 Conduct of meetings**

(a) The Committee may meet together, adjourn and otherwise regulate its meeting and procedures for conducting its business as it thinks fit (including by electronic means such as teleconference. ZOOM, Microsoft Teams or video conference). The Committee may meet at any time and the secretary will, upon the request of the chairperson or any two members, convene a meeting of the Committee.

(b) A majority of the members of the Committee from time to time will form a quorum for a meeting. If within half an hour from the time appointed for the holding of a meeting a quorum is not present, the meeting will stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place, as the members of the Committee present will determine. Notice of the new time and place will be given to the other Committee members. If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members of the Committee present will be a quorum.

**15.2 Chairperson**

The Committee from time to time will appoint, remove and replace a chairperson for such term as it sees fit from one of their number to chair these Committee meetings and otherwise exercise the powers of the chairperson set out in this Constitution.

**15.3 Chairperson's vote**

In the case of a tie in votes, the chairperson may exercise a casting vote.

**15.4 Voting**

Resolutions of the Committee will be passed by majority. Each Committee member will be entitled to exercise one vote provided that the secretary (if it is not an Owner) and/or the Manager (if it is on the Committee and is not an Owner) will not be entitled to vote and the Controlling Member (if there is one) will be entitled to exercise a number of votes equal to one more than the number of other Committee members present at any Committee meeting. Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by such of the Committee members as would constitute a quorum at a meeting will be as valid and effectual as if it had been passed at a meeting of the Committee duly convened and constituted.

**15.5 Validity of Committee's actions**

All acts properly done by any meeting of the Committee or by any person acting as a Committee member, notwithstanding that it may afterwards be discovered that there was some defect in the appointment or continuance in office of any such Committee member, or that they were disqualified, will be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Committee member.



**15.6 Committee minutes and records**

The Committee will cause proper minutes to be kept of the proceedings of all meetings of the Society and of the Committee. All business transacted at each such meeting and the minutes of such meeting signed by the chairperson will be accepted as a correct and accurate record of the business transacted at such meetings without any further proof of the facts contained in such minutes.

**16 MEETINGS****16.1 Annual General Meeting**

In addition to any other meetings in that year, the Society will hold an annual general meeting each year which must be held:

- (a) no later than 18 months after the date of the last (and in respect of the first annual general meeting no later than 18 months after the Society's date of registration); and
- (b) no later than six months after the end of each Expense Year.

**16.2 Time and place of meetings**

The Committee will determine the time and place of each annual general meeting but it must be held in the Wellington district of New Zealand.

**16.3 Other general meetings**

A general meeting other than an annual general meeting will be convened by the Secretary whenever required by:

- (a) the chairperson;
- (b) the Committee;
- (c) by written request signed by not less than 50% of the Members; or
- (d) by written notice of the Controlling Member (if there is one).

**16.4 Powers of the Society in general meeting**

The Society in general meeting may, by resolution of not less than 51% of the Members present and voting at such meeting, exercise all powers, authorities and discretions of the Society notwithstanding any such power, authority or discretion may have been vested in the Committee by or pursuant to this Constitution.

**16.5 Quorum**

No business will be transacted at any general meeting of the Society unless a quorum is present when the meeting proceeds to business. A quorum will be not less than 50% of all Members eligible to vote at general meetings, present in person (including, if permitted by the Society, by electronic means such as teleconference or video conference) or by proxy.

**16.6 Notice of general meeting**

A notice of general meeting of the Society will be sent to every Member and the Controlling Member not less than 15 working days before the date of such meeting. Such notice will specify:

- (a) the date, time and venue of such meeting;

- (b) (in the case of a general meeting other than an annual general meeting) all business and all notices of motion to be considered at such meeting and no business or notice of motion which is not specified will be discussed or transacted at such meeting; and
- (c) the text of any special resolution to be submitted to the meeting.

**16.7 Modification of notice requirements**

Notwithstanding any contrary provision, the requirements of this rule relating to notice and limiting the business to be transacted at any meeting may be modified in any particular case with the consent in writing of all Members entitled to attend a meeting of the Society (provided that the modification of such requirements for any given meeting will not be so construed or deemed to affect such requirements in any respect of any other meeting of the Society).

**16.8 Failure to give notice**

The accidental omission to give notice to or the non-receipt of any notice by any Member or any other person entitled to such notice will not invalidate the proceedings of any general meeting to which such notice relates.

**16.9 Chairperson of general meetings**

The chairperson of any general meeting will be:

- (a) the chairperson;
- (b) if the chairperson is not willing to take the chair, then those Committee members who are present may choose one of their number to chair such meeting; or
- (c) if for any reason no chairperson is selected by the Committee members then those Members entitled to vote at that meeting may elect any person entitled to be present as chairperson of that meeting.

**16.10 Adjournments**

If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting if convened on requisition of Members, will be dissolved. In any other case it will stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place, as the Committee will determine. Notice of the new time and place will be given in accordance with rules 16.6 – 16.8. If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present together with the Controlling Member (if there is one) will be a quorum.

**SPECIAL MEETINGS**

**16.11 Special meetings**

A special meeting will be convened by the Secretary whenever required by written request signed by not less than 75% of the Members.

- 16.11 **Powers of the Society in special meeting**  
The Society in general meeting may, by resolution of not less than 76% of the Members present and voting at such meeting, exercise all powers, authorities and discretions of the Society notwithstanding any such power, authority or discretion may have been vested in the Committee by or pursuant to this Constitution.
- 16.12 **Quorum**  
No business will be transacted at any special meeting of the Society unless a quorum is present when the meeting proceeds to business. A quorum will be not less than 75% of all Members eligible to vote at general meetings, present in person (including, if permitted by the Society, by electronic means such as teleconference or video conference) or by proxy.
- 16.13 **Notice of special meeting**  
A notice of special meeting of the Society will be sent to every Member and the Controlling Member not less than 15 working days before the date of such meeting. Such notice will specify:
- (a) the date, time and venue of such meeting;
  - (b) all business and all notices of motion to be considered at such meeting and no business or notice of motion which is not specified will be discussed or transacted at such meeting; and
  - (c) the text of any special resolution to be submitted to the meeting.
- 16.14 **Modification of notice requirements**  
Notwithstanding any contrary provision, the requirements of this rule relating to notice and limiting the business to be transacted at any meeting may be modified in any particular case with the consent in writing of all Members entitled to attend a special meeting of the Society (provided that the modification of such requirements for any given meeting will not be so construed or deemed to affect such requirements in any respect of any other meeting of the Society).
- 16.15 **Failure to give notice**  
The accidental omission to give notice to or the non-receipt of any notice by any Member or any other person entitled to such notice will not invalidate the proceedings of any general meeting to which such notice relates.
- 16.16 **Chairperson of special meetings**  
The chairperson of any special meeting will be:
- (a) the chairperson;
  - (b) if the chairperson is not willing to take the chair, then those Committee members who are present may choose one of their number to chair such meeting; or
  - (c) if for any reason no chairperson is selected by the Committee members then those Members entitled to vote at that meeting may elect any person entitled to be present as chairperson of that meeting.

**16.17 Adjournments**

If within half an hour from the time appointed for the holding of a special meeting a quorum is not present, the meeting if convened on requisition of Members, will be dissolved. In any other case it will stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place, as the Committee will determine. Notice of the new time and place will be given in accordance with rules 16.13 – 16.15. If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present together with the Controlling Member (if there is one) will be a quorum.

**17 VOTES OF MEMBERS**

**17.1 One vote per Member**

Subject to rule 17.2 and rule 17.3 each Member present at a general meeting of the Society or a special meeting of the Society (as the case may be) will be entitled to one vote per Lot owned by that Member, which may be exercised either in person (including, if permitted by the Society, by electronic means such as teleconference or video conference) or Skype or ZOOM or by proxy.

**17.2 Person entitled to exercise Member's vote**

Where there is more than one Owner in respect of any Lot, the Owner entitled to exercise the vote will be determined in accordance with rule 5.14(b). On the death of any Member, and pending the transfer of that Member's property, the executor of that Member's estate will be entitled to exercise that Member's Vote.

**17.3 No vote if levies and charges unpaid**

Unless all levies, special charges and additional fees presently payable by any Member to the Society have been paid in full, such Member will not be entitled to vote at any general or special meeting of the Society, whether in his or her own right or as a proxy for another person.

**17.4 Controlling Member's vote**

The Controlling Member (if there is one) will be entitled:

- (a) to exercise a number of votes equal to one more than the number of Members entitled to vote at any general meeting; provided that
- (b) on any matter which must be passed by special resolution, to exercise a number of votes equal to 76% of the number of Members entitled to vote on that matter.

**17.5 Exercise of Controlling Member's vote**

If the Controlling Member intends to exercise a vote in accordance with rule 17.4 above:

- (a) the Controlling Member will provide to every Member 10 working days' prior notice in writing of its intention to exercise such vote;
- (b) every notice under this rule will outline the matter at issue together with a statement of intention from the Controlling Member as to the vote it intends to cast;

- (c) during the 10 working day notice period every Member will have the right to provide written submissions to the Controlling Member regarding the matter at issue; and
- (d) the Controlling Member will in good faith consider all submissions prior to exercising the Controlling Member's vote.

#### 17.6 **Voting at meetings**

At any general or special meeting:

- (a) a properly notified resolution may be put to the vote by the chairperson or any Member present at the meeting (including by electronic means such as teleconference or video conference) or by proxy and entitled to vote;
- (b) resolutions put to the vote will be decided on a show of hands or by voice, unless a poll is demanded on or before declaration of the result by:
  - (i) the chairperson of the meeting;
  - (ii) the Controlling Member (if there is one); or
  - (iii) at least five Members present in (including, if permitted by the Society, by electronic means such as teleconference or video conference) or by proxy;
- (c) in the case of a resolution put to the vote of the meeting by a show of hands or voice, a declaration by the chairperson that such resolution has been carried or lost, and an entry to the effect in the Society's minute book, will be conclusive evidence of the fact without further proof of the number of proportion of votes recorded in favour of or against such resolution;
- (d) resolutions will be passed by a majority of votes except where a special resolution or a unanimous resolution of all Members is required by this Constitution; and
- (e) a Member may exercise the right to vote either by being present (including by electronic means such as teleconference or video conference) or by proxy.

#### 17.7 **Form of proxy**

The instrument appointing a proxy must be in writing and signed by the appointer and, in all other respects, will be in such other form as the Committee may determine from time to time. A proxy must be:

- (a) the chairperson; or
- (b) a Member of the Society, or an employee, officer, agent or shareholder of a Member, where that proxy is entitled to vote in its, his or her own right at the relevant general meeting.

#### 17.8 **Delivery of instrument appointing proxy**

The instrument appointing a proxy will be delivered to the registered office of the society at least 5 working days before the time fixed for holding the meeting or adjourned meeting at which the person named in such instrument is authorised to vote, failing which the instrument appointing a proxy will not be treated as valid. The

instrument appointing a proxy may be valid for one meeting only or for a period of up to one year from the date of the instrument.

## 18 **NOTICES**

### 18.1 **Forms**

All notices and other communications required under this Constitution will be in writing and will be delivered by hand or by properly addressed prepaid courier or sent by email, in the case of notices to or communications with:

- (a) any Member, will be addressed to that Member at its address as set out in the application for incorporation of the Society (for Initial Members) or in that Member's application for membership, or at such other address as the Member may from time to time notify the Secretary in writing; and
- (b) the society, the chairperson, the secretary or the Committee, will be addressed to the intended recipient, care of the registered office of the Society.

### 18.2 **Time of delivery**

Any notice or communication given in terms of rule 18.1 will be deemed to have been delivered:

- (a) in the case of delivery by prepaid courier, if:
  - (i) couriered within New Zealand to a destination within New Zealand, 2 working days after posting;
  - (ii) couriered within New Zealand to a destination outside New Zealand, 5 working days after posting;
  - (iii) couriered outside New Zealand to a destination within New Zealand, 5 working days after posting;
- (b) in the case of email, one working day after sending provided the sender does not receive an automated out-of-office response in which case notice will be deemed to be served on the first working day after the date the out-of-office response reflects as being the date that the recipient is to return.

### 18.3 **Society not liable**

The Society will not be held liable in any way for failure to give notice to any Member provided it has delivered such notice by any means specified under this Constitution to the last address provided by the Member to the Society.

## 19 **ACCOUNTS**

### 19.1 **Accounts to be kept**

The Committee will cause proper accounts to be kept with respect to:

- (a) all sums of money received and expended by the Society and the matters in respect of which the receipts and expenditure take place;
- (b) any sales and purchase of goods by the Society; and
- (c) the assets and liabilities of the Society.

**19.2 Secretary to keep accounts**

The Society's accounts will be kept by the secretary (or such other person as may from time to time be designated by the Committee) who will produce them to the Committee or any Committee member, on demand.

**19.3 Accounts at Committee and Committee member meetings**

The secretary will from time to time cause to be prepared and to be shown to the Committee and/or the Society in general meeting such income and expenditure accounts, balance sheets and reports as are from time to time required by the Committee, and at each annual general meeting an annual income and expenditure account, balance sheet and report will be given.

**19.4 Copies to Members**

A copy of all balance sheets, accounts and reports which are to be laid before the Society in general meeting, together with a copy of the auditor's or reviewer's report (if any), will be sent to every Member not less than 10 working days before the date of the relevant general meeting.

**20 REGISTERED OFFICE**

The registered office of the society will be at such place as the Committee will from time to time determine.

**21 DISPUTES**

**21.1 Good faith negotiations**

If a dispute arises between Members or between a Member or Members and the Society, the parties will endeavor in good faith to resolve the dispute expeditiously between the parties to the dispute.

**21.2 Mediation**

If a dispute is not resolved pursuant to rule 21.1 within a period of 20 working days, a party may by written notice to the other party or parties give notice of the dispute including details of the dispute and require that the dispute be resolved by mediation in accordance with the following process:

- (a) When the notice of dispute has been given the parties will appoint a mediator and if they fail to agree the mediator will be appointed by the President of the New Zealand Law Society or the President's nominee.
- (b) The parties must co-operate with the mediator in an effort to resolve the dispute.
- (c) The mediator may engage an appropriately qualified expert to give an opinion on technical matters. The cost will be a mediator's cost (rule 21.2(f)).

- (d) If the dispute is settled, the parties must sign a copy of the terms of the settlement.
- (e) If the dispute is not resolved within 10 working days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.
- (f) Each party must pay an equal share of the costs of the mediator's fee.
- (g) The terms of settlement are binding on the parties and override the terms of the contract if there is any conflict.
- (h) Either party may commence legal proceedings when mediation ceases under rule 21.2(e).
- (i) The terms of settlement may be tendered in evidence in any mediation or legal proceedings.
- (j) The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible by the recipient in any legal proceedings.
- (k) The provisions of this rule 21.2 will not apply to an application by a party seeking urgent interlocutory relief from any court.

### 21.3 **Payments without prejudice to dispute**

If the dispute relates to whether or not certain amounts of money are properly payable under this Constitution, those amounts must still be paid by the Member in order for the Member to enjoy its rights as a Member including, without limitation, voting and transferring a Developed Property. However, such payment will be without prejudice to the Member's right to dispute the amount in accordance with the process set out in this Constitution.

## 22 **LIABILITY OF MEMBERS**

### 22.1 **Acknowledgements**

Each Member acknowledges and confirms that:

- (a) it will take all reasonable care in using the Common Facilities and exercising its rights under the Encumbrance; and
- (b) all rights are exercised at the Member's own risk, or at the risk of the Occupier (as the case may be) and the Member will not hold any other Member, the Developer or their respective successors in title liable in any way for any loss, damage or injury sustained by that Member or Occupier.

### 22.2 **Members not liable for Society's obligations**

No Member will be under any liability in respect of any contract or other obligation made or incurred by the Society.



## 23 **SOCIETY TO INDEMNIFY**

The Society will indemnify and keep indemnified:

- (a) each Member against any liability properly incurred by such Member in respect of the affairs of the Society, to the extent of property owned by the Society; and
- (b) members of the Committee from and against any liabilities in respect of any act or omission in their capacity as a Committee member, to the extent of property owned by the Society, except where the Committee member is criminally liable.

## 24 **ALTERATION OF CONSTITUTION**

### 24.1 **Amendment of Constitution**

This Constitution will not be amended, added to or rescinded unless:

- (a) such action is taken at an annual general meeting or a general meeting convened for that purpose;
- (b) written notice of the proposed amendment, addition or rescission has been given to all Members in accordance with this Constitution; and
- (c) such action is taken by special resolution; and
- (d) such action is taken with the written consent of the Controlling Member (if there is one).

### 24.2 **Severability**

If any provision of this Constitution is held to be illegal, invalid or unenforceable, the remaining provisions of this Constitution will remain in full force and effect.

## 25 **WINDING UP**

### 25.1 **Winding up**

The Society may be wound up in accordance with the provisions of the Act. Upon such winding up, after satisfaction of all debts and liabilities of the Society the balance of any money in the account and any sinking fund collected by the Committee will be distributed in accordance with s26(1)(l) of the Act.

**SCHEDULE ONE**

**RULES**