

Rules of the Appleby Hills Residents' Association Incorporated

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1. Introduction

- 1.1 The name of the Association is the Appleby Hills Residents' Association Incorporated.

2. Interpretation

- 2.1 These Rules (unless the context otherwise requires) shall be interpreted so that:

"Act" means the Incorporated Societies Act 1908.

"Accounting Period" means the period from 1 April to 31 March in any given year.

"Annual General Meeting" means the annual general meeting of the Association, convened and conducted in accordance with these Rules.

"Association" means Appleby Hills Residents' Association.

"Board" means the board of Directors for the time being elected to manage the affairs of the Association, convened and conducted in accordance with these Rules.

"Bylaws" means the bylaws set from time to time in accordance with Clause 10.1.

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

"Capital Improvements" means repairs to, and the replacement or renewal of, any additions to the Communal Facilities.

"Chairperson" means the chairperson of the Association, appointed in accordance with these Rules.

"Communal Facilities" means the Stormwater Maintenance Scheme, the Water Scheme, the Wastewater Scheme, the Landscape Management Scheme and any other buildings, structures or improvements operated by the Association.

"Controlling Member" means the Developer.

"Developer" means CBH Limited.

"Development" means the residential subdivision of the land near Appleby, Nelson as described in resource consent RM030632 issued by the TDC.

"Director" means an Owner appointed to the Board in accordance with these Rules.

"Initial Members" means those persons who have subscribed to these Rules.

"Invitee" means any invitee, visitor or occupier of the Lots authorised or approved by an Owner.

"Land Management Plan" includes compliance with the landscape management plans approved by the TDC in relation to each stage of the subdivision of Lots in

the Development as they relate to ongoing maintenance and protection of planting and landform, management and maintenance of the common land and all communal and jointly owned facilities within the Development, maintaining the landscaping shown on the landscape plan which falls outside of the common land and the Lots of each Owner to the extent that it considers this is necessary to protect the appearance and amenity of the Lots and common land and where that work is not undertaken by the TDC, including irrigating, maintaining, and replacing trees, maintenance of the entrance off State Highway 60, pest control (rabbits, possums, etc) on the common land and on any Lot at the cost of the Owner of that Lot.

“Levies” means the Levies payable to the Association by the Owners in accordance with clause 9.

“Lot” means all and any of the separate certificates of title held to or to be held by Owners comprised in the Development, with the exception of the certificates of title within the Development held by the Association.

“Manager” means the person or entity appointed by the Board in accordance with clause 17 to carry out the duties and obligations of the Association.

“Objects” means the objects of the Association contained in clause 1.2.

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

“Rights of Way” means the easements creating rights of way within the Development.

“Registered Office” means the Registered Office of the Association for the time being, as determined in accordance with these Rules.

“Registrar” means the person holding the office from time to time of Registrar of Incorporated Societies under the Act.

“Restrictive Covenants” means the Restrictive Covenants registered against the certificates of title issued for the Lots.

“Rules” means these rules including the bylaws as originally stated or as from time to time altered by resolution of the Association.

“Stormwater Maintenance Scheme” includes all pipes, dams, swales and open drains and equipment used or to be used now or in the future in the conveying, or storage of stormwater including any replacement pipes and equipment which may be required from time to time on any Owner’s Lot and includes the rights and obligations contained in these Rules and any easements or consents held by the Association but does not include any pipes or equipment which are located upon and solely benefit any particular Lot within the Development.

“TDC” means the Tasman District Council.

“Waste Water Treatment Scheme” includes all pipes, tanks, pumps and equipment used or to be used now or in the future for conveying, treatment or storage of waste water including any replacement pipes and equipment which may be required from time to time on any Owner’s Lot and the treatment plant situated on Lot 2 and includes the rights and obligations contained in these Rules and any easements or consents held by the Association but does not

include any pipes or equipment which are located upon and solely benefit any particular Lot within the Development.

“Water Scheme” includes all pipes, water tanks, bores, pumps and equipment used or to be used now or in the future in the drawing, conveying, treatment/reticulation or storage of water including any replacement pipes and equipment which may be required from time to time on any Owner’s Lot and includes the rights and obligations contained in this constitution and any easements or consents held by the Association but does not include any pipes or equipment which are located upon and solely benefit any particular Lot within the Development.

2.2 In these Rules:

- 2.2.1 words importing the singular include the plural and vice versa;
- 2.2.2 a reference to a person includes any firm, company or other body corporate;
- 2.2.3 words importing one gender include the other gender;
- 2.2.4 reference to a clause means a clause in these Rules; and
- 2.2.5 expressions contained in these Rules bear the same meaning as in the Act (as the Act was expressed at the date on which these Rules became binding on the Association).

3. **Objects**

3.1 The Objects of the Association are as follows:

- 3.1.1 to appoint a suitably experienced and qualified person/company/entity to act as a Manager to be responsible for the performance of all duties of the Association as listed in these rules and in the Restrictive Covenants;
- 3.1.2 to undertake the maintenance, repair and replacement of the Communal Facilities within the Development and the development of further facilities within the Development to be designated as Communal Facilities;
- 3.1.3 to undertake building design approval as set out in the Restrictive Covenants;
- 3.1.4 to administer the Rights of Way and to resolve any disputes that may arise;
- 3.1.5 to ensure the obligations of each member as listed in these Rules and the Restrictive Covenants are carried out;
- 3.1.6 to ensure that the conditions of any resource consent imposed by the TDC for the Development are complied with; and
- 3.1.7 to ensure that the sharing of costs in respect of the Association’s responsibilities shall be allocated in just proportions between the Owners with the intention being that any levies made upon the Owners shall relate so far as possible only to undertakings of the Association which have a direct benefit to the Owner’s Lot.

3.2 The Association:

- 3.2.1 does not have, as an Object, the pecuniary gain of Owners and no Owner shall be entitled to receive any dividend out of any subscriptions, fees, donations or other income or funds of the Association in accordance with these rules (provided that any Owner may enter into any agreement or arrangement with the Association for the sale or supply of any services for such consideration as may be reasonable and as that person would be entitled to receive if not an Owner); and
- 3.2.2 will not carry on trading activities or business for profit.

4. Compliance

- 4.1 The Owners appoint the Association to manage their collective interests as co-owners of the Communal Facilities and, as Owners of individual Lots agree to be bound by these Rules and the Restrictive Covenants.
- 4.2 These Rules will operate to govern the use and enjoyment of the Development and will constitute a binding agreement between the Owners for the use and enjoyment of the Development.
- 4.3 The Association will, on the Owners' behalf, enforce these Rules. No Owner 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 Rules against the defaulting Owner.

5. Membership

- 5.1 The Initial Members of the Association shall:
 - 5.1.1 elect the first Board and exercise all rights of members and Board Members as set out in these Rules;
 - 5.1.2 have no obligations as provided for by the Act, other than those set out in clause 5.1.1, whether for the payment of levies or otherwise; and
 - 5.1.3 be deemed to have resigned, without any act required on the Initial Member's part, at such time as there are fifteen Owners.
- 5.2 As soon as there are fifteen or more Owners, such Owners shall elect a new Board.
- 5.3 Every Owner must also be a member of the Association and, with the exception of the Initial Members, only Owners shall be members of the Association.
- 5.4 Every Owner shall, immediately upon becoming an Owner provide the Association with the necessary details for maintaining the Register of Owners referred to in clause 7.

6. Controlling Member

- 6.1 The Developer shall be the Controlling Member until such time as all of the Lots owned by the Developer have been sold and the Developer is no longer an Owner, or until the Developer gives the Board notice it no longer wishes to be the Controlling Member.

- 6.2 Notwithstanding any other provisions in these Rules, the Controlling Member shall be entitled to exercise a number of votes equal to one more than the number of votes cast by other Owners eligible to vote at meetings of the Association.

7. Register of Owners

- 7.1 The Association shall maintain a register of Owners recording:
- 7.1.1 **For each Owner:** name, address, occupation, telephone number and email (at home and at work);
 - 7.1.2 **For each occupier:** name, address, occupation, telephone number and email (at home and at work);
 - 7.1.3 **Membership:** the date on which each Owner became an Owner;

8. Use of Communal Facilities

- 8.1 All members of the Association have the right to use and enjoy the Communal Facilities in accordance with these Rules and the Restrictive Covenants.

9. Restrictive Covenants

- 9.1 A Restrictive Covenant is to be registered against every Lot in the Development which shall provide (among other things):
- 9.1.1 each Owner is deemed to be a member of the Association and is thereby bound by the Rules and will perform the obligations of a member of the Association accordingly;
 - 9.1.2 an Owner shall resign and be deemed to have resigned from the Association as soon as that Owner is no longer an Owner of a Lot, provided that such resignation shall not relieve a person of any obligation or liability arising before that person ceased to be an Owner; and
 - 9.1.3 each Owner shall, immediately upon becoming an Owner provide the Association with the necessary details for maintaining the Register of Owners referred to in clause 7.

10. Costs

- 10.1 Subject to Clause 10.3 and provided the Levies are determined in accordance with Clause 11, the Association may impose Levies on members to meet the following Costs:
- 10.1.1 costs incurred by the Association relating to the management of the duties and responsibilities of the Association as set out in these Rules and the requirements of the Association as set out in the Restrictive Covenants;
 - 10.1.2 costs incurred by the Association relating to the maintenance and supply of the Communal Facilities;
 - 10.1.3 costs incurred by the Association relating to the administration of the Rights of Way and in resolving any disputes arising from the Rights of Way;

- 10.1.4 costs incurred by the Association in ensuring the Development and members comply with the conditions of resource consent imposed by the TDC, including costs levied on the Association by the TDC where the TDC has, under the authority of such consent undertaken necessary works on the Communal Facilities or the Development;
- 10.1.5 costs of establishing and maintaining the Capital Fund ; and
- 10.1.6 all communal costs incurred by the Association including:
 - 10.1.6.1 costs incurred in employing or engaging any person or body to provide any service or carry out any function;
 - 10.1.6.2 reasonable administration costs;
 - 10.1.6.3 professional costs (such as legal services, accountancy services);
 - 10.1.6.4 any other costs reasonably incurred by the Association in carrying out its responsibilities, taking any action authorised to be taken by the Association and pursuant to the Restrictive Covenants;
 - 10.1.6.5 costs incurred by the Association in ensuring compliance of the members' obligations set out herein and in the Restrictive Covenants;
 - 10.1.6.6 costs incurred by the Association in taking any action under these Rules to the extent that such costs are not able to be recovered by the Association from the person(s) or body against whom that action is taken; and
 - 10.1.6.7 special Levies to cover any unexpected expenditure incurred, in which case such levy shall be paid as directed by the Association.
- 10.2 If any of the Lots are developed for visitor accommodation with capacity to house people in excess of an ordinary residential dwelling, the owner of that Lot shall be levied a proportionate share of Costs appropriate to the residential capacity of the buildings situated on the Lot. For the purposes of this sub-clause, any such buildings providing accommodation may be deemed to be fully occupied at all times (in the same manner that individual dwellings are deemed to be fully occupied at all times). The appropriate proportion of Costs payable by that visitor accommodation Lot(s) shall be determined by the Board based upon the number of beds or bedrooms relative to the number of beds or bedrooms contained in an average dwelling in the Development, or according to an alternative appropriate formula as determined by the Board, whose decision shall be final.
- 10.3 Notwithstanding any other provision in this clause, all Costs must be applied solely for the purposes of:
 - 10.3.1 holding, administering, and maintaining the Communal Facilities; or
 - 10.3.2 administering and enforcing a scheme for the regulation and control of matters relating to the use, enjoyment, repair, decoration and landscaping of, and provision of services to, the Lots.

11. Levies

- 11.1 All Levies, fees and subscriptions payable to the Association by the Members must be determined by the Board in the following manner:
 - 11.1.1 Prior to or as soon as practicable following the close of the Association's last Accounting Period the Board shall advise each Owner of the Board's estimate of the Costs for the current Accounting Period supported by such detailed information as may reasonably be requested by the Owner in confirmation of the Board's estimate.
 - 11.1.2 The Board's estimate for each Owner shall be paid by equal quarterly installments in advance on the first day of such period.
 - 11.1.3 The Board may at any time notify the Owners of a revised estimate of the operating costs where some unforeseen matter arises which is likely to have a significant effect on the Costs and such revised estimate shall apply in lieu of the earlier estimate.
 - 11.1.4 As soon as practicable after the last day of each Accounting Period but in any event within 60 working days, the Board will provide a statement of actual Costs for such period and whatever adjustment which may be necessary between the Association and the Owner(s) shall be paid forthwith upon demand after taking into account the total of the payments previously made by the Owner in respect of that period.
 - 11.1.5 Nothing in this clause shall prevent the Association from recovering a share of the Costs from the Owner(s) merely because the Board has failed to notify the Owner promptly of an estimate or of an actual amount.
- 11.2 The liability of the Owners shall commence on the date of possession stipulated in each Agreement for Sale and Purchase made between the Developer as vendors and the Owner and shall thereafter run with the land.
- 11.3 Notwithstanding any other provision in this Clause, for 3 years from the date the Developer sells the first Lot in the Development, the total sum that each Owner may be required to contribute shall be limited to the sum of \$1500.00 per annum. Provided however the Developer remains solely liable with respect to the Land Management Plan for a period of three (3) years from the deposit of the plan of subdivision with Land Information New Zealand pursuant to the conditions of resource consent for the subdivision with the TDC.
- 11.4 Each Owner indemnifies every other Owner who has reasonably incurred any cost in excess of that Owner's liability hereunder.
- 11.5 All Levies payable by an Owner to the Association constitutes a debt owed by the Owner to the Association and is recoverable (together with any penalty interest and costs payable under clause 13.1) by the Association accordingly.

12. Rules and Damage to Communal Facilities

- 12.1 Each Owner agrees to promptly and full comply with each and every Rule and bylaw set out herein or made by the Association from time to time, and any further covenants given in favour of the Association by such Owner.
- 12.2 Each Owner acknowledges that they will take all reasonable care in using the Communal Facilities and hereby confirm that all rights are exercised at an

Owner's own risk, or at the risk of the Owner's Invitee (as the case may be) and the Owner or Invitee will not hold the Association or any other Owner, or their respective successors in title liable in any way for any loss, damage or injury sustained by that Owner or Invitee.

- 12.3 If any of the Communal Facilities reaches a state of disrepair or is damaged as a result of the negligence, wilful act or abnormal use by any Owner (or by the Owner's Invitee, an occupier or other person for whom the Owner is responsible) the Owner by whose action (or by the action of the Owner's Invitee, an occupier or other persons for whom the Owner is responsible) the damage or state of disrepair was caused shall be solely responsible to meet the costs to repair and restore such damage.

13. Breach of Obligations

- 13.1 Upon any breach of these Rules by an Owner (or their Invitees):
- 13.1.1 if such default continues for seven (7) days after notice is given by the Association to the Owner to remedy the default, the Association may do anything, including paying money, necessary to remedy the default;
- 13.1.2 all money paid and expenses incurred by the Association (including any legal costs of the Association) in remedying or attempting to remedy any breach by an Owner of these Rules, or incurred in the exercise, or attempted exercise, or enforcement or attempted enforcement of any power, right or remedy of the Association in respect of such breach, shall be a debt due from the Owner to the Association;
- 13.1.3 if any money payable by an Owner to the Association is in arrears and unpaid for seven (7) 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 rate of 5% above the Association's banker's overdraft rate (or in the absence of such rate other benchmark lending rate as nominated by the Board) applicable during the continuance of the default, computed on a daily basis from the due date until the date of payment in full.
- 13.2 A reference to an act or omission by any Owner, shall include any act or omission by any occupier of a lot or Invitees of such occupier.
- 13.3 Each Invitee shall be deemed to have knowledge of the Rules and each Owner is responsible and shall be held liable for acquainting the Invitee with the Rules. In the case of occupiers of a Lot, each relevant Owner must take all reasonable steps (including enforcing the terms of any lease/licence) to ensure occupiers comply with these Rules. In any case of persistent default by an occupier of these Rules, the Owner shall on demand by the Association, terminate an occupier's right to occupy the Lot.
- 13.4 A copy of these Rules shall be attached to every lease, licence or other document defining occupancy rights and any such document must contain an obligation on the occupier to observe and comply with the Rules.

14. Water Scheme

- 14.1 Each Owner shall ensure that water taken from the Water Scheme shall be used efficiently and without undue waste.

- 14.2 The Association shall not be obliged to deliver more than 1 cubic meter of potable water per day in respect of each Owner.
- 14.3 A decision to restrict water use may be made in anticipation of a water shortage.
- 14.4 The Association shall not be responsible for lack of water supply, or diminution of the water quality, for reasons beyond the Association's reasonable control.
- 14.5 The Association, by its Board may alter the Water Scheme to enhance water distribution and to cater for Owners whose Lots exceed 5,000m² in area and have a requirement for additional water.

15. Owners to Grant Easements

- 15.1 Each Owner shall be under an obligation to:
 - 15.1.1 allow access by the Association's representatives to the Owner's Lot for the purpose of maintaining, repairing or renewing the Communal Facilities; and
 - 15.1.2 grant to the Association any easement necessary for the efficient operation or development of the Communal Facilities including a right of access to the Owner's Lot for the purpose of repair and maintenance.

16. Administration

- 16.1 The administration of the Association shall be vested in the Association in general meeting, and shall be delegated to the Board and Manager as provided in these Rules.
- 16.2 All documents and written announcements requiring execution or signing on behalf of the Association must be signed by the Chairperson or Manager and in the case of a Manager which is a body corporate, by a duly authorised representative of that body).

17. Board of Directors

- 17.1 The Board shall consist of a maximum of five and a minimum of three Directors.
- 17.2 A Director must be an Owner with the exception that the Board may include nominees of the Developer until all of the Lots owned by the Developer are sold and the Developer is no longer an Owner.
- 17.3 Subject to Rule 17.6, a Director shall hold elected position until the earlier of:
 - 17.3.1 the next Annual General Meeting following election (when the Board member shall be eligible for re-election);
 - 17.3.2 the date written resignation from position is received by the Association; or
 - 17.3.3 the date of removal from such position by the Board in general meeting.
- 17.4 Directors will be elected or re-elected at general meetings of the Association on a majority vote by the Owners at a general meeting in the manner prescribed by these Rules.

- 17.5 In the event of any casual vacancy on the Board (whether caused by the death, resignation, or ineligibility of a Director or by some other circumstances) the Chairperson shall call for written nominations and, if necessary, conduct a written ballot to fill such casual vacancy at the earliest reasonable opportunity. For the avoidance of doubt, the appointment of any Director as Chairperson shall not create a casual vacancy on the Board.
- 17.6 Each Director shall have power from time to time by written notice to appoint any person to act as an alternate director in place of such Director whenever that Director is unable to attend to his or her duty as a Director as follows:
- 17.6.1 each alternate Director shall be entitled to receive notice of meetings of the Board and to attend and vote at such meetings if the Director by whom such alternate Director was appointed is not present and to exercise all the powers (except the power to appoint an alternate Director) and perform all the duties of a Director in so far as that Director by whom he or she was appointed has not exercised or performed them.
- 17.6.2 shall be entitled to any such alternate Director may be removed or suspended from office by notice in writing to the Association from the Director by whom such alternate Director was appointed or by the resolution of the Board.
- 17.6.3 Each alternate Director shall, whilst acting as a Director, be responsible to the Association for his or her own acts and defaults and shall not be deemed to be the agent of the Director by whom he or she was appointed.
- 17.7 Directors shall not be entitled to any remuneration for their services as such, but Directors and their alternates shall if approved by the Board be entitled to reimbursement for reasonable out of pocket expenses incurred in connection with the Objects of the Association (other than in attending meetings).

18. Powers of the Board

- 18.1 The affairs of the Association shall be managed by the Board, which may exercise all the powers of the Association and do on its behalf all such acts as it may deem necessary or expedient to achieve the Objects of this Association and as are not by these Rules required to be exercised or done by the Owners in general meeting, and may exercise such authority powers and discretions as may by these Rules be vested in the Board, but subject always to any limits which may from time to time be imposed by the Owners in general meeting on the exercise by the Board of any such powers.
- 18.2 To achieve the Objects of the Association the Board may (without limitation to the generality of Rule 18.1):
- 18.2.1 manage and maintain the Communal Facilities;
- 18.2.2 contract with, employ or otherwise procure the services of any person, persons, firm, company or other organisation for the purpose of achieving the Objects of the Association;
- 18.2.3 enforce compliance with the Rules;
- 18.2.4 levy any additional fees or any special contributions the Association may require in order to exercise its power under these Rules;

- 18.2.5 raise money from reputable established lending institutions in order to carry out the Objects of the Association;
- 18.2.6 grant and transfer to any person or entity any real property and/or other interest, including title, leasehold estates, easements, rights of way or mortgages, out in, on over or under the Communal Facilities for the purpose of constructing, erecting, operating or maintaining thereon, therein or thereunder:
 - 18.2.6.1 roads, streets, footpaths, street lights, driveways, parking area, tracks, paths and fences;
 - 18.2.6.2 lines, cables, wires, conduits, pipelines or other devices for the creation of service;
 - 18.2.6.3 sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; or
 - 18.2.6.4 any similar improvements or facilities.
- 18.3 The Board may, in its discretion, cause the Association to enter into contracts with other residential developments allowing such other residential developments to make use of certain Communal Facilities, provided that:
 - 18.3.1 the Owners receive benefits from the Association's entry into such contracts;
 - 18.3.2 the Association receives no direct monetary profit or pecuniary gains from the contracts; and
 - 18.3.3 no Levies paid by Owners shall be applied to the cost of other residential developments making use of the Communal Facilities.
- 18.4 The Board shall delegate its powers contained in this clause to a Manager in accordance with clause 19.

19. Manager

- 19.1 The Board shall appoint a Manager to be responsible for the performance of all duties of the Association as listed in these Rules. Such appointment is to be made on terms and conditions (including salary) as the Board shall deem appropriate.
- 19.2 The Manager must not be an Owner.
- 19.3 The Developer may appoint the Manager until all of the Lots in the Development owned by the Developer are sold and the Developer is no longer an Owner.
- 19.4 The Manager's duties include:
 - 19.4.1 ensuring the Objects of the Association are met;
 - 19.4.2 ensuring the duties of the Association contained in these Rules and in the Restrictive Covenants are carried out;
 - 19.4.3 ensuring the Owners comply with their duties and obligations as contained in these Rules and the Restrictive Covenants;

- 19.4.4 the administrative functions contained in clause 19.5; and
- 19.4.5 ensuring that the Association's obligations to the TDC in respect of any resource consents relating to the Development are met.
- 19.5 The Manager is to carry out the administrative functions of the Association including:
 - 19.5.1 convening Annual General Meetings and other general meetings of the Association when required to do so in accordance with these Rules and likewise convening meetings of the Board;
 - 19.5.2 giving all such notices as the Association in general meeting or the Board may instruct or which the Association may be required to give to Owners in the manner provided in these Rules;
 - 19.5.3 keeping minutes of all meetings of the Association and of the Board and entering the same in the minute book kept for that purpose;
 - 19.5.4 performing or supervising the performance of the clerical work for, and the maintenance of proper records of, the Association;
 - 19.5.5 maintaining a membership register for the Association;
 - 19.5.6 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;
 - 19.5.7 issuing and receiving correspondence on behalf of the Association;
 - 19.5.8 receiving all fees, subscriptions, levies and other moneys paid to the Association and issuing receipts;
 - 19.5.9 opening and operating a current bank account in the name of the Association;
 - 19.5.10 making such deposits and investments in the name of the Association as the Board may determine from time to time;
 - 19.5.11 paying all accounts and making all advances passed for payment by the Board;
 - 19.5.12 keeping all financial records of the Association and ensuring their safe-keeping together with any security documents;
 - 19.5.13 reporting to the Board any Owner who shall fail to pay Levies or other moneys properly payable by that Owner to the Association within the prescribed period; and
 - 19.5.14 communicating with the TDC and advising it of the address of the Association from time to time.

20. Proceedings of the Board

- 20.1 The Board may meet together, adjourn and otherwise regulate its meetings and procedures for conducting its business as it thinks fit. A majority of the members of the Board from time to time shall form a quorum for a meeting. No business of the Board shall be conducted at any time when less than a quorum is present at the same time and place. The Board may meet at any time and the Manager

shall, upon the request of the Chairperson or any three members, convene a meeting of the Board.

- 20.2 The Board from time to time shall appoint, remove and replace a Chairperson for such term as it sees fit from one of their number to chair the Board meetings and otherwise exercise the powers of the set out in these Rules.
- 20.3 The Chairperson has one vote as a Director, but may not exercise a casting vote.
- 20.4 Resolutions of the Board shall be passed by a majority. Each Board member shall be entitled to exercise one vote. Notwithstanding any contrary provision in these Rules, a resolution in writing signed by such of the Board members as would constitute a quorum at a meeting shall be valid and effectual as if it had passed at a meeting of the Board duly convened and constituted.
- 20.5 All acts properly done by any meeting of the Board or by a person acting as a member, notwithstanding that it may afterwards be discovered that there was some defect in the appointment or continuance in office of any such Board member, or that they were disqualified shall be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Board member.
- 20.6 The Board shall cause proper minutes to be kept of the proceedings of all meetings of the Association and the Board. All business transacted at each such meeting and the minutes of such meeting 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.

21. General Meetings

- 21.1 The Association shall in each year hold an Annual General Meeting in addition to any other meetings in that year, and shall specify the meetings as such in the notices calling such meeting. Not more than 18 months shall elapse between the date of one Annual General Meeting and that of the next. Each year's Annual General Meeting shall be held at such time and place as the Board shall determine.
- 21.2 A general meeting other than an Annual General Meeting shall be convened by the Manager whenever required by the Chairperson or the Board or by written requisition signed by not less than 50% of the Owners.
- 21.3 The Association in general meeting may, by resolution of not less than 75% of the Owners present and voting at such meeting, exercise all the powers, authorities and discretions of the Association notwithstanding any such power, authority or discretion may have been vested in the Board by or pursuant to these Rules.
- 21.4 No business shall be transacted at any general meeting of the Association unless a quorum is present when the meeting proceeds to business. A quorum shall be not less than 20% of all Owners eligible to vote at general meetings, present in person or by proxy.
- 21.5 A notice of a general meeting of the Association shall be sent to every Owner not less than ten (10) Working Days before the date of such meeting. Such notice shall specify the date, time and venue of such meeting. In the case of a general meeting other than an Annual General Meeting such notice shall specify all business and all notices of motion to be considered at such meeting and no business or notice of motion which is not specified shall be discussed or

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

- 21.6 The accidental omission to give notice to or the non-receipt of any notice by any Owner or other person entitled to such notice shall not invalidate the proceedings of any general meeting to which such notice relates.
- 21.7 The Chairperson shall be entitled to chair any general meeting of the Association at which he or she is present. If the Chairperson shall not be present or being present shall be unwilling to take the chair then those Directors who are present may choose one of their number to chair such meeting or if for any reason no chairperson is selected by such Directors then those Owners entitled to vote at that meeting may elect any person entitled to be present as chairperson of that meeting.
- 21.8 At any general meeting:
 - 21.8.1 a poll may be directed by the Chairperson or the chairperson of that meeting or demanded by any Owner present at the meeting and entitled to vote;
 - 21.8.2 a poll may be so directed for either before the declaration of the result of a vote by a show of hands or immediately thereafter before the meeting moves to the next business or it adjourns;
 - 21.8.3 the Chairperson or the chairperson of that meeting shall determine whether resolutions are to be put to the vote of the meeting by a show of hands, a poll, or by some other means;
 - 21.8.4 in the case of a resolution put to the vote of the meeting by a show of hands, a declaration by the Chairperson that such resolution has been carried or lost, unanimously or by a particular majority, and an entry to that effect in the Association's minute book, shall be conclusive evidence of the fact without further proof of the number or proportion of votes recorded in favour or against such resolution.
- 21.9 If within half an hour from the time appointed for holding of a general meeting a quorum is not present, the meeting if convened on the requisition of the Owners, shall be dissolved. In any other case it 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 Board shall determine. If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Owners present shall be a quorum.

22. Votes of Members

- 22.1 Subject to clauses 22.2 and 22.3, each Owner shall be entitled to one vote, which may be exercised either in person or by proxy. An Owner may vote by fax, telephone or email, by addressing such correspondence to the Manager prior to the general meeting. The Manager shall advise the Chairperson of the vote so long as the Manager is satisfied what the vote is for and the likely effect of that vote.

- 22.2 Where there is more than one Owner in respect of any Lot, 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 certificate of title to the Owner's Lot shall be entitled to exercise that vote. On the death of any Owner, and pending the transfer of that Owner's Lot, the executor of that Owner's estate shall be entitled to exercise that owner's vote.
- 22.3 Whilst there is a Controlling Member, the Controlling Member shall have the number of votes one greater than the number of votes able to be exercised by all other Members.
- 22.4 Unless all annual subscriptions and additional fees and levies presently payable by any Owner to the Association have been paid in full, such Owner shall not be entitled to vote at any general meeting of the Association, whether in his or her own right or as proxy for another person.

23. Proxy

- 23.1 An Owner may exercise the right to vote by proxy in accordance with this clause.
- 23.2 The instrument appointing a proxy shall be in writing and signed by the appointer, and in all respects, shall be in such form as the Board may determine from time to time.
- 23.3 The instrument appointing a proxy shall be delivered to the Registered Office no later than 24 hours before the time fixed for holding the meeting or adjourned meeting at which the person named in such instrument is authorised to vote, failing which the instrument appointing a proxy shall not be treated as valid.

24. Dispute Resolution

- 24.1 Any disputes arising under these Rules, the Restrictive Covenants or in connection with the Association shall be referred to mediation at first instance.
- 24.2 If the dispute is not resolved by mediation in accordance with clause 24.1, the matter shall be referred to and finally resolved by arbitration of a sole arbitrator under the Arbitration Act 1996 upon the written request of any party served on the other party.
- 24.3 The arbitrator referred to in clause 25.2 shall be appointed by the parties to the dispute or, failing agreement as to the arbitrator, a person to be appointed by the President or Vice-President of the Nelson District Law Society or the nominee of such person.

25. Notices

- 25.1 All notices and other communications required under these Rules shall be in writing and shall be delivered by hand, by properly addressed prepaid fastpost or airmail postage, by facsimile transmission or by e-mail and, in the case of notices to or communications with:
- 25.1.1 any Owner, shall be addressed to that Owner at its address as set out in the register of owners (referred to in clause 7), or at such other address as the Owner may from time to time notify the Secretary in writing;
- 25.1.2 the Association, the Chairperson, the Manager, the Board, shall be addressed to the intended recipient, care of the Registered Office.

25.2 Any notice or communication given in terms of Rule 25.1 shall be deemed to have been delivered:

25.2.1 in the case of delivery by prepaid fastpost or airmail postage, if:

25.2.1.1 posted within New Zealand to a destination within New Zealand, two (2) Working Days after posting;

25.2.1.2 posted within New Zealand to a destination outside New Zealand, five (5) Working Days after posting;

25.2.1.3 posted outside New Zealand to a destination within New Zealand, five (5) Working Days after posting; and

25.2.2 in the case of transmission by facsimile, on receipt by the sender of a transmission report showing full transmission free of error to the intended recipient.

25.2.3 in the case of e-mail, when the e-mail is sent.

25.3 The Association shall not be held liable in any way for failure to give notice to any Owner provided it has delivered such notice by any means specified under these Rules to the last address provided by the Owner to the Association.

26. Accounts

26.1 The Board shall cause proper accounts to be kept with respect to:

26.1.1 all sums of money received and expended by the Association and the matters in respect of which the receipts and expenditure take place;

26.1.2 any sales and purchase of goods by the Association; and

26.1.3 the assets and liabilities of the Association.

26.2 The Association's accounts shall be kept by the Manager (or such other person as may from time to time be designated by the Board) who shall produce them to the Board or any Director, on demand.

26.3 The financial statements of the Association must be audited annually and must be distributed to the Owners as soon as reasonably practicable after each audit is completed.

26.4 The Manager shall from time to time cause to be prepared and to be laid before the Board and/or the Association in general meeting such income and expenditure accounts, balance sheets and reports as are from time to time required by the Board.

26.5 A copy of all balance sheets, accounts and reports which are to be laid before the Association in general meeting, together with a copy of the auditor's report (if any), shall be sent to every Owner not less than ten (10) Working Days before the date of the relevant general meeting.

27. Registered Office

27.1 The Registered Office shall be at such place as the Board shall from time to time determine and until the Board otherwise determines, shall be situated at 8 Strawbridge Square, Stoke, Nelson.

28. Cheques/Bills

- 28.1 All cheques, bills of exchange and promissory notes shall be signed, drawn, made, accepted or endorsed (as the case may be) for and on behalf of the Association by the Chairperson and either the Manager or some other officer authorised by the Board, or in such other manner as the Board determines from time to time.

29. Liability of Members

- 29.1 Except as otherwise provided by the Act, no Owner or Initial Member shall be under any liability in respect of any contract or other obligation made or incurred by the Association.

30. Alteration of the Rules

- 30.1 These Rules, and any by-laws made under these Rules, shall not be amended, added to or rescinded except by resolution of not less than 75% of the current Owners entitled to vote at an Annual General Meeting or a general meeting convened for that purpose and unless written notice of the proposed amendment, addition or rescission shall have been given to all Owners in accordance with these Rules. No such amendment, addition or rescission shall be valid unless it has been approved by the TDC and it has been accepted by the Registrar.

31. Winding Up

- 31.1 The Association may be wound up in accordance with section 24 of the Act. If, upon such winding up, there remains, after satisfaction of all debts and liabilities of the Association, any property or assets (including the Communal Facilities), such property or assets shall vest in the Owners as tenants in common.

32. Seal

- 32.1 The Board shall obtain a common seal for the use of the Association and shall provide for its safe custody. The common seal shall not be used except by resolution of the Board. Every instrument to which the common seal is affixed shall be witnessed by any two members of the Board.