

**Constitution of Keirunga Terraces
Residents Society Incorporated**

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Constitution of Keirunga Terraces Residents Society Incorporated

1. Definitions and interpretation

Definitions

1.1 Unless the context requires otherwise:

Act means the Incorporated Societies Act 2022 and any regulations made under that Act.

AGM or Annual General Meeting means a meeting of the Members of the Society held once a year convened under this Constitution.

Board means the Society's governing body.

Board Member means a member of the Board, including the Chair.

Bylaws means any bylaws, policies, codes of conduct, or regulations of the Society made under clause 24.5.

Capital Fund means the fund from which the costs of any Capital Improvements are to be paid.

Capital Improvements means structural repairs to, and the replacement or renewal of the Communal Facilities.

Communal Facilities means the communal facilities specified in Schedule 2.

Cut Off Swale Drains means the earth formed diversion cut off swale drains that transport overland stormwater away from the sections. These drains are located within private reserve Lot 28 and may be located in future private reserve land in further stages of the Development. These drains are cut into the land in a "V" like manner. The primary function of these drains is for stormwater transportation. The secondary function of these drains is for walking and biking tracks.

Controlling Entity means the Developer.

Casual Vacancy is a vacancy which arises on the Board when a Board Member does not serve their full term of office.

Chair means the Board Member appointed as Chair of the Society under this Constitution.

Constitution means this Constitution as amended including any schedules to this Constitution.

Contact Details means an electronic address and a telephone number.

Contact Person means a person holding the position of contact person for the Society being the person whom the Registrar can contact when needed.

Default Interest Rate means the rate that is 5% above the business or commercial overdraft rate of the Society's nominated bank.

Developer means Greenstone Land Developments Limited.

Development means the staged residential subdivision and development of the land contained in record of title 815990 (or any successor record of title) situated in Keirunga Road, Havelock North, Hawke's Bay as described in resource consent RMA20230160 or any variation of that consent or any new consents issued for further stages of the development issued by the Territorial Authority and known as Keirunga Terraces.

Elected Board Member means a member of the Board who has been elected in accordance with clause 15.

Expense Year means each 12 month period commencing on 1 April in one year and ending on 31 March in the next year, or such other 12 month period as the Board from time to time sets.

General Meeting means an AGM or SGM of the Society.

Initial Members means those persons who are the initial members of the Society specified in Schedule 6 as at the date of registration.

Interested has the meaning set out in section 62 of the Act.

Interests Register means the register of disclosures made by Officers kept by the Board.

Invitee means any invitee or visitor authorised or approved by an Owner or Occupier.

Keirunga Terraces Maintenance Scheme means the maintenance Scheme specified in Schedule 5.

Levies means the levies payable to the Society by the members in accordance with clause 8.

Lot means all and any of the separate records of title held or to be held by Owners comprised in the Development, with the exception of the records of title within the Development held by the Society.

Lot 1 Owner means the owner(s) from time to time of lot 1 DP 519429 (record of title 815989).

Lot 19 Owner means the owner(s) from time to time of lot 19 DP 487076 (record of title 740060)

Manager means the person or entity appointed by the Board in accordance with clause 13 to carry out the duties and obligations of the Society.

Matter means:

- (a) the Society's performance of its activities or exercise of its powers; or
- (b) an arrangement, an agreement or a contract made or entered, or proposed to be made or entered, into by the Society.

Member means each person who is a member of the Society.

Member's Proportion means a Member's proportion of Levies as determined in accordance with Schedule 4.

Member Register means the register of Members kept under this Constitution.

Notice has the meaning given to it in clause 1.3.

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

Officer means a Board Member and any natural person occupying a position in the Society that allows the person to exercise significant influence over the management or administration of the Society.

Operating Expenses means the total sum all expenses incurred by the Society including but not limited to all rates, taxes, costs and expenses of the Society properly or reasonably assessed or assessable paid or payable or otherwise incurred in respect of the operation of the Society in order to promote the purposes set out in this Constitution and to comply with the Society's obligations under this Constitution, including but not limited to the any costs of management of and repair, maintenance and renovation of the Communal Facilities and the provision of the Services but shall exclude any costs payable in respect of Capital Improvements.

Ordinary Resolution means a resolution passed by a majority of votes cast.

Owner(s) means each person (whether individually or with others) registered as a proprietor of a Lot.

Parking Lot means the area "CP" on DP 607653.

Private Roads means the private roads contained in Lots 50 & 51 DP 607653.

Restrictive Covenants means the Restrictive Covenants registered against the records of titles issued for the Lots.

Register means the register of incorporated societies established under the Act.

Registrar means the Registrar of Incorporated Societies.

Regulations means regulations made under the Incorporated Societies Act 2022.

Services means the services specified in Schedule 3.

SGM or **Special General Meeting** means a meeting of the Members, other than an AGM, called for a specific purpose or purposes.

Society has the meaning given to it in clause 2.1.

Special Resolution means a resolution passed by a 75% majority of votes cast.

Subsoil Drain means the drainage pipe within lot 31 DP 607653.

Territorial Authority means the Hastings District Council or any successor or any other authority having jurisdiction.

Wick Drains means the horizontal wick drainage pipes drilled into the hillside on Lots 2 & 10 DP 607653.

Working Day means any day of the week other than:

- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, and Labour Day; and
- (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday; and
- (c) a day in the period commencing on 24 December in any year and ending on 5 January in the following year, both days inclusive; and
- (d) the day observed as the anniversary in Hawke's Bay.

Interpretation

1.2 Unless the context otherwise requires:

- (a) reference to a person includes any other entity or association recognised by law and vice versa.
- (b) words referring to the singular include the plural and vice versa.
- (c) a reference to:
 - (i) a person includes their executors and administrators.
 - (ii) **writing** includes words printed, typewritten, or otherwise visibly represented, copied, or reproduced including by email. **Written** has a corresponding meaning.
 - (iii) statutory provisions is to them as amended or re-enacted.
- (d) all periods of time or notice exclude the days on which they are given.
- (e) time is of the essence.

Notices

1.3 Unless specified otherwise in this Constitution any notice or other communication (**Notice**) given under this Constitution must be in writing.

1.4 A Notice may be served by email to:

- (a) Members at the email address in their Contact Details;
- (b) the Society at enquiry@greenstoneland.co.nz

1.5 The Society may change its email address for the purposes of clause 1.4 by giving notice to all Members.

1.6 A Notice is deemed served at the time evidenced by the sender's sent email history, unless another party can prove it was not received.

2. Details of Society

Name

2.1 The name of the society is Keirunga Terraces Residents Society Incorporated (**Society**).

3. Purpose and powers

Purpose

3.1 The purposes of the Society are to:

- (a) To generally manage any assets owned by the Society and the Communal Facilities for the benefit of the Members in a manner which ensures enjoyment of the advantages of the Development and the area.
- (b) to generally manage and undertake the maintenance, repair and replacement of the Communal Facilities within the Development and if necessary the development of further facilities within the Development to be designated as Communal Facilities;
- (c) to own Lot 28 DP 607653 and any future private reserve land in further stages of the Development and to manage and maintain those lots and any Communal Facilities and other assets and infrastructure located in those lots.
- (d) To manage and undertake the maintenance of and the replacement of the Cut Off Swale Drains located within Lot 28 DP 607653 and any future private reserve land in further stages of the Development.
- (e) to manage and undertake the maintenance of and the replacement of the Wick drains on Lots 2 & 10 DP 607653.
- (f) to manage and undertake the maintenance of and the replacement of the Subsoil Drain contained in the Lot 31 DP 607653 access lot .
- (g) to generally maintain the Development in accordance with the Keirunga Terraces Maintenance Scheme;
- (h) to manage the delivery of the Services to the Members;
- (i) to manage, maintain and replace the Private Roads and to administer the Private Roads and resolve any disputes that may arise in relation to those roads and their use;
- (j) to ensure compliance by the Members with their obligations contained in this Constitution, the Bylaws and the Restrictive Covenants;
- (k) to ensure that the conditions of any resource consent imposed by the Territorial Authority for the Development, the Communal Facilities and the Private Roads, Cut Off Swale Drains, Wick Drains and Subsoil Drain are complied with;
- (l) to ensure that the sharing of costs in respect of the Society's responsibilities shall be allocated in just and equitable proportions between the Members; and
- (m) to do any act or thing incidental or conducive to the attainment of the above purposes.

No personal benefits

- 3.2 All income, benefit, or advantage must be used to advance the purposes of the Society.
- 3.3 No Member, person associated with a Member, or Board Member is allowed to take part in or influence any decision made by the Society in respect of payments to, or on behalf of, the Member, any person associated with a Member, or Board Member of any income, benefit, or advantage.
- 3.4 Any payments made to a Member, person associated with a Member, or Board Member must:
- (a) be for goods or services that advance the purposes of the Society and must be reasonable and relative to payments that would be made between unrelated parties; or
 - (b) be in accordance with clause 16.7.
- 3.5 The provisions and effect of clauses 3.1 to 3.4 must not be removed from this Constitution and must be included and implied in any document replacing this Constitution.

4. Compliance

- 4.1 The Owners and Members appoint the Society to manage their collective interests as co- owners of the Communal Facilities (including the Private Roads), and as Owners of individual Lots and Members agree to be bound by this Constitution and the Restrictive Covenants.
- 4.2 The Owners and Members appoint the Society and grant the Society all rights to manage their collective interests in relation to any easements granted by the Owners and Members to any third party who is not a Member in relation to any Communal Facilities (including the Private Roads) contained within any land owned by those Owners or Members and in particular easements granted in favour of the Lot 1 Owner and the Lot 19 Owner. This is on the basis that any contributions to the Operating Expenses and/or the Capital Contributions to be paid in relation to any such easements may be received by the Society on behalf of the Members and applied towards the Operating Expenses and/or the Capital Contributions of the Society. For the avoidance of any doubt the Society will remain responsible for management, maintenance of and replacement of the Communal Facilities (including the Private Roads) at the cost of the Society but subject to the Levies to be paid by the Members and contributions made by any other party receiving the benefit of any such easements.
- 4.3 This Constitution will operate to govern the use and enjoyment of the Development and the Communal Facilities and will constitute a binding agreement between the Owners/Members for the use and enjoyment of the Development and the Communal Facilities & Services.
- 4.4 The Society will, on the Owners' and Members behalf, enforce this Constitution. No Member shall be entitled to take any action in law or otherwise in respect of any matter or thing done or omitted to be done without first, on each occasion, referring

the matter or thing to the Board and allowing the Board a reasonable opportunity (having regard to the seriousness and nature of the default) to enforce the terms of the Constitution against the defaulting Owner.

5. Membership

- 5.1 Subject to the rest of this clause 5, every Owner must also be a member of the Society and, with the exception of the Initial Members, unless otherwise agreed by the Members by an Ordinary Resolution only Owners shall be members of the Society or otherwise if required by the Controlling Entity.

The Initial Members (except for the Developer) shall be Members of the Society only for so long as is reasonably necessary to satisfy the membership requirements of the Act and shall resign from the Society as soon as there are more than 10 Owners (excluding the Developer) as Members. The Initial Members shall be entitled to vote at any meeting of the Society, to elect a Board and exercise all rights of Members set out in the Constitution, but shall have no other obligations as Members unless they are also an Owner of a Lot.

- 5.2 A person or entity consents to becoming a Member of the Society by becoming an Owner of a Lot and a land covenant in gross will be registered against each Lot in favour of the Society, under which each Owner confirms that consent and covenants that it:

- (a) will join as a Member of the Society and shall be bound by the Constitution of the Society, the Bylaws of the Society and shall perform all of the obligations required of a Member of the Society and will execute a deed of covenant in favour of the Society (to be prepared by the Society's solicitor's) to that effect and to remain as a Member of the Society while it is a registered proprietor of a Lot;
- (b) will remain as a Member of the Society while it is a registered proprietor of a Lot;
- (c) will not sell, transfer or otherwise dispose of a Lot without obtaining the prior written approval of the Society (which shall not be unreasonably refused or withheld) provided that the new proprietor of a Lot completes all reasonable requirements of the Society and executing a deed of covenant in favour of the Society in the form required by the Society (to be prepared by the Society's solicitor's at the cost of the current Owner) consenting to become a Member of the Society and covenanting to join as a Member of the Society, be bound by the constitution of the Society and the Bylaws of the Society, perform all of the obligations required of a Member of the Society and remain as a Member of the Society while it is a registered proprietor of a Lot;
- (d) will, immediately upon becoming an owner of a Lot, provide the Society with the necessary details for maintaining the register of owners in accordance with the requirements of the Society including the details set out in clause 5.4.
- (e) will be deemed to have resigned as a Member of the Society on the sale, transfer or otherwise disposal of a Lot, provided that such resignation shall not

relieve the Owner of any obligation or liability arising before such sale, transfer or disposal.

- 5.3 A Member of the Society has voting rights at a General Meeting and is eligible to be a Board Member.
- 5.4 The Society shall maintain the Member Register recording information about the Member as reasonably required by the Society, including but not limited to the following:
- (a) For each Member: name, address, occupation, telephone number (including mobile phone number), email address (at home and at work) and similar details for a third party to be contacted in the event of absence or emergency.
 - (b) For each Occupier: name, address, occupation, telephone number, email address 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) Voting: where there is more than one Owner of a Lot, which of such Owners is entitled to vote at a General Meeting.
 - (e) Mortgagee: name, contact details of any person holding a mortgage over the Member's Lot.
- 5.5 The Member Register must be updated as soon as practicable after the Board becomes aware of changes of the information recorded in the Member Register.
- 5.6 No notice of any trust express, implied or constructive will be entered on the register of Members.
- 5.7 The rights, privileges and obligations of a Member are not assignable.
- 5.8 If there is more than one Owner of a Lot, such Owners shall collectively constitute one Member and that Member must nominate in writing a single natural person as its representative ("Representative"), to be that Member's agent for the purpose of this Constitution. This clause will also operate to appoint that Representative as:
- (a) the proxy of the relevant Member to attend all meetings of the Society and to vote on its behalf; and
 - (b) the attorney and/or agent of the relevant Member to sign on behalf of the Member any consents or approvals, and all documents contemplated under this Constitution, including any variation thereof.
- 5.9 Any person or entity who enters into an unconditional agreement to purchase any Lot within the Development shall be deemed to have applied for membership with the Society. The Society shall grant membership to such person or entity in accordance with clause 5.2 upon such person or entity becoming an Owner of the Lot.
- 5.10 The Members acknowledge that the Development is a staged development and new Owners will become Members as each stage is completed.

6. Controlling Entity

- 6.1 Despite any other clause in this Constitution, until the Development is fully completed and the Developer no longer owns any land within the Development, or the Developer gives notice to the Society resigning as the Controlling Entity, the Developer shall be the Controlling Entity of the Society, regardless of whether the Developer is at any time a Member. The Controlling Entity shall have only the rights specified in this Constitution, and shall have no other rights or obligations of a Member. No reference in this Constitution to a Member shall be taken as including a reference to the Controlling Entity. As at the date the Developer ceases to own any land within the Development and the Development is fully completed ("fully completed" being when new records of title have issued for all stages of the Development), the Developer shall be deemed to have resigned as the Controlling Entity, and then, there shall be no Controlling Entity in respect of the Society.
- 6.2 Despite any other clause in this Constitution, the Controlling Entity (if there is one) shall be entitled to exercise a number of votes equal to one more than the number of other Board Members or Members present at any Board meeting or General Meeting. Despite any contrary provision in in this Constitution, no Special Resolution will be effective and no resolution in writing by the Board Members or Members will be effective unless approved or signed by the Controlling Entity.

7. Use of Communal Facilities & Services

- 7.1 Subject to this Constitution and the Bylaws relating to the use of the Communal Facilities & Services and the Restrictive Covenants, each Member, Occupier and Invitee shall be entitled to make full use of the Communal Facilities & Services.
- 7.2 Subject to the terms of any registered easement, registered land covenant or any resource consent relating to the Communal Facilities, or any agreement between the Society and any person in respect of the Communal Facilities, no person, other than those persons set out in clause 7.1 shall be entitled to use the Communal Facilities.

8. Obligations of Members

Levies

- 8.1 Prior to or as soon as practicable after the commencement of each Expense Year, the Society shall by written notice advise each Member of the Society's estimate ("Society's Estimate") of each Member's Proportion of Operating Expenses for that Expense Year, plus such contingency sum as the Society shall, in its sole discretion, fix.
- 8.2 Each Member shall, on the first day of July and January in each Expense Year, or such other intervals as the Society shall determine from time to time, pay one half or such other periodic amount as the Society shall stipulate from time to time of the Society's Estimate applicable to that Expense Year. Payment shall be made by each Member in the manner set out by the Society.
- 8.3 As soon as practicable after the end of each Expense Year the Society shall provide to each Member an itemised statement of the actual Operating Expenses for the previous Expense Year. If the Member's Proportion of actual Operating Expenses for

the previous Expense Year is greater than the total of the payments made by the Member under clause 8.2, the Member shall pay to the Society the difference within 7 Working Days. If the Member's Proportion of actual Operating Expenses for the previous Expense Year is less than the total of the payments made by the Member pursuant to clause 8.2, then the Society shall credit the difference to the Society's Estimate for the then current Expense Year.

8.4 If the Society has failed to advise a Member of the Society's Estimate for an Expense Year before the date the first payment is due under clause 8.2, the Member shall on that date and every other date on which a payment is due under clause 8.2 pay one half of the Society's Estimate applicable to the previous Expense Year. On the Society's Estimate for the Expense Year being advised to that Member:

- (a) Clause 8.2 shall apply thereafter.
- (b) If the aggregate of a Member's payments made under this clause during the Expense Year exceeds the aggregate of payments which should have been made under clause 8.2, the Society shall credit the difference to the Society's Estimate.
- (c) If the aggregate of a Member's payments under this clause during the Expense Year is less than the aggregate of payments which should have been made under clause 8.2, the Member shall immediately pay the Society the difference.

8.5 Special Levies:

- (a) Sinking Fund: the Board shall from time to time fix an additional levy to be paid by each Member at the same time and proportions as the money payable under clause 8.1 & 8.2 of the Society's Estimate for that Member, to be set aside as a sinking fund to allow for and meet the costs of Capital Improvements; and
- (b) Special Levy: the Board may from time to time fix such special levies, payable by each Member at such times as are set by the Society, as the Society considers necessary for it to meet its obligations under this Constitution provided that any levy payable by a Member under this clause 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.

8.6 Where a Member ("Vendor") sells a Lot:

- (a) Despite any other clause in this Constitution, the Vendor shall remain liable for sums owed to the Society by that Vendor.
- (b) The Vendor shall continue to be liable as a primary and principal debtor for all indebtedness of the purchaser of the Lot to the Society until such time as the deed of covenant specified in clause 5.2(c) is received by the Society.
- (c) The purchaser of the Lot shall be liable as a Member for all indebtedness of the Vendor to the Society in respect of the Lot purchased and a certificate of the Society shall be conclusive as to the sum of this indebtedness.

8.7 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 Society's estimate of such Member's Proportion of Operating Expenses for the current Expense Year;
 - (b) payments made by the Member on account of Operating Expenses in the current Expense Year;
 - (c) payments due from the Member on account of Operating Expenses in the current Expense Year, and not paid by the Member; and
 - (d) any accumulated unpaid Default Interest.
- 8.8 Each Member agrees to promptly and fully comply with any Bylaws made by the Society from time to time, any covenants given in favour of the Society by such Member by separate deed of covenant and any covenants given in favour of the Society by such Member as noted against each Owner's Title ("Land Covenant"),
- 8.9 Land Covenants shall be noted against each Owner's Title in favour of the Society. The Society shall not, except by Special Resolution and with the prior written consent of the Controlling Entity (if there is one) agree to the alteration of the terms of the Covenants as first noted against each Owner's record of title.
- 8.10 If a Member intends to grant a mortgage over a Lot, the Society may, in its sole discretion, require the Member to procure the intended mortgagee to enter into a deed with the Society (at the cost of the Member) covenanting to observe and perform all the rules of this Constitution upon exercising any powers as mortgagee.
- 8.11 Members must provide Notice to the Society of any change to the details in clause 5.4.
- 8.12 The Developer is to meet the Levies of any Lots unsold by the Developer or undeveloped Lots in future stages of the Development, contained in resource consent RMA20230160, adjusted to the date of sale.

9. Member's Assistance to Developer

Future Development

- 9.1 Each Member acknowledges that progress of the Development is ongoing, and that the Members and the Society are required to allow the Developer such access to, and interests in, the Communal Facilities as are necessary or desirable for the Development to proceed, and to allow the Developer to add, remove or alter structures and services forming part of the Communal Facilities, and to procure that its Members amend this Constitution if such amendment is necessary or desirable for the Development to proceed. Each Member agrees
- (a) To, and hereby allows, the Developer access to the Lot of that Member for the purpose of proceeding with the development;
 - (b) To and hereby allows the Developer to proceed unhindered with the necessary consents for the Development;
 - (c) To, and hereby grants, such easements in favour of the Developer or any party determined by the Developer or any Member and/or the Society over the Private Roads as are required for the development to proceed or as may be necessary or desirable to progress of the Development;

- (d) Not to prevent, hinder or obstruct the use by the Developer of the Communal Facilities, the addition, removal or alteration of structures or services forming part of the Communal Facilities by the Developer, or the granting of any interests in the Communal Facilities by the Society to the Developer,
- (e) That neither the Member nor the Society shall oppose, or take part in any opposition to, the progress of the Development or do anything inimical in any way whatsoever to any application by the Developer for resource or any other consent relative to the subdivision or the Development;
- (f) To sign any document or do any other thing reasonably necessary to support any resource consent or other authorisation applied for by or on behalf of the Developer in respect of the Development;
- (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 progress of the Development.
- (h) To support any resolution to amend this Constitution, where the Society is bound by agreement with the Developer, to procure such amendment.

10. Breach of Members Obligations

- 10.1 A reference to an act or omission by any Member, shall include any act or omission by any mortgagee in possession of the Member's Lot or the Occupiers of a Member's Lot, the Invitees of such Occupier and the Invitees of such Member. A Member must advise the Society of such details of the Occupiers of the Member's Lot as are requested by the Society, and if required by the Society shall procure such Occupiers before they enter into occupation of the Lot to enter into a deed of covenant with the Society (in a form acceptable to the Society), covenanting to be bound by this Constitution and the Bylaws (as far as they can be reasonably applicable to the Occupiers). Each Member must take all reasonable steps (including enforcing the terms of any lease or tenancy) to ensure Occupiers comply with this Constitution and the Bylaws.
- 10.2 In any case of persistent default by an Occupier of this Constitution, the Owner shall on demand by the Society, terminate the Occupier's right to occupy the Lot. A copy of this Constitution and the Bylaws shall be attached to every lease, licence or other document defining occupancy rights and the Occupier's must be bound to comply with this Constitution and the Bylaws (as far as they can be reasonably applicable to the Occupiers).
- 10.3 Upon any breach of this Constitution (including by a Member ("Offending Member")):
- (a) If such default continues after five (5) 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.
 - (b) All money paid and 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.

- (c) If any Levies or other money payable by an Offending Member to the Society is in arrears and unpaid for five (5) Working Days (whether or not formal demand for payment has been made and without any formal demand being necessary) such money shall be payable on demand and shall bear interest at the Default Interest Rate computed on a daily basis from the due date until the date of payment in full.
 - (d) Where damage has been caused to the Communal Facilities, the Offending Member shall make good such damage.
- 10.4 Despite clause 10.3, should any Offending Member breach any provision of this Constitution (or the Bylaws), the Society shall be entitled to serve written notice on the Offending Member requiring the breach to be remedied within seven (7) Working Days of the Offending Member's receipt of that written notice and failing remedy within that time (time being of the essence) then the Society shall be entitled to impose a penalty sum of \$200.00 per day for every day or part day the breach continues, in addition to all other costs and expenses incurred by the Society under clause 10.3, including full solicitor client costs, and the Society may in addition exercise any or all other rights available to it at law.

11. **Obligations of the Society**

Communal Facilities and management etc...

- 11.1 The Society shall promote and carry out the purposes of the Society set out in clause 3.1.
- 11.2 The Society shall be responsible for the governance of the Society
- 11.3 The Society shall ensure:
- (a) the proper management, operation, maintenance, repair, renovation and replacement of the Communal Facilities, and shall undertake such Capital Improvements as are necessary for this purpose.
 - (b) the proper management and maintenance, repair and replacement of the Private Roads, Cut Off Swale Drains, Wick Drains and the Subsoil Drain..
 - (c) that the conditions of any resource consent imposed by the Territorial Authority for the Development, the Communal Facilities and the Private Roads, Cut Off Swale Drains , Wick Drains and the Subsoil Drains are carried out and complied with.
 - (d) the proper management of the delivery of the Services to the Members.
- 11.4 The Society shall be responsible for resolving disputes between the Members.
- 11.5 The provisions and effect of clauses 11.1 to 11.4 must not be removed from this Constitution and must be included and implied in any document replacing this Constitution unless otherwise approved by the Territorial Authority.

Insurance

- 11.6 The Society shall effect and maintain all insurances as it considers prudent with respect to the Communal Facilities and the Society's affairs, 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 and the cost of certificates relating to such insurances).

Financial Statements and Information

- 11.7 The Society shall:
- (a) Provide a prospective purchaser of a Lot with a copy of the most recent financial statements for the Society within five (5) working days of receiving such a request.
 - (b) Ensure that financial statements for the Society are prepared annually by a chartered accountant appointed by the Board which comply with current reporting standards and are distributed to Members as soon as is reasonably practicable after the completion and, in any event, no later than five (5) months after the balance date of the Society.

12. Limitations of the Society

No Indebtedness

- 12.1 The Society shall 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. Notwithstanding any other rule to the contrary, on any vote of the Society or the Committee relating to the borrowing of money, the Developer shall not have a casting vote but shall have one ordinary vote.

No Investments

- 12.2 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.

Use of funds

- 12.3 All moneys paid to the Society by the Members are to be applied only in respect of fulfilling the Society's obligations under this Constitution.

13. Manager

- 13.1 The Board shall appoint a Manager to be responsible for the performance of all duties and obligations of the Society under this Constitution, the Act and by Law. Such appointment is to be made on terms and conditions (including remuneration) as the Board shall deem appropriate.

- 13.2 Subject to clause 13.3, The Manager must not be an Owner.

- 13.3 The Developer may appoint the Manager (and may appoint the Developer as the Manager) until all of the Lots in the Development owned by the Developer are sold and the Developer is no longer an Owner.

- 13.4 The Manager's duties include:

- (a) ensuring the purposes of the Society are met;
- (b) ensuring the obligations of the Society contained in this Constitution and in the Restrictive Covenants are carried out;
- (c) ensuring the Members comply with their duties and obligations as contained in this Constitution and the Restrictive Covenants;
- (d) the administrative functions contained in clause 13.5; and
- (e) ensuring that the Society's obligations to the Territorial Authority in respect of any resource consents relating to the Development are met.

13.5 The Manager is to carry out the administrative functions of the Society including:

- (a) convening General Meetings of the Society when required to do so in accordance with this Constitution and convening meetings of the Board;
- (b) giving all such notices as the Society in general meeting or the Board may instruct or which the Society may be required to give to Owners in the manner provided in this Constitution;
- (c) keeping minutes of all meetings of the Society and of the Board and entering the same in the minute book kept for that purpose;
- (d) performing or supervising the performance of the clerical work for, and the maintenance of proper records of, the Society;
- (e) maintaining the a Member 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 fees, levies and other moneys paid to the Society and issuing receipts;
- (i) opening and operating a current bank account in the name of the Society;
- (j) making such deposits and investments in the name of the Society as the Board may determine from time to time;
- (k) paying all accounts and making all advances passed for payment by the Board;
- (l) keeping all financial records of the Society and ensuring their safe-keeping together with any security documents;
- (m) reporting to the Board any Member who shall fail to pay any moneys properly payable by that Member to the Society within the prescribed period; and
- (n) communicating with the Territorial Authority as required from time to time.

14. Board composition

Role of the Board

- 14.1 The Board must govern, manage, direct, or supervise the operation and affairs of the Society and the Board has full powers to govern, manage, direct and supervise the management of, the operation and affairs of the Society.

Composition of the Board

- 14.2 The Board will consist of
- (a) a minimum of Three (3) and a maximum of Five (5) Elected Board Members.

Eligibility

- 14.3 Every Board Member must be a Member, and must in writing:
- (a) consent to be a Board Member; and
 - (b) certify that they are not disqualified from being elected, appointed, or holding office as a Board Member by this Constitution or under section 47 of Act.

15. Election of Board Members

- 15.1 The Initial Members of the Society shall:
- (a) elect the first Board and exercise all rights of members and Board Members as set out in this Constitution;
 - (b) have no obligations as provided for by the Act, other than those set out in clause 15.1 (a), whether for the payment of Levies or otherwise; and
 - (c) be deemed to have resigned, without any act required on the Initial Member's part, at such time as there are ten Owners.
- 15.2 As soon as there are ten or more Owners, such Owners shall elect a new Board and after that the provisions of clause 15.4 will apply.
- 15.3 The Controlling Entity (if there is one) shall have the right to appoint one (1) Board Member at all times that it remains the Controlling Entity.
- 15.4 Subject to clause 15.3, the Elected Board Members will be elected as follows:
- (a) before the AGM the Board must call for applications for any vacant Board Member positions;
 - (b) applications must be received at least 10 Working Days before the AGM;
 - (c) the Board must give Notice of the applications to all Members at least 5 Working Days the AGM;
 - (d) at the AGM, if there is more than one applicant for any position, the election will be by secret ballot;
 - (e) the successful applicant for each contested position is the applicant gaining the highest number of votes. If more than one position is voted on together the successful applicants will be the highest percentage and next highest in

descending order to fill the positions available. If there is an equality of votes for any position, a further ballot will be conducted between the tied applicants to determine the outcome;

- (f) if there is only one applicant for any position, that person will be declared to be elected without the need for a vote.

15.5 If there are not enough applicants for the number of vacant Board Member positions then the Board may or may not co-opt persons to fill the vacant Board Member positions at any time during the period before the next AGM. Notwithstanding clause 16.1, any Board Member co-opted under this clause will continue only until the next AGM and this period is disregarded in the calculation of the total term served under clause 16.1.

15.6 An applicant may not at any time commence or continue a position as an employee of the Society if they are elected as a Board Member.

16. **Board**

Term of office

16.1 The term of office for Board Members will be two years, commencing from the end of the AGM at which they are elected or appointed and expiring at the end of the relevant AGM. A Board Member may be re-elected or reappointed to the Board.

Casual vacancies

16.2 If there is a Casual Vacancy on the Board of an Elected Board Member, the remaining Board Members may appoint a person of their choice to fill the Casual Vacancy until the next AGM or may leave the Casual Vacancy unfilled until the next AGM.

16.3 Notwithstanding clause 16.1, a person appointed to fill a Casual Vacancy of an Elected Board Member will continue the term of the person they replace but only until the next AGM and this period is disregarded in the calculation of the total term served under clause 16.1.

Removal of Board Member

16.4 The Board may, by Special Resolution of the Board, remove any Board Member from the Board before the expiry of their term of office if the Board considers that Board Member has seriously breached duties under this Constitution or the Act or is no longer suitable to be a Board Member. The Board Member who is the subject of the motion will be counted for the purpose of reaching a quorum and will not participate in the vote on the motion.

16.5 Before considering a motion for removal, the Board Member affected by the motion must be given:

- (a) Notice that a Board meeting is to be held to discuss the motion to remove them and the basis for the motion; and
- (b) adequate time to prepare a response; and
- (c) the opportunity prior to the Board meeting to make written submissions; and

(d) the opportunity to be heard at the Board meeting.

16.6 A person ceases to be a Board Member if:

- (a) the person resigns by delivering a Notice of resignation to the Board;
- (b) the person is removed from office under this Constitution;
- (c) the person becomes disqualified from being an officer under section 47(3) of the Act;
- (d) the person dies; or
- (e) the Member who had the right to appoint the person to be a Board Member, ceases to be a Member.

Remuneration and expenses

16.7 Board Members:

- (a) may not be paid any remuneration for their service as a Board Member.
- (b) may receive full reimbursement for all reasonable expenses incurred by that Board Member on behalf of the Society when authorised by resolution of the Board.

Responsibilities

16.8 The Board is responsible for:

- (a) ensuring minutes are kept of General Meetings, Board Meetings and any sub-committee meetings.
- (b) ensuring the accounting records of the Society are kept in the manner and form required by the Act;
- (c) if the Society is required to have its financial statements audited or reviewed, ensuring that occurs; and
- (d) submitting appropriate financial statements of the Society at each AGM and ensuring any returns are completed,

but may allocate specific tasks among the Board Members or to the Manager.

17. General Meetings

Annual General Meeting intervals

17.1 The Society must hold an AGM once a year at the time, date, and place the Board decides, but not more than 6 months after the balance date of the Society and not more than 15 months after the previous AGM.

17.2 The Board must give Members at least 20 Working Days Notice of the AGM.

Business of AGM

17.3 The following business will be discussed at the AGM:

- (a) confirmation of the minutes of the previous AGM;
 - (b) the Board's presentation of the following information during the most recently completed accounting period:
 - (i) the annual report;
 - (ii) the annual financial statements;; and
 - (iii) notice of any disclosures of conflicts of interest made by Board Members, including a brief summary of the Matters, or types of Matters, to which those disclosures relate;
 - (c) the election of any Board Members;
 - (d) consideration of any motions to amend this Constitution that have been properly submitted for consideration at the AGM;
 - (e) consideration of any other items of business that have been properly submitted for consideration at the AGM.
- 17.4 The Board must receive any proposed motions and other items of business in writing from Members at least 10 Working Days before the date of the AGM.
- 17.5 An agenda containing the business to be discussed at the AGM will be sent by the Board to the Members at least 5 Working Days before the date of the AGM. No additional items of business can be voted on other than those set out in the agenda, but the Members present may agree by Special Resolution to discuss any other items.

Special General Meeting

- 17.6 A SGM must be called by the Board if it receives a request in writing stating the purpose of the SGM:
- (a) from the Board; or
 - (b) signed by five (5) Members.
- 17.7 The Board must give Members at least 15 Working Day's Notice of the SGM, unless the Board acting reasonably decides that the nature of the SGM business is of such urgency that a shorter period of notice is to be given to Members.
- 17.8 A SGM will only consider and deal with the business specified in the request for the SGM.

Method of holding General Meetings

- 17.9 General Meetings must be held by the required quorum of Members:
- (a) being assembled together at the time and place appointed for the meeting; or
 - (b) participating in the meeting by means of audio link, audiovisual link, or other electronic communication; or
 - (c) by a combination of both of the methods described in sub-clauses (a) and (b).

Quorum

- 17.10 No business is to be transacted at any General Meeting unless a quorum is present at the time when the meeting is due to start. The quorum for a General Meeting is 60% of the Members who are entitled to vote. The quorum must be present at all times during the General Meeting.
- 17.11 If a quorum is not reached within 30 minutes of the scheduled start time of an AGM, the AGM will be adjourned to a day, time, and place determined by the Chair. If no quorum is achieved at the further AGM, the Members present 15 minutes after the scheduled start time of that further AGM are deemed to constitute a valid quorum.
- 17.12 If a quorum is not reached within 30 minutes of the scheduled start time of a SGM, the SGM is cancelled.

Control of General Meetings

- 17.13 The Chair of the Board will preside at the General Meeting. If that person is unavailable a Board Member appointed by the Board will preside. In the absence of both of those persons, the Members present will elect a chair of the General Meeting.

Attendance and voting

- 17.14 All Members/Owners are eligible to attend and speak at General Meetings.:
- 17.15 The voting entitlement for each Member eligible to vote is One (1) vote.
- 17.16 Voting will generally be conducted by voices or by a show of hands as determined by the Chair of the General Meeting unless a secret ballot is called for and approved by Ordinary Resolution.
- 17.17 Casting votes by electronic means is permitted and the voting process set out in clause 17.16 must allow for that.

Proxy procedures

- 17.18 Voting by proxy is permitted and the voting process set out in clause 17.16 must allow for that. Where a Member is attending a General Meeting by proxy, written notice of the proxy signed by the Member must be received by the Chair prior to the start of the General Meeting. The form of the proxy is:

I [insert name] of [insert address] being a member of [insert society name] appoint [insert name of proxy] as my proxy to speak [and vote] for me at the General Meeting to be held on [insert date] and at any adjournment of that General Meeting. [insert if vote is directed] I direct my proxy to vote in the following manner [insert resolutions and whether the proxy is to vote for or against].

- 17.19 Elections of Elected Board Members at an AGM must be undertaken by secret ballot.
- 17.20 An Ordinary Resolution at a General Meeting will be sufficient to pass a resolution, except as specified in this Constitution.

Minutes

- 17.21 Minutes must be kept of all General Meetings.

Irregularities

- 17.22 An irregularity in the manner of calling a General Meeting is waived if all the Members entitled to attend and voting at the meeting attend the meeting without protest as to the irregularity, or if all such members agree to the waiver.
- 17.23 An accidental omission to give notice of a General Meeting to, or a failure to receive notice of a General Meeting by, a Member does not invalidate the proceedings at that General Meeting.
- 17.24 Any irregularity, error or omission in notices, agendas and relevant papers of General Meetings or the omission to give notice within the required time frame or the omission to give notice to all Members and any other error in the organisation of the General Meeting will not invalidate the General Meeting nor prevent the General Meeting from considering the business of the meeting if:
- (a) the Chair in their discretion determines that it is still appropriate for the General Meeting to proceed despite the irregularity, error, or omission; and
 - (b) a motion to proceed is put to the General Meeting and such motion is passed by a Special Resolution.

Resolution passed in lieu of meeting

- 17.25 A resolution in writing signed or consented to in writing by a 75% majority of Members will be valid as if it had been passed at a General Meeting if the requirements in clauses 17.26 and 17.27 are complied with. Any resolution may consist of several documents in the same form each signed by one or more Members.
- 17.26 The Board must ensure that a proposed resolution is sent to Members entitled to vote which contains:
- (a) the date it was circulated to all Members entitled to vote;
 - (b) a statement that the proposed resolution will lapse if it is not passed within 3 months, or any lesser period stated, of the date specified in clause 17.26(a).
- 17.27 The Board must ensure that within 5 Working Days after a resolution is passed under clause 17.25, a copy of the resolution is sent to the address, including an electronic address, of all Members who did not approve the resolution.
- 17.28 Unless all Levies and any other moneys due and payable by a Member to the Society have been paid in full, that Member will not be entitled to vote at any General Meeting of the Society, whether in its own right or as proxy for another Member.

18. Board meetings

- 18.1 Board meetings may be called at any time by the Chair or by three (3) Board Members, but generally the Board will meet quarterly.
- 18.2 Board meetings must be held by a quorum of Board Members:
- (a) being assembled together at the time and place appointed for the meeting; or

- (b) participating in the meeting by means of audio link, audiovisual link, or other electronic communication; or
- (c) by a combination of both of the methods described in sub-clauses (a) and (b).

18.3 Except to the extent specified in this Constitution, the Board will regulate its own procedure.

Quorum

18.4 The quorum for a Board meeting is three (3) Board Members.

Chair

18.5 At its first meeting following an AGM, the Board must elect a Chair.

18.6 The role of the Chair is to chair meetings of the Board. If the Chair is unavailable, another Board Member must be appointed by the Board to undertake the Chair's role during the period of unavailability. Voting Controlling Member

Voting

18.7 Each Board Member has one vote. Voting is by voices, or on request of any Board Member by a show of hands or by a ballot. Proxy and postal votes are not permitted. Voting by electronic means is permitted.

Resolution in writing

18.8 A resolution in writing signed or consented to by email or other electronic means by the required majority of Board Members will be valid as if it had been passed at a meeting of the Board. Any resolution may consist of several documents in the same form each signed by one or more Board Members.

19. Contact Person

19.1 The Board must appoint at least one, and a maximum of 3, persons to be the Society's Contact Person, subject to those persons meeting the eligibility criteria set out in the Act. The Board must advise the Registrar of any change in the Contact Person or that person's Contact Details.

20. Duties owed to Society by Officers

20.1 An Officer:

- (a) when exercising powers or performing duties as an Officer, must act in good faith and in what the Officer believes to be the best interests of the Society;
- (b) must exercise a power as an Officer for a proper purpose;
- (c) must not act, or agree to the Society acting, in a manner that contravenes the Act or this Constitution;
- (d) when exercising powers or performing duties as an Officer, must exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances, taking into account, but without limitation:

- (i) the nature of the Society;
 - (ii) the nature of the decision;
 - (iii) the position of the Officer; and
 - (iv) the nature of the responsibilities undertaken by them;
- (e) must not:
- (i) agree to the activities of the Society being carried on in a manner likely to create a substantial risk of serious loss to the Society's creditors; or
 - (ii) cause or allow the activities of the Society to be carried on in a manner likely to create a substantial risk of serious loss to the Society's creditors;
- (f) must not agree to the Society incurring an obligation unless the Officer believes at that time on reasonable grounds that the Society will be able to perform the obligation when it is required to do so; and
- (g) when exercising powers or performing duties as an Officer, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by:
- (i) an employee of the Society whom the Officer believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (ii) a professional adviser or expert in relation to matters that the Officer believes on reasonable grounds to be within the person's professional or expert competence; or
 - (iii) any other Officer or subcommittee of Officers on which the Officer did not serve in relation to matters within the Officer's or subcommittee's designated authority,

if the Officer acts in good faith, makes proper inquiry where the need for inquiry is indicated by the circumstances, and has no knowledge that the reliance is unwarranted.

21. Conflicts of interest

21.1 The Board must keep an Interests Register.

21.2 An Officer who is Interested in a Matter relating to the Society must disclose details of the nature and extent of the interest, including any monetary value of the interest if it can be quantified:

- (a) to the Board as soon as practicable after the Officer becomes aware that they are Interested in the Matter; and
- (b) in the Interests Register.

21.3 A Board Member who is Interested in a Matter:

- (a) must not vote or take part in a decision of the Board relating to that Matter;
- (b) must not sign any document in relation to that Matter;

- (c) may take part in any Board discussion and be present at the time of the Board decision, unless the Board decides otherwise;
 - (d) may be counted for the purpose of determining whether there is a quorum at any meeting at which the Matter is considered.
- 21.4 Clauses 21.3(a) or 21.3(b) do not apply to a Board Member in relation to a particular Matter if all members of the Board who are not Interested in the Matter consent to the Interested Board Member acting as referred to in clauses 21.3(a) or 21.3(b).
- 21.5 Despite clause 21.4, if 50% or more of the Board Members are Interested in a Matter, a SGM must be called to consider and determine the Matter.

22. **Indemnity and insurance**

- 22.1 The Society may indemnify and/or effect insurance for its own current and former Officers, members, and employees as permitted by sections 94 to 98 of the Act.

23. **Finances**

- 23.1 The funds and property of the Society will be controlled and managed by the Board, subject to this Constitution.
- 23.2 The Society's balance date will be 31 March or the date that the Board decides.
- 23.3 The Society must prepare and register financial statements as required by the Act.

24. **Amendments**

Amendment

- 24.1 This Constitution may only be amended or replaced by Special Resolution at a General Meeting.
- 24.2 If an amendment to this Constitution would have no more than a minor effect or is to correct errors or makes similar technical alterations, then the Board may give Notice of the amendment to every Member stating the text of the amendment and the right of Members to object to the amendment.
- 24.3 If the Board does not receive any objections from Members within 20 Working Days after the date on which the Notice is sent, or any longer period of time that the Board decides, then the Board may make that amendment. If it does receive an objection, then the Board may not make the amendment.
- 24.4 If any situation arises that, in the opinion of the Board, is not provided for in this Constitution or any Bylaws, the matter will be determined by the Board.

Bylaws

- 24.5 The Board may make and amend Bylaws for the conduct and control of the Society's activities, codes of conduct applicable to Members and for the use of the Communal Facilities & Services (including any restrictions on use for security, maintenance or other reasons). No Bylaw will contravene or be inconsistent with the Act, any other laws, or this Constitution. Bylaws are binding on Members. The first such Bylaws shall

be those Bylaws attached as Schedule 1 to this Constitution. The Board will give notice to the Members of any amendments to the Bylaws.

25. **Dispute resolution process**

Disputes

- 25.1 The Society may consider, resolve, and/or decide disputes between any one or more Members acting in their capacity as Members and any one or more Officers acting in their capacity as Officers and the Society, that relate to an allegation that:
- (a) a Member or an Officer has engaged in misconduct; or
 - (b) a Member or an Officer has breached, or is likely to breach, a duty under this Constitution or the Act; or
 - (c) the Society has breached, or is likely to breach, a duty under this Constitution or the Act; or
 - (d) a Member's rights or interests as a member have been damaged or Members' rights or interests generally have been damaged.

How a complaint is made

- 25.2 A Member or an Officer may make a complaint by giving Notice to the Board, or any subcommittee established for this purpose, that:
- (a) states that the Member or Officer is starting a procedure for resolving a dispute under this Constitution;
 - (b) sets out the allegation to which the dispute relates and who the allegation is against; and
 - (c) sets out any other information reasonably required by the Society.
- 25.3 The Society may make a complaint involving an allegation against a Member or an Officer by giving Notice to the person concerned that:
- (a) states that the Society is starting a procedure for resolving a dispute under this Constitution; and
 - (b) sets out the allegation to which the dispute relates.

Person who makes complaint has right to be heard

- 25.4 Unless the Society decides not to proceed, the Member has a right to be heard before the complaint is resolved or any outcome is determined. A Member must be taken to have been given the right if:
- (a) the Member has a reasonable opportunity to be heard in writing or at an oral hearing, if one is held; and
 - (b) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
 - (c) an oral hearing, if any, is held before the decision maker; and

- (d) the Member's written statement or submissions, if any, are considered by the decision maker.

25.5 If the Society makes a complaint, it has a right to be heard before the complaint is resolved or any outcome is determined and a Board Member may exercise that right on behalf of the Society. The Society must be taken to have been given the right if:

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

Respondent has right to be heard

25.6 The Member or Officer who, or the Society which, is the subject of the complaint (**Respondent**) has a right to be heard before the complaint is resolved or any outcome is determined. If the Respondent is the Society, a Board Member may exercise the right on behalf of the Society.

25.7 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 to be 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 disputes

25.8 The Society must as soon as is reasonably practicable after receiving a complaint or grievance, investigate and determine the complaint or grievance in a fair, efficient, and effective manner.

Circumstances in which a process may not proceed

25.9 Despite the content of this clause 25 and any other clause in this Constitution or in the Regulations, the Society may decide not to proceed with a matter if:

- (a) the complaint is trivial: or
- (b) the complaint does not appear to disclose or involve any allegation of the following kind:

- (i) any material misconduct; or
- (ii) any material breach or likelihood of material breach of a duty under this Constitution or the Act;
- (iii) any material damage to a Member's rights or interests or Members' rights or interests generally; or
- (c) the complaint appears to be without foundation or there is no apparent evidence to support it; or
- (d) the person who makes the complaint has an insignificant interest in the matter; or
- (e) the conduct, incident, event, or issue giving rise to the complaint has already been investigated and dealt with under this Constitution; or
- (f) there has been an undue delay in making the complaint.

Refer complaint

25.10 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.
- (c) with the consent of all parties to the complaint, to any type of consensual dispute resolution such as mediation or facilitation.

Decision makers

25.11 An individual may not act as a decision maker in relation to a complaint if 2 or more members of the decision-making body (whether it is a Board, committee, complaints subcommittee, tribunal, or other) consider that there are reasonable grounds to believe that the individual may not be:

- (a) impartial; or
- (b) able to consider the matter without a predetermined view.

26. Ending the Society

26.1 The Society will not be wound up or removed from the Register without the prior written consent of the Territorial Authority

26.2 The Board must give Notice to all Members of at least 60 Working Days of a proposed motion:

- (a) to remove the Society from the Register;
- (b) for the distribution of the Society's surplus assets; or
- (c) to appoint a liquidator.

26.3 The Notice must comply with section 228 of the Act and include details of the General Meeting at which the proposed motion is to be considered .

- 26.4 Any resolution for a motion set out in clauses 26.2(a) to 26.2(c) must be passed by a Special Resolution.
- 26.5 If the Territorial Authority consents to the wind up of the Society and The surplus assets of the Society, after the payment of all costs, debts, and liabilities, must be distributed to another not-for-profit entity or entities that have similar purposes to the Society as determined in accordance with the Act.

Schedule 1 – Keirunga Terraces Residents Society Incorporated Bylaws

These Bylaws may be amended by the Board from time to time

Rubbish Bin Collection – Each Member to have only one rubbish collection bin for collection at any one given time. There is a central collection point at the cul-de-sac head for Lots 8 – 11 and 15 – 19 plus an additional future for lots. Rubbish bin collection for Lots 1 – 7 and 12 shall be at their road frontage.

The Parking Lot – The Manager of the Society will administer and manage the Parking Lot. Each Member shall be entitled to one carpark in the Parking Lot capable of storing a campervan size vehicle. For some Members this may mean two small cars or a car and a small boat. If a Member is not utilising these facilities then additional allocation may be able to be provided to other Members. The Manager of the Society will manage the additional carparking facilities allocation based upon an application made each year at the annual general meeting.

Recreational Use of Tracks – Each Member is entitled to utilise the tracks within Lot 28 DP 607653 plus invited guests of Members but no more than 5 invited guests per Member per day.

Recognised invitees over Lot 28 DP 607653 at any time is the original developer (Tim Wilkins) and any of his direct family members (mother, wife and children) plus any friends joining him at the time and Members of the BMC biking club. Note, this bylaw can never be changed.

When utilising the shared tracks accompanied by pets the Member must collect any faeces disposed of by their animal.

The tracks are not to be used after heavy rain events as this will cause damage to the tracks.

Maintenance of Grass Berms & Street Trees in front of Lots 1 – 8 & 12 – The Members of Lots 1 – 8 & 12 DP 607653 must maintain the grass berm and street trees in front of their properties. Lots 5 & 6 DP 607653 are also responsible for maintaining the small grass berm on the other side of the road opposite their properties.

A Member who is an Owner of a Lot in the Development that contains any subsoil drains is responsible, at its own cost, for the management and maintenance of those subsoil drains, which will require as a minimum cleaning bi annually as referred to in the geotechnical report for the Development and in consent notices registered over a record of title to a Lot pursuant to s221 of the Resource Management Act 1991.

Private Roads (Lots 50 & 51 DP 607653)

Speed – A car or motorcycle shall not exceed 30km per hour on the roads.

Construction – During construction of a dwelling the Member is to ensure that the road is not damaged in front of their property as trucks ingress and egress from their property. Any damage to the road in front of the owners property as a result of construction it will be the Members responsibility to repair the road at their cost.

Front Gates – Each Member or Member guest and invitees must not drive into the front gate or the pillar containing the control panel at the front gate. If by accident this occurs it is the Members responsibility to repair the damage at their cost.

Unsavory Invitees – Each Member is entitled to invite any guests to drive or walk across Lots 50 & 51 however, these guests must not be “patched” members of a recognised gang in New Zealand.

Cats – This development is surrounded by trees within both Lots 28 and the adjoining Hastings District Council parks where there is tremendous birdlife. It is recommended that Members within the development do not have cats however, this is not prohibited. Any cats within the development must be spaded and the cats must have bells on at all times. If cats are found to not have a bell on after 5 occasions it is the Manager will have the right to require that this cat be prohibited and removed from the development.

Schedule 2 - Keirunga Terraces Residents Society Incorporated Communal Facilities

a) all land within Lot 28 DP 607653 containing shaped land acting as cut-off drains with pipes and sumps and also utilised as a track for walking and cycling. Also contained within Lot 28 DP 607653 are grass, shrubs and trees;

b) The Private Roads and all structures within Lots 50 & 51 DP 607653 containing sealed road, kerb and channel, footpath, grass, shrubs, trees, wooden fencing, pillars, irrigation system, streetlights and street trees. Also automatic front gates and electronics and cameras to operate the gates;

c) The Parking Lot for the benefit of Members in accordance with the Bylaws.

together with any other communal facilities to be located in any future stages of the Development or as otherwise determined by the Society from time to time.

Schedule 3 – Keirunga Terraces Residents Society Incorporated Services

a) internet services to operate the gates by remote control via either cell phone, handheld device or number plate recognition;

b) rubbish collection;

c) maintaining the four service and management plans contained in the Keirunga Terraces Maintenance Scheme:

(i) Cut Off Swale Drain - Service & Management Plan,

(ii) Wick Drains & Subsoil Drain - Service & Management Plan,

(iii) Private Roads - Road, Kerb & Footpath Service & Management Plan

(iv) Front Gates, Wooden Fencing, Gardens, Parking Lot & Streetlights Service & Management Plan.

and any other services determined by the Society from time to time

Schedule 4 – Member’s Proportion

The Society will use its reasonable efforts to ensure that the sharing of costs in respect of the Society's responsibilities shall be allocated in just and equitable proportions between the Members. The Member’s Proportion will be based on and calculated as specified in this Schedule subject to any fair and reasonable adjustments made by the Board.

The Developer has a resource consent for Stages 1, 1b, 1c and 2 = 19 members which currently equates to a 95% Member’s Proportion for lot 51 DP 607653 (“Lot 51”) and 100% Member Proportion for lots 50 & 28 DP 607653 (“Lots 50 & 28)

In addition there will be the neighbouring Lot 1 Owner’s property which has the benefit of an easement for a right of way over lot 51 and will be required to pay Levies but adjusted to reflect that the Lot 1 Owner only has the benefit of the right of way over Lot 51. This equates to 20 Members & users. The Lot 1 Owner will not have to pay the Levies until they have obtained a consent to build a residential dwelling on that property, but at that time, this will result in an applicable 5% Member’s Proportion for lot 51. The Lot 1 Owner’s property could be subdivided into 3 new titles which would make a total of 22 Members & users which equates to a 4.55% Member Proportion for lot 51 and 5.27% Member Proportion for lot 50 & 28 (refer to examples below).

There will also be the neighbouring Lot 19 Owner’s property which has the benefit of an easement for a right of way over lot 50 and Lot 51 DP 607653. The Lot 19 Owner will not have to pay the Levies until they have obtained a consent to build a residential dwelling on that property or otherwise starts using the Private Roads . Then there maybe 21 Members & users which equates to a 5% Member’s Proportion for Lots 50/28 and 4.77% Member’s Proportion for Lot 51.

Pursuant to clause 8.12 the Developer will meet the Levies of any Lots unsold by the Developer or undeveloped Lots in future stages of the Development, contained in resource consent RMA20230160, adjusted to the date of sale.

This Schedule also allows for the Member’s Proportion to change if the Developer obtained a resource consent for a further stage 3 that may include 2 or 3 Lots.

The following table covers the scenarios envisaged at the date of this document but will be subject to any fair and reasonable adjustments made by the Board.

Matrix For Members & Separate Easement Owners										
Body Corp Members	Members	Members	Members	Members	Members	Members	Members	Members	Members	Members
Stage 1 with RC	10	10	10	10	10	10	10	10	10	10
Stage 1b with RC	5	5	5	5	5	5	5	5	5	5
Stage 1c with RC	2	2	2	2	2	2	2	2	2	2
Stage 2 with RC	2	2	2	2	2	2	2	2	2	2
Stage 3 (maybe)							2	2	2	2
Extra Lot (maybe)								1	1	1
Total Members	19	19	19	19	19	19	21	22	22	22
Separate Easement Owners	Owner	Owner	Owner	Owner	Owner	Owner	Owner	Owner	Owner	Owner
Lot 19 Title Easement Owner					1	1	1	1	1	1
Lot 1 Title easement owner - current		1	1	1	1	1	1	1	1	1
Lot 1 title easement owner subdivided in 2 titles			1	1	1				1	1
Lot 1 title easement owner subdivided in 3 titles				1	1					1
Total Separate Easement Owners	0	1	2	3	4	2	2	2	3	4
Total Members & Separate Easement Owners	19	20	21	22	23	21	23	24	25	26
% Cost per Member & Separate easement owner	5.26%	5.00%	4.77%	4.55%	4.35%	4.77%	4.35%	4.17%	4.00%	3.85%

The following table apportions the Levies between Lots 50/28 and Lot 51. Therefore, the Society apportions the Levies between the percentages below. This is required as the Lot 1 Owner will only be subject to Lot 51 Levies.

Keirunga Terraces Body Corp & Separate Owner Easement Information						
Apportionment of Sinking Fund, Maintenance, Management and Regular Expenses between the areas of Lots 50, 28 and Lot 51 plus BC members only						
	Lot 50	Lot 51	Sep Owner Lot 19 costs	Sep Owner Lot 1 costs	Body Corp Member costs	
Road/footpath/kerb (not berms) incl Sinking Fund	80.8%	19.2%	yes	yes	yes	
Planted Gardens & Trees in gardens only	42%	58%	yes	yes	yes	
Front Gates & Front wooden Rail Fences		100%	yes	yes	yes	
Front Tree lights		100%	yes	yes	yes	
Power for gates & tree lights		100%	yes	yes	yes	
Internet cost for gates		100%	yes	yes	yes	
Private Rubbish Collection for members (BCM) only	100%		no	no	yes	
Other Lot 51 costs		100%	yes	yes	yes	
Power for Streetlights	100%		yes	no	yes	
Cut off drains in lot 28 Private Reserve	100%		no	no	yes	
Horizontal Wick drains in lot 2 & 10	100%		no	no	yes	
Shared Carpark area in easement (CP)	100%		no	no	yes	
Wick Drains in lots 2 & 10	100%		no	no	yes	
Subsoil drain in Lot 31	100%		no	no	yes	
Other Lot 50 Costs	100%		yes	no	yes	
Manager fees	59%	41%	yes	yes	yes	
Accountant fees	59%	41%	yes	yes	yes	

The following is an examples only of how payments would work

Example Only										
Based on 19 Body Corp Members(BCM) plus sep easement owner lot 19 in Lots 50/28 = 20 = 5%										
and based on 19 BC Members plus sep easement owner lot 19 plus sep easement owner in lot 1 in Lot 51 = 21 = 4.77%										
	Lot 51 %	Lot 50 %	Example say Total Costs per year	Share of costs for Lot 51 only	Share of costs for Lot 50, Rubbish, Lot 28 & BC only	Say Lot 1 Sep Easement owner @ Lot 51 4.77% for	say Lot 19 Sep Easement Owner @ 50 & 4.77% for Lot 51	say Lot 9 (BCM) @ 4.77% for Lot 51 & 5% for Lot 50 & 5.26% for lot 28/Rubbish & BCM only		
Road/footpath/kerb (not berms) incl Sinking fund	19.2%	80.8%	\$ 14,880	\$ 2,853	\$ 12,027	\$ 136	\$ 737	\$ 737		
Planted Gardens only mainly RHS banks & front	58%	42%	\$ 2,000	\$ 1,166	\$ 834	\$ 56	\$ 97	\$ 97		
Gates/fences	100%	0%	\$ 1,000	\$ 1,000		\$ 48	\$ 48	\$ 48		
Tree lights	100%	0%	\$ 200	\$ 200		\$ 10	\$ 10	\$ 10		
Power for gates & tree lights	100%	0%	\$ 1,440	\$ 1,440		\$ 69	\$ 69	\$ 69		
Internet for gates	100%	0%	\$ 900	\$ 900		\$ 43	\$ 43	\$ 43		
Private Rubbish Collection (BCM only)	0%	100%	\$ 7,600		\$ 7,600	\$ -		\$ 400		
Other Lot 51	100%	0%	\$ 1,000	\$ 1,000		\$ 48	\$ 48	\$ 48		
Power for Streetlights	0%	100%	\$ 7,000		\$ 7,000	\$ -	\$ 350	\$ 350		
Cut off drains in Lot 28 - BCM only	0%	100%	\$ 2,000		\$ 2,000	\$ -		\$ 105		
Shared Carpark area in easement (CP) - BCM only	0%	100%	\$ 300		\$ 300	\$ -		\$ 16		
Wick Drains in Lots 2 & 10 - BCM only	0%	100%	\$ 400		\$ 400	\$ -		\$ 21		
Sub-Soil drain in Lot 31 - BCM only	0%	100%	\$ 100		\$ 100	\$ -		\$ 5		
Other Lot 50	0%	100%	\$ 1,000		\$ 1,000	\$ -	\$ 50	\$ 50		
Manager fees	41%	59%	\$ 2,000	\$ 820	\$ 1,180	\$ 39	\$ 98	\$ 98		
Accountant fees	41%	59%	\$ 3,000	\$ 1,230	\$ 1,770	\$ 59	\$ 147	\$ 147		
			\$44,820	\$10,609	\$34,211	\$ 506	\$ 1,697	\$ 2,244		
				<i>check</i>		\$44,820	<i>Total 19 BCM lots</i>	\$ 42,629		
							<i>Plus Lot 1</i>	\$ 506		
							<i>Plus Lot 19</i>	\$ 1,697		
							<i>Total All Lots</i>	\$ 44,832		

Schedule 5 – Keirunga Terraces Maintenance Scheme

Cut Off Swale Drain - Service & Management Plan

Cut Off Swale Drain:

Descriptions - The purpose of the cut off drains is to capture overland stormwater generated from the top of the slope and convey the stormwater away from the slopes above the sections down to the private roads and gullies below. The key features and description of the cut off drains are as follows: a cut V shaped drain approximately 1.5m wide; small lumps in the drain to slow the velocity of waterflow; sumps and pipes under lumps at various points; V channels above the lumps incase the sumps block up.

Description	Action Required
Service – Every 3 months	<ul style="list-style-type: none"> - Vegetation to be cleared away from the cut off drain by raking away, blowing away followed by weed sprayed - the small sumps to be cleaned out by hand - It is most important the inside invert (V) of the cut off drain is cleaned out of all vegetation and sediment to keep its shape
2 Yearly	Cut off drain to be inspected and commented on by appropriate personnel. This could either be a Civil Engineer or an experienced earthworks contractor. Instructions from this person to be provided to the Body Corporate and actions to be carried out.
Major Rain Events - After rainfall events that equal or exceed the 5 year storm intensity or equal to 15mm rainfall depth in a 24 hour period.	<ul style="list-style-type: none"> - The cut off drain to be inspected and any damage to be repaired. - Any loose or additional sediment to be removed from the inside invert V. - Any vegetation to be removed. - Sumps & pipes to be inspected and cleared of sediment. - If major Scour damage revert below.
Major Scour Damage	A Civil Engineer to inspect any major scour damage. The cut off drain to be repaired as per the instruction. This could mean the import and placement of compacted aggregate material.

Wick Drains & Subsoil Drain - Service & Management Plan

Horizontal Wick Drains on Lot 10 and Lot 2 DP 607653:

Descriptions - The purpose of the horizontal wick drains is to capture ground water from the cut slopes and convey the stormwater down pipes to the sub-soil drains at the bottom of the slopes which then connect into the public stormwater system. The key features and description of the horizontal wick drains are as follows: a perforated solid pipe drilled 6 metres into the slope; this pipe gathers ground water discharging it through the pipe to the connection pipes on the outside of the slope. These pipes connect to a sub-soil drain pipe that eventually discharges the stormwater into the public stormwater roadside sumps.

Description	Action Required
Service – Every 2 years	Flush out Wick drain pipes; check and flush balance pipes running down the hill.

Subsoil Drain contained in Lot 31 DP 607653

Descriptions - The purpose of the drain pipe is to transport ground water from the wick drains and convey the stormwater into the public stormwater system roadside sump. Note this doesn't include any maintenance of the subsoil drainage pipe on lot 1 & 2 DP 607653 that is corrected to the single wick-drain on lot 2 DP 607653. (this subsoil drainage pipe needs to be maintained privately by the two land owners of lot 1 & 2 DP 607653 covered under an easement)

Description	Action Required
Service – Every 2 years	Flush out drain pipes; check correction at road sump is flowing

Private Roads - Road, Kerb & Footpath Service & Management Plan

Located on Lots 50 & 51 only

Descriptions – Lot 51 DP 607653 has a land area of 1160m² with hard surface area of 487m², gardens/gates area of 631m² and driveway road crossing of 42m². Lot 50 DP 607653 has a land area of 3070m² with hard surface area of 2023m², grass berms and driveway road crossings 596m² and gardens of 451m².

The road on Lot 51 and flat part of Lot 50 is made up of 200mm gap 65 metal, 150mm AP40 basecourse and minimum 25mm DG7 Asphalt. The road on Lot 50 hill and cul-de-sac is made up of 200mm gap 65 metal, 150mm AP40 basecourse and minimum 25mm AC10 asphalt. The footpaths and kerb are concrete with the hill footpath exposed aggregate concrete.

Service & Management Time period or description	Action Required
Regular Servicing - Every 3 months	<p>Every three months the kerb and channels are to be inspected and any sediment, leaves, vegetation are to be removed. This should be done at the same time as the three monthly cut off drain maintenance.</p> <p>Any vegetation growth in the road, kerb or footpath to be weed sprayed. Also any noted damage to the road should be reported to the Chairman of the Body Corporate.</p>
After 2, 5, 8, 11, 14, & 17 years	<p>Civil or Pavement Engineer to walk over the asphalt pavement and footpath and provide any actions required to the Body Corporate. When the asphalt begins to look aged or starts to unravel a surface treatment known as Enviro Shield can be installed which will increase the life of the asphalt.</p> <p>https://www.roadscience.co.nz/products/pavement-preservation/enviro-shield</p>
Action plan for Cracking in the Asphalt	<p>When the Civil or Pavement Engineer is completing the review they are to look at any cracking and to provide an appropriate remediation.</p>
Action Plan for Potholes	<p>If at any time potholes appear in the road pavement these should be repaired immediately. The Body Corporate Chairman should be informed. Note, it is critical to limit any water into the aggregate layers which will cause more damage to the pavement. Potholes are to be repaired by removing the asphalt seal to the centreline, replacing and compacting any loose aggregate material, resealing with a membrane coat and AC10 seal to the (cul-de-sac and steep section) or DG7</p>

	seal to the road (in front of Lots 1-6 and down to the entrance). The seal joints are to be sealed.
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Front Gates, Wooden Fencing, Gardens, Parking Lot & Streetlights Service & Management Plan

Located on Lots 50 & 51 DP 607653 only

Descriptions – Lot 51 has a gardens/gates area of 631m² and Lot 50 gardens area of 451m². These areas are managed by the Body Corporate.

Note, on Lot 50 the grass berms and street trees in front of all sections are to be maintained by the landowner adjoining this berm or street tree. Lots 5 & 6 are to maintain the narrow grass berm on the other side of the road opposite their sections.

Automatic Gates Description – Consists of a large singular steel gate, motor for operating the gate, slide rail along the seal and through the garden, electrical cabinet to operate the gate that has a modem that is connected to a AML fibre connection; camera that has number plate recognition and can be viewed; post in middle of road with a keypad; sensors so the gates don't shut when there are vehicles crossing through; weight bearing ground sensor in the asphalt near the boundary of Lot 51 so the gates open when leaving the property; front entrance has cobblestones within the road and there are large stone pillars with lights on the pillars.

Bin Collection – Located at the cul-de-sac head is a purpose-built concrete pad so that rubbish and recycling collection trucks can collect bins from this location. This is for Lots 8 – 11 and 15 – 19 plus any future sections in Stages 2 & 3. Bin recycling for Lots 1 – 6 & 12 will be at their street frontage location.

Service & Management Description	Action required
Regular Servicing of Gates - Every 6 months	Every six months the gate motor needs a quick service that includes spraying with insecticide to remove ants or spiders. Also lube the roller guides. Check for any damage to the gates, camera, sensors and keypad. Report any damage to the Chairman of the Body Corporate.
Gates - in 15 years	After 15 years check the motor is still operating appropriately. This may include lubing the gearbox and replacing the control board.
Regular Servicing of Gardens - Every 3 months	Check automatic irrigation system is working properly. Check for any repairs to the irrigation required at the drippers and sprays. All gardens have long lasting weedmat with bark or coconut matting over the top of the weedmat. Some weeds

	may be required to be removed around the actual plants and trees.
Gardens - 1 year	Replace any shrubs or trees that may have died. Ensure that the tree stakes and tiebacks to the trees are still secure.
Garden Irrigation - 3 years	Once the shrubs and gardens are established after 3 years the water interval of irrigation can be turned down.
Garden & Tree Lighting at front entrance - every 3 years	Check garden light LED bulbs under the trees are still operating and replace any bulbs.
Streetlights - every 10 years	Check streetlight bulbs are still operating every 10 years. Replace any bulbs that are not working.
Bin Collection Area	The Society is to organize 1 refuse truck firm to collect rubbish and/or recycling either weekly or fortnightly.
Parking Lot	Every 3 months the Parking Lot is to be inspected with weeds sprayed to stop weeds growing up through the stones.

Schedule 6 – Initial Members

Karen Spires

John Harman

Amanda McKay

Ian McKay

Leah Wilkins

Tim Wilkins

Greenstone Land Developments Limited

Stuart Murray

Emma Mary Murray