

Kirimoko Park Residents Association Incorporated

Constitution

Version Table

December 2010	Original version of Rules	
November 2013	Changes made at Special General Meeting held on 18 November 2013	Marked as italics on December 2010 version
August 2016	Changes made at Annual General Meeting on 24 August 2016	Marked as underline or strikethrough on December 2010 version
September 2024	Draft Changes to change "Rules" to "Constitution" for adoption at AGM to be held in September 2024 for the purposes of registering under the new Incorporated Societies Act 2022.	Summary of changes: • Remove previous markups from December 2010 version • Change "Rules" to "Constitution" and "clauses" • Remove references to Controlling Member and Incorporation Members as no longer relevant • Add remote audio connection for attendance as option for meetings • Add Matariki as holiday day • Add alternative dispute resolution processes – refer Schedule 1 for standard procedures

		• Remove audit requirements • Miscellaneous amendments to conform with new Act – ie dissolution of Society
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Kirimoko Park

Kirimoko Park

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INTRODUCTION

1. NAME

- 1.1. **Name of Society:** The name of the Society shall be Kirimoko Park Residents Association Incorporated.

2. DEFINITIONS AND INTERPRETATION

- 2.1. **Definitions:** In this Constitution, unless the context otherwise requires:

"Act" means the Incorporated Societies Act 2022.

"Adjoining Lot(s)" means Residential Lots that are directly adjacent to one another and share a boundary.

"Authority" means any local body government or other authority having jurisdiction or authority over or in respect of any part of Kirimoko Park or its use.

"Bank" means a bank registered under the Reserve Bank of New Zealand Act 1989.

"Capital Asset" means any asset of a capital nature, such as buildings or machinery that are expected to hold long term value to the Society. The Society will provide for depreciation or amortisation of such assets to the intent that they be written off over the term of their economic life.

"Committee" means the committee members from time to time elected to manage the affairs of the Society pursuant to this Constitution.

"Communal Facilities" means:

- (a) any land or any right over, or interest in, land within the development designated by the Society for use by owners or occupiers of Developed Properties, or by the public generally; and
- (b) buildings, chattels, fixtures, plant, equipment, Hydrological Systems and other amenities within the development designated by the Society for use by owners or occupiers of Developed Properties, or by the public generally; and
- (c) Utilities.

"Completion of Development" refers to the time when:

- (a) all of the physical works in connection with the development have been completed, and
- (b) all relevant Computer Registers (titles) for Developed Properties have been issued or created; and
- (c) all required code compliance certificates for the development have been issued under the Building Act 2004.

"Computer Register" means—

- (a) a computer register within the meaning of section 4 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002; or
- (b) a certificate of title issued under the Land Transfer Act-1952 or the Unit Titles Act 1972.

"Constitution" mean this Constitution as amended or added to including all schedules to this Constitution.

"Covenants" means the Kirimoko Registered Land Covenants and any other covenants given in favour of the Society.

"Default Interest Rate" means five per cent above the 90 day bill rate disclosed on Reuters screen page BKBM (or its successor's page) at 11.00am on the due date for payment.

"Design Code" means the Kirimoko Design Code.

"Design Review Board" means the board of the Society as described in clause 10.7.

"Developed Property" means a property within Kirimoko Park for which a Computer Register has been or will be issued or created, as part of the process of development, -

- (a) for an estate in fee simple or a leasehold estate under the Land Transfer Act 1952; or
- (b) for a stratum estate under the Unit Titles Act 1972, but

- (c) does not include any lot that is capable of further subdivision and that is not in any way restricted by a registered land covenant or encumbrance from subdivision of any sort.

"Developer" means Crescent Investments Limited or any associated company promoting and carrying out the development of Kirimoko Park, including any assignee and/or successor in title whether as to the whole or any part or parts of Kirimoko Park, that continues the promotion and carrying out of such development.

"Development Stage" means a particular stage of Kirimoko Park as follows:

- Stage 1 – meaning land subdivided in accordance with LT443395 and LT 447560.
- Stage 2 – meaning land subdivided in accordance with LT481348.
- Stage 3 – meaning land subdivided in accordance with LT 491833.

"District Plan" means the Queenstown-Lakes District Plan.

"Exemption Notice" means Securities Act (Real Property Developments) Exemption Notice 2007 (SR 2007/378), or any subsequent Exemption Notice issued in replacement thereof.

"Financial Year" means each 12 month period commencing on 1 April and ending on 31 March, or such other 12 month period as the Committee from time to time determine.

"GST" means goods and services tax charged under the Goods and Services Tax Act 1985 or amendments thereto.

"Hydrological Systems" means low impact storm water systems at Kirimoko Park including associated reticulation, structures, swales, holding and infiltration basins, treatment facilities, fencing, and plantings.

"Invitee" means any invitee or staff of or any visitor to an Owner or Occupier.

"Kirimoko Block" means the land area at Wanaka identified by the "Kirimoko Block — Wanaka — Structure Plan" which was the result of Plan Change 13 made operative on 28 March 2008. The general area of the Kirimoko Block is bordered at the west by adjoining houses along Rata Street; at the east by Peak View Ridge; at the south by Aubrey Road and to the north by Peninsula Bay and the "sticky forest" ridge.

"Kirimoko Design Code" means the code of building and landscape design issued by the Society from time to time under clause 10.1

"Kirimoko Park" means the integrated development undertaken within the Kirimoko Block by the Developer and its associated and/or subsidiary companies upon an area of land of 11.86 hectares located at Kirimoko Crescent, Wanaka, and legally described as Lot 1 Deposited Plan 347876 held in Computer Freehold Register 196498, Lot 2 Deposited Plan 301928 held in Computer Freehold Register 7786 and Lot 12 Deposited Plan 300734 held in Computer Freehold Register 3657. Kirimoko Park includes, but is not limited to the park facilities, associated reserves, Hydrological Systems, Utilities, and other associated infrastructure.

"Kirimoko Registered Land Covenants" means the land covenants registered against the Owner's Title securing that Owner's obligations as a Member and to perform the obligations of a Member as set out in this Constitution.

"Levies" means contributions from Owners to cover Operating Expenses computed as defined in clause 6.

"Long Interval Maintenance" means structural repairs to, and the replacement or renewal of, the Communal Facilities that are likely to occur at more widely spaced intervals of 5, 10 or even 20 years or longer and which is appropriately provided for by a sinking fund incremented annually.

"Manager" means the manager or management company of the Society, appointed under clause 13.1. Where no Manager has been appointed, any reference to the "Manager" in this Constitution shall be deemed to be, where appropriate, a reference to the Committee, subject to clause 12.10.

"Member" means each person who shall from time to time be a member of the Society under clauses 4.1 to 4.10 which automatically includes any Owner.

"Members' Interest Group" means a group of Members whose interests are affected in a similar manner by an action or proposal. One or more Members' Interest Groups may exist in relation to any action or proposal and individual Members may fall into one or more Members' Interest Groups. For sake of clarity, and without limitation, examples of Members' Interest Groups would pertain to properties within the same Development Stage; or accessed by a common service lane; or subscribing to a common service or utility provided by the Society.

"Member's Proportion" means, in relation to each Developed Property, the proportion that:

- (a) the land area of such Developed Property bears to the sum total of the land areas of all Developed Properties where the total development is complete; and/or
- (b) the land area of such Developed Property bears to the sum total of the land areas for all Developed Properties within a particular Members' Interest Group where the Manager decides that such a method of proportion is equitable and appropriate.

"Membership" means a membership of the Society.

"Occupier" means any person occupying any Developed Property under any lease, licence or other occupancy right and shall include the Owner and all members of an Owner's family.

"Operating Expenses" means the total sum of all rates, taxes, payments, costs, liabilities and expenses of the Society paid or payable, properly or reasonably assessed or assessable, or otherwise incurred:

- (a) in respect of the Communal Facilities,
- (b) in the operation of the Society (including, without limitation, the management fees and expenses, as referred to in clause 13.1);

- (c) in the administration and enforcement of a scheme for the provision of services, benefits, facilities and Utilities to Developed Properties; and
- (d) as required by any resource consent granted in respect of Kirimoko Park to be undertaken by the Society in respect of the maintenance and upkeep of Kirimoko Park; and will include, but not be limited to the following:
- (e) all rates levied by any Authority which are at any time levied upon the Communal Facilities or upon the Society in respect of the Society's interest in the Communal Facilities;
- (f) all premiums and costs payable by the Society in respect of all policies of insurance effected on the Communal Facilities for sums insured up to their full replacement value or, at the option of the Society, 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;
- (g) the cost of operating, supplying, servicing, maintaining, inspecting, testing, and repairing all services from time to time provided to the Communal Facilities, or generally at Kirimoko Park, and the plant and equipment required for any of such or other services and systems;
- (h) all charges for lighting, gas and power, and all other forms of energy incurred by the Society in connection with the Communal Facilities, and other services or requirements furnished or supplied to the Communal Facilities for their general benefit including maintenance costs of lighting and equipment;
- (i) all costs in respect of the Communal Facilities, including the costs of the removal and disposal of all waste and garbage from the Communal Facilities.
- (j) all costs for the provision, at intervals deemed appropriate by the Society, of security services to the Communal Facilities or Kirimoko Park;
- (k) all costs of repairs, maintenance, renovations and landscaping of the Communal Facilities. For clarity, and without limitation, this includes facilities that are not owned by the Society, but that the Society is obliged to or agrees to maintain from time to time;
- (l) any other items of expense which the Society, acting reasonably, considers necessary to incur for the good management and appearance of the Communal Facilities and for Kirimoko Park generally;
- (m) all costs of managing, controlling, and administering the Communal Facilities and Kirimoko Park generally, including professional fees and such costs that consist of wages, allowances or other emoluments paid to persons employed by or contracted to the Society including members of the Design Board.
- (n) Depreciation or amortisation charges calculated to write off a Capital Asset over its expected economic life.

"Ordinary Resolution" means a resolution of the Members passed either on a show of hands or, if a poll is taken, by a majority of those Members present in person, or by

audio remote connection or by proxy at a meeting of the Society and entitled to vote on the question.

"Owner" means each person registered as a proprietor (whether individually or with others) of a Developed Property.

"Owner's Title" means the certificate of title issued for an Owner's Developed Property.

"Quarter" means, respectively, the period of three calendar months between 1 April and 30 June, 1 July and 30 September, 1 October and 31 December, or 1 January and 31 March in any year, and "Quarterly" shall have an equivalent meaning where the context permits.

"Registrar" means the person holding office from time to time as Registrar of Incorporated Societies in terms of the Act.

"Related Entity" in relation to a person means:

- (a) any holding company of the person; or
- (b) any person that is an associated person (as defined by the Securities Act 1978) or subsidiary of that holding company or of the person.

"Service Lines" includes (without limitation) underground power cables; underground telephone and electronic data and computer media services; underground gas supply lines (if any); and underground water supply lines.

"Society" means Kirimoko Park Residents Association Incorporated.

"Special Resolution" means a resolution of the Society in general meeting passed by a majority of not less than 75% of such Members (which, for the purposes of this definition, includes the Controlling Member (if any)) present in person, or by remote audio connection or by proxy at a meeting of the Society and entitled to vote on the question.

"Users of the Member's Developed Property" means any users and Occupiers and/or Invitees of the Member's Developed Property including any mortgagee in possession of that Member's Developed Property,

"Utilities" means any utilities or services ancillary to the use of Developed Properties or the development generally, including items leased, licensed, maintained or otherwise held or operated in whole or in part by the Society from time to time for the benefit of Kirimoko Park.

"Working Day" means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, Labour Day, Matariki, Waitangi Day; and Otago Anniversary Day.
- (b) A day in the period commencing the 24th day of December in any year and ending with the 5th day of January in the following year.

2.2. Interpretation: In this Constitution, unless the context otherwise requires:

- (a) words denoting the singular shall include the plural and vice versa;
- (b) one gender shall include the other genders;
- (c) words denoting persons shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or any statutory body in each case whether or not having separate legal identity;
- (d) any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally;
- (e) reference to anything of a particular nature following upon a general statement shall not in any way derogate from, or limit the application of the general statement, unless the particular context requires such derogation or limitation;
- (f) any reference to "month" or "monthly" shall mean, respectively, calendar month or calendar monthly;
- (g) references to clauses are references to clauses in this Constitution;
- (h) the table of contents, the section headings and clause headings have been inserted for convenience and a quick guide to the provisions of this Constitution and shall not form part of this Constitution or affect its interpretation in any way;
- (i) reference to any statute, regulation, ordinance or Design Code shall be deemed to extend to all statutes, regulations, ordinances or Design Code amending, consolidating or replacing the same.

PURPOSE

3. PURPOSE

3.1. **General:** The Society's purpose is to promote the following objectives for the benefit of Members and/or Kirimoko Park:

- (a) The promulgation and enforcement of the Design Code and Kirimoko Registered Land Covenants benefiting Members and/or Kirimoko Park generally.
- (b) The creation and implementation of appropriate Design Code relevant to each Developed Property.
- (c) The proper supply, operation, maintenance, repair, renovation and replacement of the Communal Facilities and including facilities leased or licensed by the Society.
- (d) Facilitating the installation and maintenance of Service Lines and the supply of Utilities to properties within Kirimoko Park.
- (e) The ownership, leasing or licensing of any Communal Facilities or facilities owned (directly or indirectly) by, or leased or licensed to the Society.

- (f) The full and proper use of the Communal Facilities by Members and, where appropriate, members of the public.
 - (g) The promulgation and enforcement of the Design Code and Kirimoko Registered Land Covenants to ensure that obligations regarding the management of Hydrological Systems and natural features, including compliance with all relevant laws and any other legal requirements.
 - (h) The levying of Members for the purpose of meeting the objectives set out in this clause 3.
- 3.2. **Pecuniary gain not to be an objective:** The Society does not have as an objective the pecuniary gain of Members, and (subject to clauses 3.4 and 16.1) no Member shall be entitled to receive any dividend or other distribution out of any levy, fee, donation or other income or funds of the Society.
- 3.3. **Shares held by Society in Utility or Management Company:** The Society must not hold shares in any company that holds, maintains or manages any of the Utilities, the Communal Facilities or Hydrological Systems, unless the constitution of that company provides that it cannot carry on trading activities or business for a profit.
- 3.4. **Members may contract:** A Member may enter any agreement or understanding with the Society for the supply of any goods or services for such consideration and on such other terms and conditions as would be reasonable if that person were not a Member.

MEMBERSHIP

4. MEMBERSHIP

4.1. [Deleted – as no longer relevant].

- 4.2. **Owners to be Members:** Each Owner must consent to be a Member, and only Owners shall be Members, and for that purpose:
- (a) Each Member for so long as they are an Owner shall remain a Member in good standing of the Society and comply with the obligations under this Constitution.
 - (b) Each Owner shall commit to the Kirimoko Registered Land Covenants registered against that Owner's Title, securing (inter alia) that Owner's obligations to remain a Member, and to perform the obligations of a Member as set out in this Constitution and otherwise containing the terms required by the Society. The Kirimoko Registered Land Covenants will bind the respective Owner's successors in title so that contemporaneously with the acquisition of any interest in any Developed Property all such successors in title will automatically become a Member, and observe and perform the obligations of a Member as set out in this Constitution. In order to facilitate the effectiveness of the covenants, each Owner shall comply with clause 9.2.
 - (c) A Member shall cease to be a Member immediately upon the registration of a transfer of the Owner's Title (after the Society has consented to such transfer in terms of clause 7.2(d), provided that such cessation shall not relieve a person of any obligation or liability arising before that person ceased to be a Member.

- (d) Each Member shall, immediately upon becoming an initial Owner, provide the Society with the particulars and documentation necessary for maintenance of the register of Members pursuant to clause 4.56 and, whilst continuing to be a Member, shall promptly notify the Society of any variations to those particulars. Each Member shall, before ceasing to be an Owner, provide the Society with the particulars and documentation necessary for maintenance of the register of Members pursuant to clause 4.56 in respect of the new Owner of its Developed Property. Upon the registration of the transfer of the Owner's Title to the new Owner, the new Owner shall automatically become a Member.
- 4.3. **Fee:** The Society shall be entitled from time to time to set such reasonable fee 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 or the transfer of a Membership (including, without limitation, solicitor-client costs), the applicant (in the case of the issue of a Membership) or the seller (in the case of the transfer of a Membership) shall meet those reasonable third party costs.
- 4.4. [Deleted as no longer relevant].
- 4.5. **Register of Members:** The Society shall maintain a register of Members recording and holding the following particulars and documentation:
- (a) **For each Member or Owner:**
- (i) Particulars: name, postal and email addresses, telephone number (at home and at work) and;
- (ii) Documentation: a duly signed written acknowledgement for the purposes of clause 7.2(d)(ii)(2).
- (b) **Membership:** the date upon which each Member became a Member.
- (c) **Voting:** Where there is more than one Owner of a Developed Property, which one of such Owners is entitled to vote in accordance with clause 15.1 and where a Member is a corporation and has appointed a representative under clause 15.5, the name and contact details of that representative.
- (d) Any other particulars and documentation reasonably required by the Committee from time to time.
- 4.6. **Optional information for Register of Members:** The Society may maintain as part of the Register of Members the following particulars and documentation:
- (a) Particulars of third party emergency contact: name, postal and email addresses, telephone number for a third party provided by a Member or Occupier to be contacted by the Society in the event that the Member is absent or in an emergency where the Member or Occupier is not contactable.
- (b) **For each Occupier:** (If different from the Owner) Name, postal and email addresses and telephone number (at home and at work);
- 4.7. **No notice of trust:** No notice of any trust express, implied or constructive will be entered on the register of Members.
- 4.8. **[Delete as audit not required under new Act].**

- 4.9. **Not assignable:** The rights, privileges and obligations of a Member are not assignable.
- 4.10. **More than one Owner:** If there is more than one Owner for a Developed Property:
- (a) such Owners shall collectively constitute one Member and the liability of such Owners in relation to their Membership will be joint and several; and
 - (b) such Owners will nominate in writing one of their number to be their agent and:
 - (i) such nominee will be deemed to be agent of and acting on behalf of all such Owners to bind all Owners accordingly; and
 - (ii) if no such nomination is made, the nominee shall be deemed to be the Owner appearing first on the Owner's Title.
 - (iii) where the Constitution requires notice in respect of anything concerning or connected with the relevant Membership 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.
- 4.11. **Address for service:** Subject to clause 4.12, the particulars given by each Member under clause 4.2(d) shall be the address for service at which any communication or notice in writing by the Society may be served on that Member by any of the following methods:
- (a) By way of post to any postal address provided by the Member or to the current address to which the local authority sends rates demands for that Member, in which case the communication or notice shall be deemed to have been served within three days of posting of any such communication or notice.
 - (b) By way of email to any email address provided by the Member in which case the communication or notice shall be deemed to have been served immediately upon emailing any such communication or notice to the Member.
 - (c) By personally delivering any communication or notice to a Member or to that Member's nominee under clause 4.10 above, in which case the communication or notice shall be deemed to have been served on all Owners if served on the Member who is the nominee of the Owners under clause 4.10(b).
- 4.12. **Service on Occupier:** The Society may elect to serve any communication or notice on an Occupier of a Developed Property by any of the methods specified in clause 4.11 as if the Occupier were the Owner. Such communication or notice shall be deemed to have been served on the Owner of that Developed Property by virtue of service of the communication or notice on the Occupier.
5. **USE OF COMMUNAL FACILITIES**
- 5.1. **Use of Communal Facilities:** Subject to the Constitution of the Society relating to the use of the Communal Facilities each Member and Occupier and/or Invitee shall be entitled to make full use of the Communal Facilities.

6. COMPUTATION AND PAYMENT OF LEVIES

- 6.1. (a) The Society is responsible for setting the Levies described in this clause 6. Levies must be set in a way that is fair and equitable to the Society and to all Members, including any Members' Interest Group. The Levies for a Financial Year will be set taking into account the estimated Operating Expenses for the Financial Year and any contingency sums or special levies contemplated under clause 6.9;
- (b) For the purpose of setting and collecting levies under this clause 6 the Society shall levy all Developed Properties within Kirimoko Park which, by definition, includes a potential lot developed for sale by the Developer (and otherwise ready for separate title) for which the developer has not yet sought issue of title,
- (c) Levies may be determined in any of the following ways or in any combination of them:
- (i) uniform annual charges ("Fixed Charges") provided that such levy must always be reasonable taking into account the nature of that Utility, service, administration cost or other expense to which the charge relates. The office administration costs of the Society including Committee costs and the preparation and audit of financial accounts shall be allocated as uniform Fixed Charges. There could also be separate Fixed Charges payable per Member, or per Members' Interest Group.
 - (ii) variable usage charges ("**Variable Charges**") provided that such levy must always be reasonable taking into account the nature of the Communal Facilities. Utility, service or other expense to which the charge relates and, if deemed appropriate, of the related Development Stage of Kirimoko Park. These costs would normally be allocated as Member's Proportion. There could also be separate Variable Charges allocated by ~~category of~~ Member or by Members' Interest Group.
 - (iii) sinking funds for Long Interval Maintenance, or special sums, or contingency sums ("**Special Charges**") which should be allocated as provided within clause 6.9; and
- (d) Where a Member's Developed Property comprises more than one Residential Unit or commercial tenancy, then to the extent that the Queenstown Lakes District Council and/or the Otago Regional Council levies charges or surcharges for services, utilities, connections or benefits based on the number of Residential Units and/or commercial tenancies on a lot the Society may calculate the levies for a Developed Property as if each Residential Unit or commercial tenancy were a Developed Property. For the purposes of this clause 6.1(d) a Residential Unit means a single self contained household unit, whether of one or more persons, and includes accessory buildings. Where more than one kitchen and/or laundry facility is provided on the lot there shall be deemed to be more than one Residential Unit.
- 6.2. **Levies:** Levies for the ensuing Financial Year shall be estimated ("**the Society's Estimate**") for each Member's Developed Property prior to or as soon as practicable after the commencement of each Financial Year, and the Society shall by written notice advise each Member of the Society's Estimate comprising:

- (a) the "Fixed Charges" for that Financial Year;
- (b) the "Variable Charges" for that Financial Year;
- (c) any "Special Charges" for that Financial Year

6.3. [Deleted Aug 2016].

6.4. [Deleted as no longer relevant].

6.5. **Society to invoice for Levies:** The Society shall prepare and invoice Members or Owners for the Levies on a Quarterly basis or other such period determined by the Society from time to time.

6.5.1 **Preferred payment method:** The Society's preferred method for payment of invoices is by electronic payment. Details to enable such payment will be included on each invoice.

6.6. **Payment of Levies:** Levies are payable within 20 working days of the date of the invoice.

6.7. **Statement of Operating Expenses:**

(a) As soon as practicable after the end of each Financial Year the Society shall provide to each Member an itemised statement of the actual Operating Expenses for the just completed Financial Year in accordance with clause 12.11(I),

(b) If:

(i) the actual Operating Expenses for the previous Financial Year (as shown in the financial statements completed in accordance with clause 12.11(I)) are greater than the total levies fixed for that Financial Year under clause 6.2, the Society shall add the difference to the Society's total estimate of the Operating Expenses for the then current Financial Year; or

(ii) the actual Operating Expenses for the previous Financial Year (as shown in the financial statements completed in accordance with clause 12.11(I)) are less than the total levies fixed for that Financial Year

under clause 6.2, the Society shall credit the difference to the Society's estimate of the Operating Expenses for the then current Financial Year.

6.8. [Deleted August 2016].

6.9. **Special Charges:** The Committee may from time to time fix:

(a) an additional levy to be paid by each Member to be set aside in a sinking fund to allow for and to meet the costs of Long Interval Maintenance, provided that any levy payable by a Member under clause 6.9(a) shall be equal to that Member's Proportion of the total estimated cost to be provided for and met

from the proceeds of the levies paid by all Members or by a Members' Interest Group; and

- (b) such other levies, payable by each Member at such times as are set by the Society, as the Society considers are necessary for it to meet its obligations under this Constitution provided that any levy payable by a Member under clause 6.9(b) shall be equal to that Member's Proportion of the total estimated cost to be provided for and met from the proceeds of the levies paid by all Members or by a Members' Interest Group; and
- (c) such levies, payable by each Member of a Members' Interest Group at such times as are set by the Society, as the Society, acting reasonably, considers are necessary for any Members' Interest Group, provided that any levy payable by a Member of a Members' Interest Group under this clause 6.9(c) shall be equal to that Member's Proportion (in which case the calculation of the total land areas shall be deemed to be that of the Developed Properties of the Members' Interest Group) of the total estimated cost to be provided for and met from the proceeds of the levies paid by all Members of that Members' Interest Group;

and in each case the Committee will determine if that Member's Proportion will be calculated under paragraph (a) or paragraph (b), of the definition of Member's Proportion in clause 2.1 of this Constitution.

6.10.[Deleted August 2016].

7. OBLIGATIONS OF MEMBERS

7.1. **Kirimoko Registered Land Covenants and Design Code:** Each Member agrees to promptly and fully comply with the terms of this Constitution, any Design Code and the Kirimoko Registered Land Covenants given in favour of the Society by such Member (whether by separate deed of covenant or as registered against each Owner's Title). No amendment to this Constitution shall be made that would result in there being any conflict between the provisions of this Constitution (including any Design Code) and the provisions of those Covenants (as described in clause 4.2 (b)). In the event of a conflict between this Constitution and those Covenants the provisions of the Covenants shall prevail.

7.2. **Sale of Developed Property:** Where a Member sells ("**the Seller**") a Developed Property:

- (a) Notwithstanding any other clause in this Constitution, the Seller shall remain liable for sums owed to the Society by that Seller.
- (b) Without limitation, the Seller shall continue to be liable as a primary and principal debtor for all indebtedness of the purchaser of the Developed Property ("**the Purchaser**") to the Society until such time as:
 - (i) the transfer of the certificate of title for that Developed Property to the Purchaser is registered at the Land Transfer Office; and
 - (ii) the Purchaser becomes bound by the Covenants registered against the Developed Property; and

- (iii) the Seller has complied with its obligations under this clause 7.2 and clause 9.2.
- (c) The Purchaser shall be liable as if a Member for all indebtedness of the Seller to the Society in respect of the Developed Property purchased and a statement of the Society given under clause 7.5 will (in the absence of manifest error) be conclusive as to the sum of this indebtedness.
- (d) The Seller must obtain the consent of the Society to the transfer of the Seller's Developed Property prior to the date of transfer. Notwithstanding anything else contained in this clause 7.2, the Society may decline to consent to a transfer of the Seller's Developed Property until:
 - (i) the Seller has performed its obligations as a Member as set out in this Constitution, including (without limitation):
 - (1) the Seller's payment of all sums owed to the Society in full (including any fees charged or costs incurred under clause 4.3 and any amounts owing under clause 9.3); and
 - (2) the Seller's provision of the Purchaser's particulars and documentation in accordance with clause 4.2(d), and
 - (ii) the Purchaser has given a written acknowledgement to the Society that it has read and understood this Constitution, the current Design Code and the Covenant.
- 7.3. **Assignment or Sub-Letting:** Any assignment or subletting of the type or in the manner referred to in Section 109(2) of the Property Law Act 1952 shall be a breach of the provisions of this Constitution.
- 7.4. **Change of Control:** Where any Member is an unlisted company or any Occupier is an unlisted company then any change in the legal or beneficial ownership of any of its shares, issue of new capital or amalgamation which results in a change in the effective management or control or ownership of the company is deemed to be a transfer of the Seller's Developed Property requiring compliance with clause 7.2(d).
- 7.5. **Society to provide statement:** The Society shall, on application by a Member, or any person authorised in writing by such Member, provide the Member or authorised person with a statement of the indebtedness of the Member to the Society calculated to the date specified in the application.

The statement shall show:

- (a) the levies payable by such member for the current Financial Year calculated in accordance with clause 6;
- (b) payments made by the Member on account of Operating Expenses or other moneys owing in the current Financial Year;
- (c) payments due from the Member on account of Operating Expenses or other moneys owing in the current Financial Year, and not paid by the Member; and
- (d) any accumulated unpaid default interest.

- 7.6. **Payment of Rates and Compliance with Obligations:** For clarity, each Member acknowledges that it is still liable to pay rates levied by the Queenstown Lakes District Council and/or by the Otago Regional Council (or their successors) and to comply with all legal obligations in respect of that Member's Developed Property.
- 7.7. **No improper use:** All Communal Facilities intended for the Hydrological Systems and/or for recreational purposes shall be used only for such purposes.

7. MEMBERS' ASSISTANCE TO SOCIETY

- 8.1. **Ongoing Development and Maintenance:** The Members acknowledge that development of Kirimoko Park is ongoing and that periodic maintenance of the Communal Facilities of Kirimoko Park will be required.

Each Member agrees:

- (a) to grant and now grants the Society access to the Developed Property of that Member with such vehicles, machinery and tools as the Society or developer desires for the purpose of attending to the installation and/or maintenance of the Hydrological Systems. However, the Society or Developer shall:
 - (i) make good any damage caused by such access to the Developed Property of that Member; and
 - (ii) in so doing, shall not unreasonably interfere with that Member's quiet enjoyment of that Member's Developed Property,
- (b) to grant, and hereby grants, such easements in favour of the Society, over or under the Member's Developed Property as are required for installation and/or maintenance of the Hydrological Systems or as may be desirable for the development of the Hydrological Systems or other Utilities to proceed; that easement to include terms equivalent to those set out in clauses 8.1(a)(i) and 8.1(a)(ii);
- (c) not to prevent, hinder or obstruct the operation of the Hydrological Systems or the addition, replacement, alteration or removal where not required of structures or services forming part of the Hydrological Systems by the Society;
- (d) that neither the Member nor the Society shall oppose, or take part in any opposition to, the development of Kirimoko Park;
- (e) [Deleted as no longer relevant]
- (f) [Deleted as no longer relevant]
- (g) to permit the Society to temporarily close the Communal Facilities as may be required for the development to proceed or as may be necessary or desirable for the development of Kirimoko Park.

8. BREACH OF OBLIGATIONS

- 9.1. **Occupiers:** A reference to an act or omission by any Member shall include any act or omission by any Users of the Member's Developed Property.

9.2. Each Member must, without limitation and in addition to the requirements of clauses 4.2 and 7.2:

- (a) procure that all leases, licences, agreements for sale and purchase and all other agreements and documents that relate to the Member's Developed Property include a provision for the benefit of the Society that requires all such Users of the Member's Developed Property to comply with this Constitution, the current Design Code and the Kirimoko Registered Land Covenants given in favour of the Society by that Member:
- (b) make all Users of the Member's Developed Property aware of this Constitution, the current Design Code and the Kirimoko Registered Land Covenants.
- (c) attach a copy of this Constitution, the current Design Code, the Kirimoko Registered Land Covenants and any covenants given in favour of the Society by that Member to all leases, licences, agreements for sale and purchase and all other agreements and documents that relate the use of to the Member's Developed Property; and
- (d) 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 Users of the Member's Developed Property comply with this Constitution. In any case of persistent breach by a User of the Member's Developed Property of this Constitution, the Owner shall on demand by the Society and where legally possible, terminate the Users' of the Member's Developed Property rights to the Developed Property.

9.3. **Consequences:** Without prejudice to the Society's other rights and remedies, upon any breach of this Constitution by a Member ("**Offending Member**"):

- (a) Where damage has been caused to the Communal Facilities or to the Hydrological Systems, the Offending Member shall immediately make good such damage to the standard reasonably required by the Society.
- (b) If such default continues for seven 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 the expenses incurred by the Society (including any 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, shall 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 at the date, being seven days after the date specified in any invoice or demand for payment ("Due Date") (and, whether or not formal demand for payment has been made and without any formal demand being necessary), such money shall be payable by the Offending Member to the

Society immediately on demand. Any money payable to the Society by an Offending Member after the Due Date:

- (i) 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
- (ii) in addition, the Society may also on the Due Date (or at any time between the Due Date and the date all such money is paid) charge the Offending Member a penalty fee of 10% of the amount owing (including any amount owing from previous invoices).
- (iii) The payment of Levies to the Society shall be secured by Covenants against the titles of the Developed Properties. The Society may enforce the Covenants as it may deem necessary or expedient to enforce the Society's Constitution and Design Code.

9.4. Without prejudice to clauses 9.1 to 9.3 (inclusive) each Member acknowledges the Covenant registered over that Members Developed Property in favour of land owned by the Society restricting subdivision of that Developed Property and regulating timeframes for completion of construction and landscaping on that Developed Property, ("**Property Covenant**"). If:

- (a) a Member ("Infringing Member") breaches the terms of the Property Covenant; and
- (b) another Member who is affected by that breach complains to the Society and refers to this clauses 9.4; and
- (c) the Society is reasonably satisfied that the Infringing Member has in fact breached the Property Covenant, then the Society, as Owner of the land that is the dominant tenement in respect of such Property Covenant may take appropriate action to enforce the Property Covenant. For clarity, the Society may, but is not obliged to, take any action in relation to a land covenant that is registered not only in favour of land owned by the Society but also in favour of land owned by other persons.

THE SOCIETY

9. POWERS AND OBLIGATIONS OF THE SOCIETY

- 10.1. **Design Code:** In the fulfilment of the purposes and objects of the Society, but subject to clauses 16.7, the Society shall from time to time promulgate, amend and distribute to Members a Design Code regulating the use of the Communal Facilities (including any restrictions on use for security, maintenance or other reasons), regulating the behaviour of Users of the Members' Developed Properties and governing the use of Developed Properties.
- 10.2. **Repair of Communal Facilities:** The Society shall ensure the proper installation, operation, maintenance, repair, renovation and replacement of the Communal Facilities. Each Member agrees and allows the Society (or any parties engaged under clause 10.4) access to the Developed Property of that Member for the purposes of this clause 10.2. However, the Society shall make good any damage caused by such access within a reasonable time frame after the completion of any work carried out to give effect to this clause 10.2.

10.3. **Insurance:** The Society shall effect and maintain all insurances as it considers prudent with respect to the Communal Facilities, the Society's affairs and members of the Committee, and shall meet all costs of such insurance (which shall include all valuations and other professional fees required or deemed desirable for the purposes of such insurances). Insurance regarding members of the Committee may be effected, without limitation, in respect of:

- (a) Liability, not being criminal liability, for any act or omission in a Committee member's capacity as such; and
- (b) costs incurred by that Committee member in defending or settling any claim or proceeding relating to any such liability, and
- (c) Costs incurred by that Committee member in defending any relevant criminal proceedings in which he or she is acquitted.

10.4. **Service contractors and utility suppliers:**

- (a) For the supply and maintenance of Utilities or services (including security, landscaping, operation of Hydrological Systems or other such essential services as the Society considers desirable) to Kirimoko Park, the Society may, from time to time, nominate:
 - (i) service contractors;
 - (ii) Utilities suppliers;
 - (iii) an exclusive service contractor for a particular service; or
 - (iv) an exclusive Utilities supplier.
- (b) Any Member wishing to contract for services or Utilities to that Member's Developed Property must use the service contractor(s) or Utilities supplier(s) who have been nominated by the Society.
- (c) Where service contractor(s) or Utilities supplier(s) have been nominated by the Society, every Member must comply with all guidelines for use of the particular services or Utilities reasonably imposed by such contractor(s) and supplier(s).

10.5. **[Deleted as no longer relevant]**

10.6. **Agreement to Grant Easements:** Each Member agrees to grant any easements and/or covenants in favour of the Society over or under that Member's Developed Property which are necessary to permit the Society access to that Member's Developed Property to give effect to this Constitution or any Design Code made by the Society under clause 10.1.

10.7 **Design Review Board:**

- (a) The Design Review Board (as defined in the Registered Land Covenant) shall consist of not less than 2 members ("**DRB Members**") who shall be appointed by the Society pursuant to the Design Review Board organisation provisions of the Development Controls (as defined in the Kirimoko Registered Land Covenant).

- (b) The appointment of such DRB Members shall be for such term or terms as determined by the Society and the Society may at any time require the resignation of and replace any DRB Member, so that the appointment of DRB Members is at all times at the discretion of the Society. DRB Members may or may not be Members of the Society.
- (c) The Society shall determine the extent (if any) to which DRB Members are recompensed for their work as DRB Members.
- (d) The Design Review Board shall be empowered on behalf of the Society to review the building plans and specifications of developments or alterations proposed by Members to ensure compliance with the Registered Land Covenants and the Kirimoko Design Code.
- (e) The Design Review Board shall be empowered on behalf of the Society to authorise minor departures from the Development Controls within the Kirimoko Registered Land Covenant in accordance with the procedure outlined below:
 - i. The Design Review Board may consider and provide approval to a Member for minor departures from the Development Controls contained within the Kirimoko Registered Land Covenant, subject to the following:
 - 1) The Design Review Board shall obtain independent advice from a Suitably Qualified Professional that any proposed departure is minor in nature, has minor effects and does not compromise the objectives for Kirimoko Park as set out in the Kirimoko Design Code; and
 - 2) Written approval for the minor departure has been obtained from the Registered Proprietors of all Adjoining Lots.
- (f) To obtain the consent of the Design Review Board in terms of (d) and (e) above, Members shall submit to the Society two copies of plans and specifications of any proposed structures, or alterations to existing structures, together with a landscape plan for review by the Design Review Board. Where written consent is required from the Adjoining Lot owner two copies of the relevant consent will also be provided.
- (g) The prior written consent of the Design Review Board must be obtained before commencement of any such work.

10.8. **Enforcement:** The Society shall have the power and authority, in its own name and on its own behalf or in the name of or on behalf of any Member to:

- (a) commence and maintain legal action, or to restrain and enjoin any breach or threatened breach of the covenants established by the Kirimoko Registered Land Covenants, the Constitution and the Design Code of the Society;
- (b) settle claims, enforce the covenants, and take all such action as it may deem necessary or expedient to enforce the Society's Constitution and the Design Code.

10. LIMITATIONS OF THE SOCIETY

11.1. **No indebtedness:** The Society shall not borrow any money, other than short term borrowing of a minor nature to cover a temporary shortfall in meeting the Society's proper obligations, unless authorised to do so by Special Resolution.

- 11.2. **No encumbrances:** The Society shall hold the Communal Facilities in its own name and shall not mortgage, charge, encumber, transfer or otherwise deal with such Communal Facilities, except by Special Resolution, provided that where the Society is obliged to grant any interest in or right in respect of the Communal Facilities by any agreement with the Developer, such interests or rights may be granted by the Committee.
- 11.3. **No investments:** The Society shall hold all funds with a Bank, and shall not invest those funds other than by deposit with a Bank, except by Special Resolution.
- 11.4. **Application of funds:** All money paid to the Society by Members in accordance with this Constitution is to be applied exclusively for the purposes of:
- (a) owning, administering, maintaining, replacing and renewing the Communal Facilities and the Hydrological Systems;
 - (b) managing and administering the Society and administering and enforcing this Constitution;
 - (c) providing services, Utilities, facilities and benefits to Members; and
 - (d) such further or other incidental matters as the Committee may deem beneficial for Members.

OPERATION OF THE SOCIETY

11. COMMITTEE

- 12.1. **Powers:** The administration of the Society shall be vested in the Society in general meeting, and shall be delegated to the 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 deem necessary or expedient. The powers, authority and discretions as exercised by the Committee are subject always to any limits, which may from time to time be imposed by the Society by this Constitution or otherwise. The Committee may delegate any of its powers to committees consisting of such member or members of their body as they think fit or to the Manager. Any committee so formed shall in the exercise of the powers so delegated conform to directions of the Committee.
- 12.2. **Bank accounts:** The Society shall establish a bank account with a Bank and any drawings on that account (including any cheque drawn on that account) shall be made only under the signatures of the Manager and one other member of the Committee.
- 12.3. **Deeds:** Any contract which, if made between private persons must be by deed shall, when made by the Society, be in writing under the common seal of the Society, to be affixed in accordance with clause 12.16 and a copy (as signed) shall be retained in the Society's records.
- 12.4. **Other Documents:** All other documents and written announcements requiring execution on behalf of the Society must be signed by the chairperson and a copy (as signed) shall be retained in the Society's records.
- 12.5. **Composition:** The Committee shall comprise the following persons:

- (a) a chairperson;
- (b) a treasurer/secretary (who need not be a Member of the Society); and
- (c) a minimum of two and a maximum of five general Committee members, as elected by the Society in general meeting.
- (d) [Delete as no longer relevant]

12.6. **Committee Members:** The chairperson shall be as elected by the Committee at every annual general meeting. The treasurer/secretary shall be such person as the Committee shall appoint from time to time and need not be a Member of the Society. It is acceptable for the Manager to be appointed also to the position of treasurer/secretary. The balance of the Committee shall be elected by the Society at every annual general meeting, and may be elected at any other time by the Society in general meeting.

12.7. **Rotation of Committee:** At the annual general meeting of the Society in every year one third of the general committee members, or if their number is not a multiple of three then the number nearest to one third, shall retire from office. The Committee members to retire shall be those who have been longest in office, as general committee members, since they were last elected. If two or more of those general committee members were last elected on the same day, the Committee members to retire (unless they otherwise agree) shall be determined by lot. A retiring Committee member is eligible for re-election, and shall act as a Committee member throughout the meeting at which that Committee member retires.

12.8. **Duration of Membership:** A Committee member shall hold the elected position until the earliest of:

- (a) retirement from office at an annual general meeting under clause 12.7;
- (b) the date written resignation from the position is received by the Society;
- (c) the date of removal from such position by the Society in general meeting; or
- (d) the date of cessation of Membership.
- (e) An Officer shall be removed as an Officer by resolution of the Committee or the Society where, in the opinion of the Committee or the Society:
 - i. The Officer elected to the Committee has been absent from 3 Committee meetings in any 12 month period without leave of absence from the Committee, or
 - ii. The Officer has brought the Society into disrepute, or
 - iii. The Officer has failed to disclose a conflict of interest, or
 - iv. The Committee passes a vote of no confidence in the Office
 with effect from (as applicable) the date specified in a resolution of the Committee or Society.

12.9. **Casual vacancies on Committee:** In the event of a casual vacancy in any position on the Committee (whether caused by death, cessation of Membership from the Society, or some other means) the remaining Committee members may appoint

another Member to fill the vacancy until the position is filled by the Society in general meeting.

12.10. [Deleted as no longer relevant].

12.11. **Duties of Treasurer/Secretary:** The treasurer/secretary shall:

- (a) convene general meetings when requested to do so in accordance with this Constitution;
- (b) attend all meetings of the Committee and have full speaking rights at such meetings;
- (c) give all notices required to be given by this Constitution or as directed from time to time by the Society or the Committee;
- (d) keep minutes at all general meetings and Committee meetings (including meetings of special groups and Members' Interest Groups) and enter into the minute book:
 - (i) the time, date and venue of such meeting;
 - (ii) all business considered and resolutions passed at such meeting;
- (e) [Deleted as not required]
- (f) receive, and issue receipts for, all annual levies, additional fees, and any other moneys paid to the Society;
- (g) operate and maintain a current bank account in the name of the Society;
- (h) pay all accounts properly incurred by or on behalf of the Society;
- (i) report immediately to the Committee any Member who fails to pay annual levies or additional fees within the prescribed period;
- (j) keep all financial records, copies of signed deeds and documents, and any security documents in safe custody;
- (k) compile all proper accounting records from time to time as required by the Act or by the Committee which give a true, fair and complete account of the financial affairs and transactions of the Society: and
- (l) compile the financial statements immediately following each Financial Year as required by the Act and the distribution of the financial statements to Members as soon as reasonably practicable and in any case within three months of the end of the Financial Year.
- (m) institute and maintain the Register of Members as required by clause 4.5 and 4.6.
- (n) Act as point of contact for the purposes of the Incorporated Societies Act.

12.12. **Conduct of Meetings:** The Committee may meet together, adjourn and otherwise regulate its meetings and procedure for conducting its business as it thinks fit. The

Committee may meet at any time and the secretary shall, upon the request of the chairperson or any two Committee members, convene a meeting of the Committee.

- 12.13. **Quorum:** A majority of the members of the Committee from time to time shall form a quorum for a Committee meeting. No business of the Committee shall be conducted at any time when less than a quorum is present at the same time and place.
- 12.14. **Chairperson:** Subject to clause 12.6, the Committee from time to time shall appoint, (and may also remove and replace) a chairperson for such term as it sees fit from one of their number to chair Committee meetings and otherwise exercise the powers of the chairperson set out in this Constitution.
- 12.15. **Chairperson to have casting vote:** In the case of a tie in votes, the chairperson shall exercise a casting vote.
- 12.16. **[Deleted as not a requirement under new Act]**
- 12.17. **Voting:** Resolutions of the Committee shall be passed by majority. Each Committee member shall be entitled to exercise one vote, provided that the treasurer/secretary shall not be entitled to vote.
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 Committee meeting shall be as valid and effectual as if it had been passed at a meeting of the Committee duly convened and constituted.
- 12.18. **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 ineligible, shall be as valid as if every such person had been duly appointed or had duly continued in office and was eligible to be a Committee member.
- 12.19. **Committee minutes and records:** The Committee shall cause proper minutes to be kept of the proceedings of all meetings of the Society and of the Committee. All minutes of business transacted at such meetings signed by the chairperson shall 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.

12. **MANAGER**

- 13.1. **Duties:** The Committee may:
- (a) appoint, remove and/or replace a Manager from time to time to carry out such of the obligations of the Society, and to exercise such of the discretions and powers of the Society, as the Committee shall see fit;
 - (b) enter into and terminate from time to time management agreement(s) or equivalent arrangements whereby the Committee appoints a third party to carry out certain of the obligations of the Society to operate, maintain, repair, renovate and replace all or any of the Communal Facilities or the Hydrological Systems, and the Committee may pay any fee or expense associated with either such appointment or outsourcing.

13. **GENERAL MEETINGS**

- 14.1. **Annual general meeting:** In addition to any other meetings in that year, the Society shall hold an annual general meeting each year which must be held:
- (a) not later than 18 months after the date of the last annual general meeting or in respect of the first annual general meeting not later than 18 months after the Society's date of registration; and
 - (b) not later than six months after the end of each Financial Year. The Committee will determine the time and place of each year's annual general meeting but this meeting must be held in the town or close environs of Wanaka, New Zealand.
- 14.2. **Special general meetings:** A general meeting other than an annual general meeting may be requested by the Committee, or by written requisition signed by not less than 25% of current Members. The secretary shall call a special general meeting within 14 days of receiving an effective request.
- 14.3. **Powers of the Society in general meeting:** The Society in a general meeting may, by resolution, exercise all powers, authorities and discretions of the Society notwithstanding that any such power, authority and discretion may have been delegated to the Committee by or pursuant to this Constitution. Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by
- (a) the required majority of Members relevant to the question and entitled to vote in person or by proxy at general meetings and
 - (b) shall be as valid and effectual as if it had been passed at a general meeting of the Society duly convened and constituted.
- 14.4. **Quorum:** No business shall be transacted at any general meeting of the Society unless the quorum is present when a meeting proceeds to business. Quorum shall be not less than 10% of all Members or 10 Members (whichever is the lesser) eligible to vote at general meetings, present in person, or by remote audio connection or by proxy.
- 14.5. **Notice of general meeting:** A notice of general meeting of the Society shall be sent to every Member not less than 14 days before the date of such meeting. Such notice shall specify:
- (a) the date, time and venue of such meeting;
 - (b) the nature of the business to be transacted at the meeting in sufficient detail to enable a Member to form a reasoned judgement in relation to it; and
 - (c) the text of any Special Resolutions to be submitted to the meeting.
- 14.6. **Failure to give notice:** The accidental omission to give notice, or the non-receipt of such notice by a Member, shall not invalidate the proceedings at any such meeting.
- 14.7. **The chairperson:** The chairperson at any general meeting shall be:
- (a) the chairperson of the Society; or

- (b) if the chairperson is not present or is unwilling to take the chair, then those Committee members who are present may choose one of their number to chair the meeting; or
 - (c) if for any reason no chairperson is selected by the Committee, any Member appointed by a majority of Members present in person or by proxy.
- 14.8. **Adjournment:** If a quorum is not present within half an hour from the time appointed for the holding of a general meeting convened on requisition of Members, the meeting shall be dissolved. In any other case the meeting shall 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 shall determine (such date not to be later than 14 days from the date of the adjourned meeting). 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 shall constitute a quorum.
- 14.9. **Adjourned meetings:** No business other than that business which might have been transacted at the meeting from which the adjournment took place, shall be transacted at any adjourned meeting. Members shall not be entitled to receive any notice in respect of adjourned meetings.
- 14. **VOTING**
 - 15.1. **Member has one vote per property:** Each Member present at a general meeting of the Society (not at that time being in breach of this Constitution) shall be entitled to one vote for each Developed Property of which that Member is a registered proprietor, which may be exercised either in person or by proxy. Where there is more than one Owner in respect of any Developed Property such Owners are collectively a Member pursuant to clause 4.10, and only one such Owner shall be entitled to vote. In the absence of agreement between such Owners as to who shall exercise this vote, the Owner appearing first on the Owner's Title shall be entitled to exercise that vote. On the death of any Member, the trustee of that Member's estate shall be entitled to exercise that Member's vote.
 - 15.2. [Deleted as no longer relevant].
 - 15.3. [Deleted as no longer relevant].
 - 15.4. [Deleted as no longer relevant].
 - 15.5. **Corporation representatives:** Any corporation which is a Member may, by resolution of its directors or other governing body, authorise in writing such person as it thinks fit to act as its representative at any meeting of the Society, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which that person represents as that corporation could exercise if it were a natural person. References in this Constitution to a Member being present in person shall mean and include a representative appointed pursuant to this clause 15.5, and such person may also stand for election to the Committee.
 - 15.6. **No vote if fees unpaid:** Unless all annual levies and additional fees (including under clause 9.3) presently payable by the Member to the Society have been paid in full, the Member shall not be entitled to vote at any general meeting of the Society, whether in his own right or as a proxy for another person.
 - 15.7. **Voting at meetings:** At any general meeting:

- (a) A properly notified resolution may be put to the vote by the chairperson or by any Member present at the meeting and entitled to vote.
- (b) Resolutions put to the vote shall be decided on voices or a show of hands, unless a poll is demanded on or before declaration of the result of the voices or show of hands by:
 - i. The chairperson of the meeting; or
 - ii. At least five Members present in person or by proxy. In the case of a resolution put to the vote of the meeting by voices or a show of hands, a declaration by the chairperson that such resolution has been carried or lost or an entry to that effect in the Society's minute book, shall be conclusive evidence of that fact, without further proof of the number or portion of votes recorded in favour of or against such resolution.
- (c) Resolutions shall be passed by a majority of votes, except where a Special Resolution or a unanimous resolution of all Members is required by this Constitution.
- (d) In the case of a tie in votes, the chairperson may exercise a casting vote.
- (e) A Member may exercise the right to vote either by being present or by proxy. A proxy for a Member is entitled to attend, to be heard and vote at a meeting of the Society as if the proxy were the Member. A proxy must be appointed by notice in writing signed by the Member and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding twelve months. No proxy is effective in relation to a meeting unless a signed copy of the notice of appointment is delivered to the chairperson or the secretary of the Society at least 24 hours before the start of the meeting.

15.8. **Proxy Forms:** The form of proxy shall be the form included by the secretary/treasurer with the notice of meeting but, if no such form is included with the meeting notice, or if the standard form is unavailable to a Member, then any usual form of proxy document meeting the conditions of clause 15.7(f) will be sufficient.

15.9. **Good faith:** Members shall, in exercising any vote at any general meeting, or as a Committee Member, exercise such vote in good faith with a view to ensuring that all Members are treated fairly by the Society, and that each Member shall bear that Member's fair proportion of Operating Expenses and of all costs and expenses to be met by levies made by the Society under clause 6, irrespective of whether any expenditure by the Society benefits all Members.

GENERAL

15. GENERAL

16.1. **Dissolution:** The Society may be wound up in accordance with provisions of Part 5 of the **Act**. On the liquidation of the Society or its removal from the Register of Incorporated Societies, The Society's surplus assets, after payment of all debts, costs and liabilities, shall be vested in such other organisation or body having objects similar to the objects of the Society, or to some other charitable purpose in New Zealand.

- 16.2. **Alteration of the Constitution:** Subject to clauses 16.4, 16.5 and 16.6 this Constitution shall not be amended, added to or rescinded unless:
- (a) such action is taken at an annual general meeting, or a special 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;
 - (c) such action is taken by Special Resolution.
- 16.3. **[Deleted as no longer relevant].**
- 16.4. **Alteration of Certain Clauses:** Until such time as Completion of Development and notwithstanding clause 16.2, clauses 3.3, 6.9, 15.4 or any clause or part of a clause that would, if amended, have the effect of altering this Constitution so that a condition in the Exemption Notice would no longer be met must be approved by a Special Resolution and by the Developer.
- 16.5. **Alteration of Clauses Affecting Members Interest Groups:** Notwithstanding clause 16.2 this Constitution shall not be amended to, added to or rescinded in a manner that affects a Members' Interest Group unless:
- (a) such action is taken at an annual general meeting, or a special general meeting convened for that purpose, and
 - (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) each Members' Interest Group affected by the amendment, addition or rescission passes a Special Resolution of that Members' Interest Group.
- 16.6. **Acceptance by Registrar:** No such amendment, addition or rescission shall be valid unless and until accepted by the Registrar.
- 16.7. **Introduction, Alteration or Cancellation of the Design Code:** If the Committee wishes to promulgate a new Design Code or vary or cancel any portion of the existing Design Code:
- (a) that new or amended Design Code shall not be effective until it is approved by the Members by resolution in accordance with clause 15.7; provided that
 - (b) if that portion of the Design Code only regulates a Members' Interest Group, that amendment to the Design Code shall not be effective until it is approved by a majority resolution of the Members' Interest Group, in which case the process for notification and voting as set out under clause 15.7 shall be deemed to apply (*mutatis mutandis*).
- 16.8. **Registered office:** The registered office of the Society shall be situated at a place nominated by the Committee.
- 16.9. **Liability of Members:** No Members shall be under any liability in respect of any contract or other obligation made or incurred by the Society.

- 16.10. **Society to Indemnify:** The Society shall indemnify and keep indemnified members of the Committee from and against any liability in respect of any proper act or omission in their capacity as a Committee member, to the extent of property owned by the Society, except where criminal liability is adjudged in respect of any Committee member.
- 16.11. **No action in favour of Members:** No action in law or otherwise shall lie in favour of any Member against any other Member or the Committee, or any Committee member in respect of any proper act or omission pursuant to this Constitution. Nothing in this clause 16.11 shall prevent an action in respect of any loss or expense arising from the wilful default of the person against whom such action is taken.
- 16.12. **Member to indemnify Society:** Each Member shall indemnify and keep indemnified the Society from and against any action, claim, demand, loss, damage, cost, expense and liability for which the Society may become liable in respect of or arising from any breach of this Constitution by the Member.
- 16.13. **Dispute Resolution:** The Society's process for resolution of disputes shall be as set out in Schedule 1.
- 16.14. **Approval:** Where in this Constitution any reference is made to the approval or consent of the Society:
- (a) Such approval or consent shall be given at the sole discretion of the Society;
 - (b) No approval or consent given on any occasion by either the Society shall serve as a precedent for, or be binding in any way with respect to, any future application for consent or approval; and
 - (c) Such reference shall mean the prior written approval or consent of the Society.
- 16.15. **Financial Year:** The Financial Year of the Society shall be as defined in clause 2.1.

SCHEDULE 1 DISPUTE RESOLUTION

Meanings of dispute and complaint:

A dispute is a disagreement or conflict involving the **Society** and/or its **Members** in relation to specific allegations set out below.

The disagreement or conflict may be between any of the following persons—

- (a) 2 or more **Members**
- (b) 1 or more **Members** and the **Society**
- (c) 1 or more **Members** and 1 or more **Officers**
- (d) 2 or more **Officers**
- (e) 1 or more **Officers** and the **Society**
- (f) 1 or more **Members** or **Officers** and the **Society**.

The disagreement or conflict relates to any of the following allegations—

- (a) a **Member** or an **Officer** has engaged in misconduct
- (b) a **Member** or an **Officer** has breached, or is likely to breach, a duty under the **Society's Constitution** or bylaws or the **Act**
- (c) the **Society** has breached, or is likely to breach, a duty under the **Society's Constitution** or bylaws or the **Act**
- (d) a **Member's** rights or interests as a **Member** have been damaged or **Member's** rights or interests generally have been damaged.

A **Member** or an **Officer** may make a complaint by giving to the **Committee** (or a complaints subcommittee) a notice in writing that—

- (a) states that the **Member** or **Officer** is starting a procedure for resolving a dispute in accordance with the **Society's Constitution**; and
- (b) sets out the allegation(s) to which the dispute relates and whom the allegation or allegations is or are against; and
- (c) sets out any other information or allegations reasonably required by the **Society**.

The **Society** may make a complaint involving an allegation against a **Member** or an **Officer** by giving to the **Member** or **Officer** a notice in writing that—

- (a) states that the **Society** is starting a procedure for resolving a dispute in accordance with the **Society's Constitution**; and
- (b) sets out the allegation to which the dispute relates.

The information setting out the allegations must be sufficiently detailed to ensure that a person against whom an allegation or allegations is made is fairly advised of the allegation or allegations concerning them, with sufficient details given to enable that person to prepare a response.

A complaint may be made in any other reasonable manner permitted by the **Society's Constitution**.

All **Members** (including the **Committee**) are obliged to cooperate to resolve disputes efficiently, fairly, and with minimum disruption to the **Society's** activities.

The complainant raising a dispute, and the **Committee**, must consider and discuss whether a dispute may best be resolved through informal discussions, mediation, arbitration, or a tikanga-based practice. Where mediation or arbitration is agreed on, the parties will sign a suitable mediation or arbitration agreement.

How a complaint is made:

16. A **Member** or an **Officer** may make a complaint by giving to the **Committee** (or a complaints subcommittee) a notice in writing that—

- a. states that the **Member** or **Officer** is starting a procedure for resolving a dispute in accordance with the **Society's Constitution**; and
- b. sets out the allegation or allegations to which the dispute relates and whom the allegation is against; and
- c. sets out any other information reasonably required by the **Society**.

17. The **Society** may make a complaint involving an allegation or allegations against a **Member** or an **Officer** by giving to the **Member** or **Officer** a notice in writing that—

- d. states that the **Society** is starting a procedure for resolving a dispute in accordance with the **Society's Constitution**; and
- e. sets out the allegation to which the dispute relates.

18. The information given under subclause (1.2) or (2.2) must be sufficient to ensure that a person against whom an allegation is made is fairly advised of the allegation or allegations concerning them, with sufficient details given to enable that person to prepare a response.

19. A complaint may be made in any other reasonable manner permitted by the **Society's Constitution**.

Person who makes complaint has a right to be heard:

20. A **Member** or an **Officer** who makes a complaint has a right to be heard before the complaint is resolved or any outcome is determined.

21. If the **Society** makes a complaint—

- a. the **Society** has a right to be heard before the complaint is resolved or any outcome is determined; and
- b. an **Officer** may exercise that right on behalf of the **Society**.

22. Without limiting the manner in which the **Member**, **Officer**, or **Society** may be given the right to be heard, they must be taken to have been given the right if—

- b. they have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
- c. an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
- d. an oral hearing (if any) is held before the decision maker; and
- e. the **Member's**, **Officer's**, or **Society's** written or verbal statement or submissions (if any) are considered by the decision maker.

Person who is subject to a complaint has a right to be heard:

23. This clause applies if a complaint involves an allegation that a **Member**, an **Officer**, or the **Society** (the 'respondent')—

- a. has engaged in misconduct; or
- b. has breached, or is likely to breach, a duty under the **Society's Constitution** or bylaws or this **Act**; or

- c has damaged the rights or interests of a **Member** or the rights or interests of **Members** generally.
- 24. The respondent has a right to be heard before the complaint is resolved or any outcome is determined.
- 25. If the respondent is the **Society**, an **Officer** may exercise the right on behalf of the **Society**.
- 26. Without limiting the manner in which a respondent may be given a right to be heard, a respondent must be taken to have been given the right if—
 - a the respondent is fairly advised of all allegations concerning the respondent, with sufficient details and time given to enable the respondent to prepare a response; and
 - b the respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
 - c an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
 - d an oral hearing (if any) is held before the decision maker; and
 - e the respondent's written statement or submissions (if any) are considered by the decision maker.

Investigating and determining dispute:

- 27. The **Society** must, as soon as is reasonably practicable after receiving or becoming aware of a complaint made in accordance with its **Constitution**, ensure that the dispute is investigated and determined.
- 28. Disputes must be dealt with under the **Constitution** in a fair, efficient, and effective manner and in accordance with the provisions of the **Act**.

Society may decide not to proceed with complaint:

- 29. Despite the 'Investigating and determining dispute' rule above, the **Society** may decide not to proceed further with a complaint if—
 - 1. the complaint is considered to be trivial; or
 - 2. the complaint does not appear to disclose or involve any allegation of the following kind:
 - a. that a **Member** or an **Officer** has engaged in material misconduct;
 - b. that a **Member**, an **Officer**, or the **Society** has materially breached, or is likely to materially breach, a duty under the **Society's Constitution** or bylaws or the **Act**;
 - c. that a **Member's** rights or interests or **Members'** rights or interests generally have been materially damaged;
 - 3. the complaint appears to be without foundation or there is no apparent evidence to support it; or
 - 4. the person who makes the complaint has an insignificant interest in the matter; or
 - 5. the conduct, incident, event, or issue giving rise to the complaint has already been investigated and dealt with under the **Constitution**; or
 - 6. there has been an undue delay in making the complaint.

Society may refer a complaint:

30. The **Society** may refer a complaint to—
a a subcommittee or an external person to investigate and report; or
b a subcommittee, an arbitral tribunal, or an external person to investigate and make a decision.
31. The **Society** may, with the consent of all parties to a complaint, refer the complaint to any type of consensual dispute resolution (for example, mediation, facilitation, or a tikanga-based practice).

Decision makers:

32. A person may not act as a decision maker in relation to a complaint if 2 or more members of the **Committee** or a complaints subcommittee consider that there are reasonable grounds to believe that the person may not be—
(a) impartial; or
(b) able to consider the matter without a predetermined view.