

*No. of Incorporation: 445620*

*The Incorporated Societies Act 2022*

## **CONSTITUTION**

**of**

## **ONE MAHURANGI BUSINESS ASSOCIATION INCORPORATED**

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**The Incorporated Societies Act 2022**

**CONSTITUTION**

**of**

**ONE MAHURANGI BUSINESS ASSOCIATION**

**1 INTERPRETATION AND DEFINITIONS**

In this Constitution, unless the context indicates otherwise:

**"Act"** means the Incorporated Societies Act 2022 as amended from time to time;

**"Annual Financial Statements"** means the Annual Financial Statements for the Association to be approved by the Members, so that it may then be delivered to the Registrar of Incorporated Societies in accordance with the Act;

**"Annual General Meeting"** has the meaning given to it in Rule 24;

**"Associate Member"** means a member who does not qualify as a Full Member under Rule 5.1 and who has become a member pursuant to Rule 5.9 and

**"Associate Membership"** has a corresponding meaning;

**"Association"** means One Mahurangi Business Association Incorporated.;

**"Auckland BID Programme"** or **"BID Programme"** means the economic development programme involving the Council, the business community, other stakeholders and the Association to organise, design, promote, improve and develop the Warkworth commercial area and any other area managed by the Association for which the Association receives a BID Targeted Rate Grant;

**"Auditor"** means the auditor appointed in accordance with Rule 18;

**"BID Targeted Rate Grant"** means any funding received by the Association from the Council for the purposes of the BID Programme;

**"BID Policy"** means the Council policy that sets out the relationship between the association and Auckland Council including the three-year BID Targeted Rate Grant Agreement, and the governance and accountability requirements for the BID Programme and BID Targeted Rate Grant;

**"Business Improvement District Targeted Rate"** or **"BID Targeted Rate"** means any rate set by the Council pursuant to section 16 of the Local Government (Rating) Act 2002 or any equivalent legislation in order to provide, or contribute to, the BID Targeted Rate Grant;

**"Business Improvement District Targeted Rating Area"** or **"BID Targeted Rating Area"** means the geographical area subject to the BID Targeted Rate for

the purposes of the BID Programme, as defined for the purposes of the Auckland Council rating information database;

**"Chairperson"** means the chairperson, or two co-chairs, of the Association referred to in Rule 16;

**"Council"** means the Auckland Council or its successor;

**"Executive Committee"** means the committee of the Association referred to in Rule 13;

**"Full Member"** means a person who is entitled to be a member of the Association pursuant to Rule 5, and who has joined the Association;

**"General Meetings"** means the Annual General Meeting and Special General Meetings of the Association;

**"Local Board"** means the local board of the Council within whose local board area the BID Programme operates;

**"Local Board Representative"** means the member of the Local Board who is appointed by the Local Board to represent it in matters relating to the BID Programme, and includes any other member of the Local Board who is authorised by the Local Board to act in place of that appointee if he or she is absent or unavailable;

**"Members"** means the Members of the Association from time to time including Associate Members and Full Members;

**"Officers"** means a member of the Executive Committee and includes the Chairperson, Secretary and Treasurer of the Association referred to in Rules 16 and 17;

**"Rules"** means the provisions of this Constitution, and references to a particular Rule or Rules is a reference to the corresponding clause or clauses in this Constitution;

**"Secretary"** means the Secretary of the Association referred to in Rule 16;

**"Special General Meeting"** has the meaning given to it in Rule 26;

**"Special Resolution"** has the meaning given to it in Rule 32;

**"Special Subscription"** means the amount payable by an Associate Member pursuant to Rule 9.1;

**"Treasurer"** means the Treasurer of the Association referred to in Rule 17.

References to **Persons** in these Rules includes references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations or other entities.

## **2 NAME**

2.1 The name of the Society is "One Mahurangi Business Association Incorporated".

## **3 OBJECTS**

3.1 The objects for which One Mahurangi Business Association is established are:

3.1.1 To act in the best interests of all businesses in the BID Targeted Rating Area; to promote the area; to have a voice in the development of the area; and to ensure that the BID Targeted Rating Area is known as a safe, secure and thriving environment that will attract and retain business which will drive employment growth.

Embodied in this, One Mahurangi Business Association specifically aims to:

- (a) Secure the membership of eligible businesses in the Warkworth area.
- (b) Expand geographical areas where Members are derived where appropriate or of benefit to existing Members.
- (c) Obtain funding from Council;
- (d) Encourage an environment attractive to new businesses and employment growth;
- (e) Promote low carbon, environmental and socially responsible business practices and to support businesses on their journey towards zero carbon emissions and sustainability.
- (f) Have regular contact with Rodney Local Board, Auckland Council and its CCOs and Councillors to ensure the Association is informed of local issues and to provide comment on such issues;
- (g) Advocate to improve the infrastructure of the area, i.e. services such as security, transport, roading, water, gas, safety, street signage, etc.;
- (h) Make submissions to the Council as required and act as a strong advocacy group;

- (i) Develop a networking environment of business within the area; and
- (j) Work in harmony in a symbiotic relationship with other business associations and key stakeholders.

3.1.2 To capitalise on the natural and historical significance of the BID Targeted Rating Area and to use that natural and historical significance as a means of establishing an identity for the area.

3.1.3 To make arrangements with and/or advocate to the Government, local authorities, the Council and/or persons, corporations or associations for the improvement of amenities, streetscapes, utilities, transport services or other infrastructure, reserves, and for lighting, surfacing, security and cleaning in the BID Targeted Rating Area.

3.1.4 For the purposes of objects stated in these Rules, to administer the BID Programme and BID Targeted Rate Grant.

3.1.5 To do all things which are conducive, or may be incidental to, the attainment of these objects.

#### **4 SCOPE OF THE ASSOCIATION'S POWERS**

4.1 The Association has the widest possible powers to do all things which may be necessary to pursue the Association's objects as set out in Rule 3 including (but not limited to) the following powers:

4.1.1 To purchase, take on, lease, exchange, hire, or otherwise acquire any real or personal property, and to sell, mortgage dispose of or otherwise deal with any real or personal property of the Association and any rights or privileges which the Association thinks necessary or expedient for the purposes of attaining the objectives of the Association or promoting the interests of the Association, its Members or any other persons.

4.1.2 Subject to Rule 13, to use the funds of the Association as the Association may consider necessary or proper to pay the costs and expenses of the Association and further the objects of the Association. Such costs may include the employment or engagement of solicitors, agents, officers and servants as necessary or expedient, always subject to Rule 12.

4.1.3 To engage in prosecuting, defending or otherwise taking any legal action or legal proceedings on behalf of the Association and, for that purpose, to expend such moneys and employ such solicitors, counsel and other advisors as the Association may think fit.

4.1.4 To delegate such jobs, offices and powers to any Member for the purposes of carrying out the objects of the Association.

- 4.1.5 To collect and receive from the Members such membership fees and periodically other subscriptions or fees as may, from time to time, be determined by the Association.
- 4.1.6 To publicise and promote the objects of the Association, to conduct appeals, to solicit, advertise or otherwise request, and to hold and make use of donations or contribution in specie or of property of any kind and to invite, collect or receive regular or other donations or financial support from persons who are not Members, for the purposes of the Association and in furtherance of its objects.
- 4.1.7 To work in the best interests of the Association, in good faith and within the mandate of the Association.
- 4.1.8 To invest in any manner authorised by the Rules of the Association, moneys not immediately required for the purposes of the Association.
- 4.1.9 To apply for and acquire any licences or permits deemed necessary by the Association.
- 4.1.10 To open and operate bank accounts of whatever nature or description subject to such conditions as the Association thinks fit.
- 4.1.11 To assist any charity or charitable purpose by such financial or other means as the Association thinks fit.
- 4.1.12 To borrow or raise money by any means and upon such conditions as the Association thinks fit.
- 4.1.13 To employ staff and nominate contractors for such purposes, periods and conditions as the Association thinks fit, always subject to Rule 12.
- 4.1.14 To enter into contractual business relationships with other companies, consultants, associations, councils, insurers, government departments or agencies or any other person subject to the provisions of the Act, for the purpose of advancing the objects of the Association.
- 4.1.15 To establish an Executive Committee with the functions and powers set out in these Rules.

4.2 Notwithstanding any of the above powers, the Association resources can never be used to;

- 4.2.1 Provide services that would otherwise be provided by Council via its general rate. This doesn't prevent the Association from using their resources to provide a higher level of service than what a Council is currently providing, if desired; or,
- 4.2.2 Endorse or support a particular political candidate or party or to endorse any other political purpose.

## **5 MEMBERSHIP QUALIFICATIONS AND ENTITLEMENTS**

5.1 The membership of the Association shall consist of Full Members and Associate Members. A person shall be entitled to be a Full Member of the Association if that person:

- (a) Owns one or more commercially rated properties within the BID Targeted Rating Area; or
- (b) Occupies or is the tenant of one or more premises (with a floor space of not less than 10 square metres) of a commercially rated property within the BID Targeted Rating Area and who operates a business from those premises for not less than 50 business days a year;

5.1.2 Has not previously been expelled from the Association, unless the Executive Committee has resolved to readmit that person under Rule 11.6; and,

5.1.3 Has fully paid up all fees, subscriptions, levied by the Association pursuant to Rule 9.

5.2 For the avoidance of doubt, a person may only hold one Full Membership at one time, even though that person may be entitled under Rule 5.1 to be a Full Member on more than one ground.

5.3 A Full Member is entitled to:

- 5.3.1 Attend and vote at all General Meetings;
- 5.3.2 Attend all meetings of the Executive Committee (but not vote);
- 5.3.3 Stand for election to the Executive Committee;
- 5.3.4 Receive regular communications about the Auckland BID Programme activities;
- 5.3.5 Receive notification of upcoming meetings and agenda items
- 5.3.6 Attend all events hosted by the Association. The Association reserves the right to exclude any member from an event in the best interests of the Association and other attendees.

5.4 Any person entitled to be a Full Member of the Association and who wishes to become a Member shall provide and maintain current details of their name, occupation, business identity, contact details and business address to the Secretary. Every applicant for membership must consent in writing to becoming a Member and this consent shall be retained in the Association's Membership records.

5.5 Any person who ceases to be entitled to be a Full Member of the Association shall immediately provide notice of that fact, and of the date their entitlement ceased, to the Secretary.

5.6 Each Member, which is not an individual, shall designate an individual representative to act on its behalf in all matters relating to the Association, and shall notify the Secretary of that representative's details. Any such Member may change their representative, but no such change is effective until notice of the change and the name and contact information of the new representative is received by the Secretary. The notice must be given in writing, either by electronic means or via the post.

5.7 The voting rights of the Members of the Association shall be that each Full Member shall be entitled to one vote.

5.8 Subject to Rule 33.3, proxy votes are permitted by a Member unable to attend a meeting provided that a proxy vote form records the Member's name, is signed by the voting Member, appoints the Chairperson as the proxy, clearly sets out the manner in which the Member wishes to vote on any one resolution and is presented to the Chairperson two working days prior to the meeting at which a vote to which the proxy form relates is to be held. The Chairperson will present the proxy at the time of a vote to which it relates and for avoidance of doubt a party voting by proxy will be deemed to be in attendance at a meeting, to have voted and to comprise an attendee for the purposes of a quorum.

5.9 There may be Associate Members of the Association. A person who does not qualify to be a Full Member under Rule 5.1 (for example, a business that operates near but outside the BID Targeted Rating Area, or a person who operates a business from a residential property within or near the BID Targeted Rating Area, or a non-business organisation or entity operating in the area) may submit to the Secretary an application to become an Associate Member of the Association. The Secretary shall advise the Executive Committee of the application and the Executive Committee shall determine at its next scheduled Executive Committee meeting whether or not the applicant shall be admitted as an Associate Member, taking into account the objects of the Association set out in Rule 3. An Associate Member shall have the same entitlements as a Full Member except that:

5.9.1 No more than four Associate Members may be elected or appointed by the Executive Committee to the Executive Committee,

5.9.2 An Associate Member may not vote or form part of a quorum in the context of a vote that relates to the BID Programme, BID Programme Funding, BID Targeted Rate or BID Targeted Rating Area, unless an Associate Member:

(a) owns one or more commercially rated properties within an area to which it is proposed the BID Targeted Rating Area be extended; or

(b) trades within one or more commercially rated properties within an area to which it is proposed the BID Targeted Rating Area be extended.

5.10 For the avoidance of doubt, reference to a “person” in these Rules relating to Membership of the Association is a reference to any separate legal entity such as an individual, company, association or incorporated society.

5.11 An Associate Membership shall be for a term commencing on the date of payment of a Special Subscription, and ending on the 30th June following that date (or on the date of termination under Rule 6), provided that where an Associate Member wishes to rollover its Membership for a further twelve months, the term of the subsequent Associate Membership shall commence on 1st July following the previous term.

## **6 TERMINATION OF MEMBERSHIP**

6.1 A person ceases to be a Member of the Association if the person:

- 6.1.1 dies, becomes bankrupt or, being a company or other incorporated body is wound up; or
- 6.1.2 resigns that Membership by notice in writing to the Association; or
- 6.1.3 is expelled from the Association; or
- 6.1.4 ceases to be entitled to be a Full Member in terms of Rule 5.1, and has not been admitted as an Associate Member.

6.2 Termination of Membership shall not release any Member from any liability to the Association arising prior to the date of termination.

## **7 MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE**

7.1 A right or privilege which a person has, by reason of being a Member of the Association:

- 7.1.1 Is not capable of being transferred or transmitted to another person; and
- 7.1.2 Terminates upon cessation of the person's Membership.

## **8 REGISTER OF MEMBERS**

8.1 The Secretary of the Association shall establish and maintain a register of Members of the Association pursuant to the Act specifying the name, consent to Membership, address, contact details and occupation or business of each person who is a Member of the Association, whether that person is a Full or Associate Member,

together with the date on which the person became a Member, and the date they ceased to be a Member, and, in the case of Members which are not individuals, the name and address of that Member's individual representative.

- 8.2 Each Member shall advise the Secretary if there is any change to any of the information in the register relating to that Member. The notice must be given in writing, either by electronic means, or via the post.
- 8.3 The register of Members shall be kept at the principal place of administration of the Association and shall be open for inspection, free of charge, by any Member of the Association at any reasonable hour. Such information is confidential to the Association and may not be copied or duplicated by any member, for any purpose.

## **9 FEES, SUBSCRIPTIONS, ETC.**

- 9.1 An Associate Member shall, in each year, pay a Special Subscription of such amount as is determined by the Executive Committee from time to time provided the total of all fees, subscriptions or charges paid by that Associate Member does not exceed the sum of \$500 plus GST.
- 9.2 The Association may levy from its Full Members in each year any fee, subscription or charge considered by the Executive Committee to be necessary or expedient to carry out the Association's objects, which may be in several parts or categories, provided the total of all fees, subscriptions or charges paid by a Full Member does not exceed the sum of \$500 plus GST per each commercially rated property owned or tenanted by the Full Member within the BID Targeted Rating Area.
- 9.3 Full Member levies shall be collected through the BID Targeted Rate.
- 9.4 The Executive Committee must take into account any BID Programme Funding (and Members' contributions to that funding) and other funding available to the Association before deciding to levy, and setting the amount of any such fee, subscription or charge.
- 9.5 If any Associate Member fails to pay that Member's Special Subscription in full by the due date as determined by the Executive Committee, the Committee may resolve that that Member's Associate Membership of the Association shall be terminated. The Secretary shall give that person notice of termination of that Member's Membership in writing.
- 9.6 Any Member ceasing to be a member of the Association pursuant to Rule 6 shall not be entitled to any refund of any subscription or Special Subscription charge paid or payable by that Member prior to his, her or its termination and such Member shall continue to remain liable to pay such subscription despite ceasing to be a Member.

## **10 MEMBER'S LIABILITIES**

10.1 The liability of a Member of the Association to contribute towards the payment of the debts and liabilities of the Association or the costs, charges and expenses of the winding up of the Association is limited to the amount, if any, unpaid by the Member in respect of Membership of the Association as required by Rule 9. In the event any Member ceases to be a Member of the Association pursuant to Rule 6, that Member shall not be released from any liability to the Association for any matters arising prior to the end of the financial year which falls on the 30 June, in which the Member ceased to be a Member.

## **11 DISCIPLINING OF MEMBERS AND DISPUTE RESOLUTION**

11.1 Where the Executive Committee is reasonably of the opinion that a Member of the Association:

- 11.1.1 Has persistently refused or neglected to comply with a provision or provisions of these Rules; or
- 11.1.2 Has persistently and wilfully acted in a manner prejudicial to the interests of the Association; or
- 11.1.3 Has failed to pay any subscription or charge payable under Rule 9 or any Special Subscription or otherwise failed to make any payment due under these Rules and such failure continues for a period of three calendar months after it is due; or
- 11.1.4 Does anything which, in the opinion of the Executive Committee in its absolute discretion is likely to seriously harm the reputation of the Association or the objects of the Association in general;

11.2 The Executive Committee may by resolution:

- 11.2.1 Remove that Member's entitlement to vote at any General Meeting until such time as payment is made in full; or
- 11.2.2 Expel the Member from the Association; or
- 11.2.3 Suspend the Member from Membership of the Association for a specified period.

11.3 A resolution of the Executive Committee under Rule 11.2 is of no effect unless the Executive Committee confirms the resolution at a meeting held not earlier than fourteen (14) days and not later than twenty-eight (28) days after service on the Member of a notice issued pursuant to Rule 11.4.

11.4 Where the Executive Committee passes a resolution under Rule 11.1, the Secretary shall, as soon as practicable, cause a notice in writing to be served on the Member:

- 11.4.1 Setting out the resolution of the Executive Committee and the grounds on which it is based;
- 11.4.2 Stating that the Member may address the Executive Committee at a meeting to be held not earlier than fourteen (14) days and not later than twenty-eight (28) days after service of the notice;
- 11.4.3 Stating the date, place and time of that meeting; and
- 11.4.4 Informing the Member that the Member may do either or both of the following:
  - (a) Attend and speak at that meeting;
  - (b) Submit to the Executive Committee, at or prior to the date of that meeting, written representations relating to the resolution.

11.5 At a meeting of the Executive Committee, held in accordance with Rule 11.4, the Executive Committee shall:

- 11.5.1 Give the Member an opportunity to make oral representations and to bring a supporting person;
- 11.5.2 Give due consideration to any written representations submitted to the Committee by the Member at or prior to the meeting; and
- 11.5.3 By resolution, determine whether to confirm or to revoke the resolution.

11.6 The Executive Committee may, in its absolute discretion, resolve to readmit as a Member of the Association any person who has been previously expelled from the Association and is otherwise entitled to be a Full Member or an Associate Member, as the case may be, of the Association.

11.7 For any other disagreement or conflict involving the Association and/or its Members as set out in sections 38 to 44 of the Act, the Association adopts the processes set out under Schedule 2 of the Act for the handling of any dispute of that nature as amended and set out in Appendix 1 of these Rules.

## **12 MEMBER DEALINGS WITH AND INTERESTS IN THE ASSOCIATION**

- 12.1 The funds and assets of the Association shall be applied towards furthering the objects, aims and purposes.
- 12.2 No private pecuniary profit shall be made by any person from the Association except that:
  - 12.2.1 Any Member may receive full reimbursement for all expenses properly incurred by that Member in connection with the affairs of the Association;

- 12.2.2 The Association may pay reasonable remuneration to any Officer or servant of the Association (whether a Member or not) in return for services actually rendered to the Association;
- 12.2.3 Any Member may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by the Member, or by any firm or entity of which that Member is a member, employee or associate in connection with the affairs of the Association; and
- 12.2.4 Any Member may retain any remuneration properly payable to that Member by any company or undertaking with which the Association may be in any way concerned or involved for which that Member has acted in any capacity whatever, notwithstanding that the Member's connection with that company or undertaking is in any way attributable to that Member's connection with the Association.

12.3 The Executive Committee may recommend to the Association's Annual General Meeting, the payment of an honorarium to the Chairperson, and Deputy Chairperson, providing that any resolution must be passed as a Special Resolution at an AGM, and is only valid until the following year's AGM, at which time it may only be continued with a Special Resolution.

12.4 Notwithstanding anything contained or implied in these Rules, any person who is:

- 12.4.1 A Member of the Association; or
- 12.4.2 A shareholder or director of any company carrying on any business of the Association; or
- 12.4.3 A shareholder or director of any company which is a Member of the Association; or
- 12.4.4 A member of any association which is a shareholder of any company carrying on any business of the Association; or
- 12.4.5 An associated person (as defined in the Income Tax Act 1994) of any such Member, shareholder or director;

shall not, by virtue of that capacity, in any way (whether directly or indirectly) determine, or materially influence the determination of the nature or the amount of any benefit or advantage or income or the circumstances in which it is or is to be received, gained, achieved, afforded or derived by that person.

12.5 The Executive Committee shall not lend money nor lease property or assets at less than current commercial rates, and shall ensure that receipts by way of interest or rent shall not be at less than current commercial rates, having regard always to the nature and terms of the loan and lease, to any person (as defined in the Income Tax Act 1994):

12.6 Any Member who is or may be interested or concerned directly or indirectly in any property or undertaking in which the Association is or may be in any way concerned or involved:

- 12.6.1 Must disclose the nature and extent of that Member's interest to the other Members. A dated record should be kept in the Association's interests register and
- 12.6.2 Must not take any part whatever in any deliberation concerning any matter in which that Member is or may be interested other than as a Member of the Association.

## **13 POWERS AND AUTHORITY OF EXECUTIVE COMMITTEE**

13.1 The Association shall be governed by an Executive Committee which:

- 13.1.1 Shall control and manage the affairs of the Association;
- 13.1.2 May exercise all such functions as may be exercised by a General Meeting of Members of the Association;
- 13.1.3 May fix the amount of any fee or subscription charge, other than the BID Targeted Rate, to be paid by Members, which may be in several parts or categories
- 13.1.4 Has power to perform all such acts and do all such things as appear to the Executive Committee to be necessary or desirable for the proper management of the affairs of the Association.
- 13.1.5 Shall be responsible for managing any staff of the Association;
- 13.1.6 Shall be responsible for co-ordinating with Council any ballot in relation to the BID Targeted Rating Area required by the Council;
- 13.1.7 Shall carry out the affairs of the Auckland BID Programme on behalf of the Association, which includes:
  - (a) identifying strategic opportunities;
  - (b) establishing a programme of activities, projects and priorities to further the BID Programme;
  - (c) allocating the BID Targeted Rate Grant;
  - (d) overseeing the spending of approved budgets;
  - (e) monitoring work progress against approved budgets and performance measures;

- (f) establishing any sub-committee to deal with specific projects as the Executive Committee deems appropriate;
- (g) reporting to the Local Board or the Governing Body of the Council as required;
- (h) any other matters or requirements as set out in the BID Policy.

13.2 The Executive Committee shall be responsible for arranging for the preparation of:

- 13.2.1 Each year a detailed annual plan and budget, showing the expected income and expenditure, covering the following 12-month period;
- 13.2.2 A strategic plan covering the following three-to-five-year period;
- 13.2.3 Each year an annual report reviewing the previous year's activities.
- 13.2.4 A Finance committee annual report.
- 13.2.5 Annual audited accounts.

13.3 The Executive Committee shall be responsible for accounting for the BID Targeted Rate Grant.

13.4 The Executive Committee shall be responsible for ensuring that the Association complies with these Rules and all applicable laws and regulations, including all aspects of the BID Policy.

13.5 If the Association is at any time non-compliant with the BID Policy then the Executive Committee must advise Auckland Council of this non-compliance immediately. The Executive Committee must do all things necessary to follow an issue resolution process with Auckland Council to achieve compliance.

13.6 The Executive Committee shall be responsible for ensuring that the Association complies with any Council accountability reporting requirements which may either be a general requirement or a specific requirement associated with particular Council funding.

13.7 Each member of the Executive Committee must, when exercising powers or performing duties, comply with the Act (in particular the officers' duties in sections 54 to 61) and these Rules.

13.8 There must at all times be an Executive Committee board charter that is reviewed annually by the current Executive Committee which, among other things, delineates the separate roles of governance and management.

## **14 MEMBERSHIP OF EXECUTIVE COMMITTEE**

14.1 The Executive Committee shall consist of:

- 14.1.1 A Chairperson or two Co-Chairs; and
- 14.1.2 Not less than five persons, but not more than fifteen persons who are Members of the Association, and who have been elected at the Annual General Meeting of the Association pursuant to Rule 15 or appointed under Rule 14.4.
- 14.1.3 Comprise at least one Full Member from each of the following categories within the BID Targeted Rating Area:
  - (a) a Landlord
  - (b) a Retail zoned business operator
  - (c) a Commercial or Industrial zoned business operator and
  - (d) a Professional Services business operator ( e.g. and without limitation: lawyers, accountants, real estate, medical).
- 14.1.4 A majority of Full Members.
- 14.1.5 No more than one non-voting member appointed pursuant to Rule 14.4.

14.2 Each member of the Executive Committee shall, subject to these Rules, hold office until the conclusion of the Annual General Meeting following the date of the member's election, but is eligible for re-election.

14.3 In the event of a casual vacancy occurring in the membership of the Executive Committee, the Executive Committee may appoint a Full Member of the Association to fill the vacancy. Any member so appointed shall hold office, subject to these Rules, until the conclusion of the next Annual General Meeting following the date of the appointment.

14.4 Subject to Rule 14.1, if the number of elected Members is less than 15, then the Executive Committee may from time to time appoint any person who it considers appropriate, including the Local Board Representative, or persons who are not Members, to be a voting or non-voting member of the Executive Committee.

14.5 The Executive Committee may at any time remove, or change the voting status of, any member of the Executive Committee appointed under Rule 14.4.

## **15 ELECTION OF MEMBERS TO EXECUTIVE COMMITTEE**

15.1 Nominations of candidates for election of Members on to the Executive Committee:

- 15.1.1 Shall be made in writing, signed by two Members of the Association and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination);

- 15.1.2 The written consent of the candidate must certify that they are not disqualified under section 47(3) of the Act from being elected or appointed as an officer of the Association
- 15.1.3 Shall be delivered to the Secretary of the Association not less than two (2) working days before the date fixed for the holding of the Annual General Meeting at which the election is to take place.
- 15.2 If insufficient nominations are received to fill all vacancies, the candidates nominated shall be deemed to be elected and further nominations shall be received at the Annual General Meeting.
- 15.3 If insufficient further nominations are received, any vacant positions remaining shall be deemed to be casual vacancies.
- 15.4 If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated shall be deemed to be elected.
- 15.5 If the number of nominations received exceeds the number of vacancies to be filled, a poll shall be held.
- 15.6 Any such poll shall be conducted after the Annual General Meeting in such usual and proper manner as the Executive Committee may direct.
- 15.7 In the event of an equality of votes between two or more candidates an additional exhaustive poll will be held to determine the person elected.

## **16 CHAIRPERSON AND SECRETARY**

- 16.1 The Chairperson or Co-Chairs, shall be elected to that position by members of the Executive Committee at the first meeting following the Annual General Meeting. In the absence of that Chairperson, members present shall be entitled to elect a Chairperson for that meeting.
- 16.2 The Executive Committee may choose to elect a Deputy Chairperson.
- 16.3 The Secretary shall be appointed to that position by the Executive Committee. The role of the Secretary shall include acting as the Contact Officer for the Association. The Secretary's name must be provided to the Registrar of Incorporated Societies, along with their contact details, including a physical address or an electronic address and a telephone number. Any change in the Secretary or the Secretary's contact details shall be advised to the Registrar of Incorporated Societies within 20 working days of that change occurring.
- 16.4 It is the duty of the Secretary to keep minutes of:
  - 16.4.1 All elections of Officers;

- 16.4.2 The names of Officers present at each Executive Committee meeting and General Meeting; and
- 16.4.3 All proceedings at Executive Committee meetings and General Meetings.

16.5 Minutes of proceedings at a meeting shall be signed by the Chairperson of the meeting or by the Chairperson of the next succeeding meeting which is held in person

16.6 The Local Board Representative is entitled to attend meetings of the Executive Committee as a non-voting member, and he or she may not:

- 16.6.1 Be the Chairperson or the Secretary; or
- 16.6.2 Vote on the election of the Chairperson or Secretary.

## **17 TREASURER**

17.1 The Treasurer shall be appointed to that position by the Executive Committee at the first meeting following the Annual General Meeting and will Chair the Finance Committee

17.2 It is the duty of the Treasurer of the Association to ensure that:

- 17.2.1 All money due to the Association is collected and received and all payments authorised by the Association are made; and
- 17.2.2 Correct books and accounts are kept showing the financial affairs of the Association including full details of all receipts and expenditure connected with the activities of the Association.

17.3 If the Local Board Representative is a member of the Executive Committee, he or she may not:

- 17.3.1 Be the Treasurer; or
- 17.3.2 Vote on the election of the Treasurer.

17.4 Despite Rule 17.1 in the event that no member of the Executive Committee is qualified and wishes to act as Treasurer, the Executive Committee may engage a professionally qualified person (not necessarily a member of the Association) to act as Treasurer of the Association.

## **18 AUDITOR**

18.1 A qualified Auditor shall be appointed by the Association on an annual basis to carry out the functions set out in this Rule.

18.2 No person who is an Officer, Associate Member or Member of the Association or any other personnel, may be appointed as Auditor. Furthermore, no person who trades from within the BID Programme boundary may be appointed as Auditor.

18.3 The remuneration of the Auditor shall be fixed by the Association.

18.4 If any casual vacancy occurs in the office of any Auditor appointed by the Association, the Executive Committee shall appoint an Auditor to carry on the duties of the Auditor until the next Annual General Meeting.

18.5 Every Auditor shall be supplied with a copy of the accounts and statements. It shall be the Auditor's duty to thoroughly examine the accounts and statements, all minutes and such other information as is requested.

18.6 The Auditor shall be provided with a list of all books kept by the Association and shall at all reasonable times have access to the books and documents of the Association. The Auditor may, in investigating such accounts, question the Officers of the Association. The Officers of the Association shall at all reasonable times render all assistance to the Auditor.

18.7 The Auditor shall provide the Members with a report regarding the accounts and statements. In that report, the Auditor shall state whether, in his or her opinion, the accounts and statements are full and fair accounts and statements containing the particulars required by the Rules, and whether the accounts and statements have been properly drawn up so as to exhibit a true and correct view of the Association's affairs. The report shall be read together with the report of the Executive Committee at the Annual General Meeting. The report shall be forwarded to the Council.

18.8 The appointed Auditor of the Association must;

- 18.8.1 Be a current Chartered Accountant and member of Chartered Accountants Australia and New Zealand (CAANZ) or a similar representative body;
- 18.8.2 Have a current Certificate of Public Practice issued by CAANZ; and,
- 18.8.3 Conduct the audit in terms of the guidelines of CAANZ.

18.9 The type and extent of the audit performed, whether a review audit or a full audit (as defined by CAANZ) or any other type of audit, must be compliant with the BID Programme audit requirements.

## **19 CASUAL VACANCIES**

19.1 For the purposes of these Rules, a casual vacancy in the office of a member of the Executive Committee occurs immediately if the member:

- 19.1.1 Dies;

- 19.1.2 Ceases to be a Member of the Association;
- 19.1.3 Is declared bankrupt;
- 19.1.4 Resigns office by notice in writing given to the Secretary;
- 19.1.5 Is removed from office under Rule 20;
- 19.1.6 Becomes disqualified from being a member of the Executive Committee under section 47(3) of the Act;
- 19.1.7 Becomes of unsound mind or becomes a person who is liable be dealt with in any way under the law relating to mental health;
- 19.1.8 Fails to attend three meetings in succession without apologies being tendered and accepted by resolution of the Executive Committee, or without having been granted leave of absence by resolution of the Executive Committee; or
- 19.1.9 Commits a crime punishable by imprisonment.

## **20 REMOVAL OF EXECUTIVE COMMITTEE MEMBER**

- 20.1 The Association in a General Meeting may, by resolution, remove any member of the Executive Committee from office before the expiration of the member's term of office.
- 20.2 Where a member of the Executive Committee to whom a proposed resolution referred to in Rule 20.1 relates:
  - 20.2.1 Makes representations in writing (not exceeding a reasonable length) to the Secretary or Chairperson; and
  - 20.2.2 Requests that the representations be notified to the Members of the Association;

then the Secretary or Chairperson may send a copy of the representations to each Member of the Association. If they are not so sent, the Member is entitled to require that the representations be read out at the meeting at which the resolution is considered.

## **21 MEETINGS OF EXECUTIVE COMMITTEE AND QUORUM**

- 21.1 The Executive Committee shall endeavour to meet monthly but in all events shall meet not less than six (6) times in each period of twelve months, based on the preceding twelve months from the date of the meeting, and at such time and place as shall be decided by the Executive Committee.

21.2 Additional meetings of the Executive Committee may be convened by agreement of a quorum of the Executive Committee.

21.3 Meetings may be held at the date and time appointed for the meeting, by way of a quorum of members of the Executive Committee;

21.3.1 meeting in person at the appointed place (physical meeting); or,

21.3.2 meeting by utilising technology, audio, or audio visual communication (electronic means) enabling all those participating in the meeting to be able to simultaneously communicate with each other throughout the meeting (electronic meeting); or,

21.3.3 Meeting using a combination of the methods above (hybrid meeting).

21.4 Oral or written notice (including by way of electronic mail) of a meeting of the Executive Committee shall be given by the Secretary to each member of the Executive Committee at least 48 hours (or such other period as may be unanimously agreed upon by the members of the Executive Committee) before the time appointed for the holding of the meeting.

21.5 Any five Full Members of the Executive Committee constitute a quorum for the transaction of the business of a meeting of the Executive Committee. For the avoidance of doubt, those attending by electronic means are present at the meeting and are to be counted in the quorum.

21.6 No business shall be transacted by the Executive Committee unless a quorum is present within half an hour of the time appointed for the meeting. If a quorum is not present, the meeting stands adjourned to the same place (physical and hybrid meetings), the same method (electronic meetings), and at the same hour of the same day in the following week.

21.7 If, at the adjourned meeting, a quorum is not present within half an hour of the time appointed for the meeting, the meeting shall be dissolved.

21.8 At a meeting of the Executive Committee:

21.8.1 The Chairperson or, in the Chairperson's absence, any member of the Executive Committee nominated to stand in his/her place shall preside; and

21.8.2 The Chairperson and/or such other person shall have an ordinary but not a casting vote.

21.8.3 A member of the Executive Committee unable to attend a meeting in person may attend by way of electronic means.

21.9 The Executive Committee must engage in at least one meeting per year with the Local Board. This meeting should occur between the completion of the Annual General Meeting and 10 March. These meetings with the Local Board should,

without limitation, focus on governance, accountability and opportunities relating to the BID Programme and surrounding business community.

## **22 DELEGATION BY EXECUTIVE COMMITTEE TO SUBCOMMITTEE**

- 22.1 The Executive Committee may delegate to one or more subcommittees (consisting of such Member or Members of the Association, or such other persons, as the Executive Committee thinks fit) the exercise of such of the functions of the Executive Committee as the Executive Committee may decide.
- 22.2 A function which has been delegated to a subcommittee under this Rule may be exercised by that subcommittee in accordance with the terms of the delegation, while the delegation remains unrevoked.
- 22.3 Notwithstanding any delegation under this Rule, the Executive Committee may continue to exercise any function delegated.
- 22.4 Any act or thing done or suffered by a subcommittee acting in the exercise of a delegation under this Rule has the same force and effect as it would have if it had been done or suffered by the Executive Committee.
- 22.5 The Executive Committee may, by instrument in writing, revoke wholly or in part any delegation made to a subcommittee pursuant to this Rule.
- 22.6 A subcommittee may meet and adjourn as it thinks proper.

## **23 VOTING AND DECISIONS OF EXECUTIVE COMMITTEE AND SUB-COMMITTEES**

- 23.1 The voting rights of members of the Executive Committee shall be as follows:
  - 23.1.1 Each voting member or the Executive Committee shall be entitled to one vote.;
  - 23.1.2 Matters arising at a meeting of the Executive Committee or of any subcommittee appointed by the Executive Committee shall be determined by a majority of the votes of members of that committee present at the meeting, entitled to vote and voting on the matter.
- 23.2 Subject to Rule 21.6, the Executive Committee may act notwithstanding any vacancy on the Executive Committee.
- 23.3 Any act or thing done or suffered, or purporting to have been done or suffered, by the Executive Committee or by a subcommittee appointed by the Executive Committee is valid and effectual notwithstanding any defect that may afterwards be discovered in the appointment or qualification of any member of that committee.

23.4 A resolution in writing signed by all members of the Executive Committee entitled to vote, will be as valid as if it had been passed at a meeting of the Executive Committee duly convened.

## **24 ANNUAL AND SPECIAL GENERAL MEETINGS**

24.1 The Association shall, at least once in each calendar year, and within the period of four months after the expiration of each financial year of the Association and no later than 15 months after the previous Annual General Meeting, convene an Annual General Meeting of its Members and in addition to such meetings, other meetings of the Association's Members, referred to as Special General Meetings, may be held from time to time.

24.2 General Meetings shall be held at the date and time appointed for the meeting, by way of a quorum of Members;

24.2.1 meeting in person at the appointed place (physical meetings); or,

24.2.2 meeting by utilising technology, audio, or audio visual communication (electronic means) enabling all those participating in the meeting to be able to simultaneously communicate with each other throughout the meeting (electronic meeting); or,

24.2.3 meeting using a combination of the methods above (hybrid meetings).

## **25 ANNUAL GENERAL MEETING - CALLING AND BUSINESS**

25.1 The Annual General Meeting of the Association shall, subject to the Act and to Rule 24, be convened on such date and at such place (physical and hybrid meetings) and time as the Executive Committee thinks fit.

25.2 In addition to any other business which may be transacted at an Annual General Meeting, the business of an Annual General Meeting shall be:

25.2.1 To confirm the Minutes of the last preceding Annual General Meeting and of any Special General Meeting held since that meeting;

25.2.2 To receive from the Executive Committee, reports on the activities of the Association during the preceding financial year;

25.2.3 To approve the Annual Financial Statements;

25.2.4 To approve the proposed budget for the following financial year, provided that any change by more than 10% or \$10,000 (whichever is greater) over the previous year's budget amount may only be made by Special Resolution;

- 25.2.5 To approve the annual accountability reporting as required and set out in the BID Policy
- 25.2.6 To elect members of the Executive Committee; and
- 25.2.7 To appoint an Auditor.
- 25.2.8 To give notice of any record made in the Association's Interest Register since the last preceding Annual General Meeting.

25.3 For the purposes of the Act, the Association's financial year shall end on 30th June.

25.4 An Annual General Meeting shall be specified as such in the notice convening it.

## **26 SPECIAL GENERAL MEETINGS**

- 26.1 The Executive Committee may, whenever it thinks fit, convene a Special General Meeting of the Association.
- 26.2 The Executive Committee shall, on the requisition in writing of not less than ten (10) per cent of the total number of Members, convene a Special General Meeting of the Association.
- 26.3 A requisition of Members for a Special General Meeting:
  - 26.3.1 Shall state the purpose or purposes of the meeting;
  - 26.3.2 Shall be signed by the Members making the requisition;
  - 26.3.3 Shall be lodged with the Secretary; and
  - 26.3.4 May consist of several documents in a similar form, each signed by one or more of the Members making the requisition.
- 26.4 If the Executive Committee fails to convene a Special General Meeting to be held within two months after the date on which a requisition of Members for the meeting is lodged with the Secretary, any one or more of the Members who made the requisition may convene a Special General Meeting to be held not later than three months after that date.
- 26.5 A Special General Meeting convened by a Member or Members as referred to in Rule 26.2 shall be deemed to have been convened by the Executive Committee. Any Member who incurs expense as a result of the Special General Meeting is entitled to be reimbursed by the Association for any reasonable expenses directly associated with the hiring of the venue so incurred.
- 26.6 The business to be conducted at a Special General Meeting shall be the only business for which the Special General Meeting in question was convened,

provided that it is business which can properly be dealt with by Members in a General Meeting.

## **27 NOTICE**

- 27.1 Except where the nature of the business proposed to be dealt with at a General Meeting requires a Special Resolution of the Association, the Secretary shall, at least fourteen (14) calendar days before the date fixed for the holding of the General Meeting, cause to be sent by prepaid post or electronic means to each Member at the Member's address appearing in the register of Members, a notice specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- 27.2 Where the nature of the business proposed to be dealt with at a General Meeting requires a Special Resolution of the Association, the Secretary shall, at least twenty-one (21) calendar days before the date fixed for the holding of the General Meeting, cause notice to be sent to each Member of the Association provided in Rule 27.1 specifying, in addition to the matters required under Rule 27.1, the intention to pass such a resolution as a Special Resolution.
- 27.3 No business other than that specified in the notice convening a General Meeting shall be transacted at a meeting except, in the case of an Annual General Meeting present business which may be transacted pursuant to Rule 25.
- 27.4 A Member desiring to bring any business before a General Meeting may give notice in writing of that business to the Secretary who shall include that business in the next notice calling a General Meeting given after receipt of the notice from the Member.
- 27.5 In any case where a proposed Special Resolution is to approve a budget for the following financial year which is an increase of more than 10% or \$10,000 (whichever is greater) over the current year's budget, then the notice referred to in Rule 27.2 shall be provided to each Member in such a way as to draw particular attention to it and to clearly distinguish it from any other notice being given at the same time. As a minimum this shall involve the notice being given in a separate document which does not contain any communication about any other matter and which is headed: "**IMPORTANT NOTICE TO MEMBERS: NOTICE OF INTENDED SPECIAL RESOLUTION TO INCREASE BUDGET BY MORE THAN 10% OR \$10,000**"

## **28 PROCEDURE**

- 28.1 No item of business shall be transacted at a General Meeting unless a quorum of Members entitled under these Rules to vote is present. For the avoidance of doubt, those attending by electronic means are present at the meeting and are to be counted in the quorum.

- 28.2 Six (6) Full Members in attendance constitute a quorum for the transaction of the ordinary business of a General Meeting.
- 28.3 If, within half an hour after the appointed time for the commencement of a General Meeting, the required quorum is not present, then the meeting shall stand adjourned to the same day in the following week at the time and (unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to Members before the day to which the meeting is adjourned) at the same place (physical and hybrid meetings), and the same method (electronic meetings).
- 28.4 If, at the adjourned meeting, the required quorum is not present within half an hour after the time appointed for the commencement of the meeting, the Members present shall constitute a quorum.

## **29 PRESIDING MEMBER**

- 29.1 The Chairperson shall preside at each General Meeting of the Association.
- 29.2 If the Chairperson is absent from a General Meeting or unable or unwilling to act, the Executive Committee shall elect one of their number to preside as Chairperson at the meeting.

## **30 ADJOURNMENT**

- 30.1 The Chairperson of a General Meeting at which a quorum is present may, with the consent of the majority of Members present at the meeting, adjourn the meeting from time to time and place to place. No business shall be transacted at an adjourned meeting other than business left unfinished at the meeting at which the adjournment took place.
- 30.2 Where a General Meeting is adjourned for fourteen (14) days or more, the Secretary shall give written or oral notice of the adjourned meeting to each Member of the Association. The notice shall state the place (physical and hybrid meetings), method (electronic meetings), date and time of the meeting and the nature of the business to be transacted at the meeting.
- 30.3 Except as provided in Rules 30.1 and 30.2, notice of an adjournment of a General Meeting or of the business to be transacted at an adjourned meeting is not required to be given.

## **31 MAKING OF DECISIONS**

- 31.1 Subject to Rule 31.2, a resolution arising at a General Meeting of the Association shall be determined by a majority of votes of Members present at the General

Meeting entitled to vote and voting on the resolution. Voting shall be in one of the following methods, as determined by the Chairperson;

- 31.1.1 on a show of hands;
- 31.1.2 by voice; or,
- 31.1.3 by any electronic means permitted by the Executive Committee.

31.2 Matters arising at any General Meeting that will alter, rescind, add to or replace Rule 9.1 or Rule 9.2 in this Constitution or will change the BID Targeted Rate being based upon a flat rate of \$500 plus GST per commercially rated property within the BID Targeted Rate Area, shall be determined by resolution passed by a number of Full Member votes (Associate Members excluded) that exceeds 50% of the total number of Full Members eligible to cast a vote on the matter, whether or not present at the General Meeting, it being acknowledged that the number of Members required to vote to pass such a resolution exceeds a quorum as described in Rule 28.2 for a General Meeting.

31.3 Unless a poll is demanded before, or on the declaration of a vote, then a declaration by the Chairperson (for example, that a resolution has been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect has been entered in the Minute Book of the Association) shall constitute evidence of the outcome of the resolution without proof of the number or proportion of votes recorded in favour of or against that resolution.

31.4 At a General Meeting of the Association, a poll may be demanded by the Chairperson or by not less than ten Full Members in attendance or by proxy at the meeting.

31.5 Where a poll is demanded at a General Meeting, the poll shall be taken:

- 31.5.1 Immediately, in the case of a poll which relates to the election of the Chairperson of the meeting or to the question of adjournment; or
- 31.5.2 In any other case, in such manner and at such time before the closing of the meeting as the Chairperson directs. Resolution of the poll on the matter shall be deemed to be the resolution of the meeting on that matter.

31.6 A resolution in writing signed by not less than 75% of the Members that would be entitled to vote on that resolution at a General Meeting is as valid as if it had been passed at a General Meeting.

31.7 A written resolution in accordance with Rule 31.6 may consist of several documents (including emails or similar means of communication) each signed or assented to by one or more Members, including by electronic means permitted by the Executive Committee.

31.8 A copy of any written resolution passed in accordance with Rule 31.6 is to be entered into the Minute Book of the Association and also sent to those Members who did not sign the resolution within 5 working days of it being passed.

## **32 SPECIAL RESOLUTION**

32.1 A resolution of the Association is a Special Resolution if:

- 32.1.1 It is passed by a majority of the votes of those Full Members present at the meeting (including by proxy), entitled to vote and voting on the resolution; and
- 32.1.2 The resolution is passed at a General Meeting; and
- 32.1.3 Not less than twenty-one (21) days' written notice of the meeting has been given to Members specifying the intention to propose the resolution as a Special Resolution.

## **33 VOTING AT GENERAL MEETINGS INCLUDING AGM**

- 33.1 For any question arising at a General Meeting of the Association, a Member has one vote only.
- 33.2 All votes shall be given by persons in attendance or by proxy vote in accordance with Rule 5.8.
- 33.3 Notwithstanding any other Rule in this Constitution where a vote that relates to the BID Programme, BID Programme Funding, BID Targeted Rate or BID Targeted Rating Area has been approved by a General Meeting and is to progress to a ballot required by Council, affected via Election Services Limited, or other independent party engaged for this purpose, proxy votes will not be permitted.
- 33.4 In the case of an equality of votes on a question at a General Meeting, the Chairperson of the meeting is entitled to exercise a second or casting vote, but only to defeat the question and preserve the status quo.

## **34 INSURANCE**

- 34.1 The Association shall effect and maintain full and proper insurance on all of its assets.
- 34.2 The Association shall effect and maintain full and proper insurance including public liability insurance.
- 34.3 In addition to the insurance required under Rules 34.1 and 34.2, the Association may effect and maintain other insurance, excluding insurance for Members' personal or business purposes or to cover their own negligence or dishonesty.

## **35 FUND - MANAGEMENT**

35.1 Subject to any resolution passed by the Association in General Meeting, the funds of the Association shall be used to pursue the objects of the Association in such manner as the Executive Committee determines.

35.2 All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments shall be signed by any two members of the Executive Committee or employees of the Association, being Members or employees authorised to do so by the Executive Committee.

35.3 All funds received by the Association remain the property of the Association; unless the Association is subject to dissolution, see Rule 40. The property of the Association is irrevocably dedicated to objectives stated in these Rules. No part of the net income or assets of the Association shall ever inure to the benefit of any director, Officer or Member of the Association or to the benefit of any private persons.

35.4 The funds and property of the Association shall be controlled, invested and disposed of by the Executive Committee, subject to these Rules and devoted solely to the promotion of the purposes of the Association.

35.5 The Executive committee shall maintain bank accounts in the name of the Association. All money received on account of the Association shall be banked within 5 days of receipt.

35.6 All accounts paid or for payment shall be submitted to the Executive Committee or the Finance Committee respectively for approval of payment.

35.7 The Executive Committee must ensure that there are kept at all times accounting records that correctly record the transactions of the Association and allow the Association to produce financial statements that comply with the requirements of the Act and enable the financial statements to be readily and properly audited.

35.8 The Executive Committee must establish and maintain a satisfactory system of control of the Association's accounting records. The accounting records must be kept in written form or in a form or manner that is easily accessible and convertible into written form. The accounting records must be kept for the current accounting period and for the last 7 accounting periods of the Association.

## **36 ALTERATION OF OBJECTS AND RULES**

36.1 Subject to the provisions of the Act, Rule 36.2 and the statement of objects , these Rules may be altered, rescinded or added to only by a Special Resolution of the Association provided that no addition to or alteration or rescission of the Rules shall be made to the Objects clause, Member Dealings With And Interests In The Association clause or Winding-up clause without insuring compliance with the Act .

The provisions and effect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document.

- 36.2 None of the Rules of the Association affecting the BID Programme, three-year BID Targeted Rate Grant Agreement, or the BID Targeted Rate Grant shall be altered in any way without the prior written approval of the Council.
- 36.3 If there is a conflict between the BID Programme or BID Policy or any other BID Programme requirements and these Rules, including any future additions or amendments to the Rules, then the BID Programme and BID Policy requirements will prevail. Additionally, if there is a conflict between the Act and the Rules, including any future additions or amendments to the Rules, then the Act will always prevail.

### **37 COMMON SEAL**

- 37.1 No instrument shall be executed except by the written authority of the Executive Committee.
- 37.2 Any instrument authorised for execution may be signed on behalf of the organisation by one or more members of the Executive Committee or another person acting under the authority of the Executive Committee.
- 37.3 Unless no longer required under statute, the Executive Committee shall ensure that the Association has a common seal, which shall be kept in the custody of the Secretary. The common seal shall not be affixed to any instrument except by the authority of the Executive Committee. The affixing of the common seal shall be attested by the signatures of two members of the Executive Committee and such fixing shall be recorded in the Association's records.

### **38 CUSTODY OF BOOKS, ETC.**

- 38.1 Except as otherwise provided by these Rules, the Secretary shall keep in his or her custody or under his or her control all records, books and other documents relating to the Association. Backups must be kept of computer files at least quarterly and at different premises or online.

### **39 SERVICE OF NOTICES**

- 39.1 For the purposes of these Rules, a notice may be served by or on behalf of the Association upon any Member either personally or by sending it by post, by electronic mail or by facsimile transmission to the Member at the Member's address shown in the register of Members
- 39.2 Any notice is deemed to be received:

- 39.2.1 If personally delivered, when delivered;
- 39.2.2 If posted, five days after posting;
- 39.2.3 If sent by facsimile, at the time of transmission specified in a transmission report by the machine from which the facsimile was sent which indicates the facsimile was sent in its entirety to the facsimile number of the recipient; or
- 39.2.4 If emailed, upon the date of emailing provided that the sender does not receive a delivery failure notification.

## **40 WINDING UP**

- 40.1 Should the dissolution of the Association be deemed necessary, then two meetings must be held in accordance with the Act. The first meeting shall be called to pass a resolution to wind up the Association and must be carried by a majority of valid votes. The second meeting must be called (not earlier than thirty (30) days after the first meeting) to confirm the resolution to be passed.
- 40.2 If, upon the winding up or dissolution of the Association, there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid or distributed among the Members of the Association. Such remaining property shall be given or transferred to some other charitable organisation or approved non-profit body within New Zealand having objects similar to the objectives of the Association. In the event of the Executive Committee being unable to decide upon the distribution of assets, the remaining assets are to be distributed as a Judge of the High Court of New Zealand directs.

## APPENDIX 1 DISPUTE RESOLUTION

### Meanings of dispute and complaint

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

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

1. 2 or more **Members**
2. 1 or more **Members** and the **Association**
3. 1 or more **Members** and 1 or more **Officers**
4. 2 or more **Officers**
5. 1 or more **Officers** and the **Association**
6. 1 or more **Members** or **Officers** and the **Association**.

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

1. a **Member** or an **Officer** has engaged in misconduct
2. a **Member** or an **Officer** has breached, or is likely to breach, a duty under the **Association's Constitution** or bylaws or the **Act**
3. the **Association** has breached, or is likely to breach, a duty under the **Association's Constitution** or bylaws or the **Act**
4. a **Member's** rights or interests as a **Member** have been damaged or **Member's** rights or interests generally have been damaged.

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

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

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

1. states that the **Association** is starting a procedure for resolving a dispute in accordance with the Association's **Constitution**; and
2. sets out the allegation to which the dispute relates.

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

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

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

The complainant raising a dispute, and the **Committee** (or a complaints subcommittee), must consider and discuss whether a dispute may best be resolved through informal discussions, mediation, arbitration, or a tikanga-based practice. Where mediation or arbitration is agreed on, the parties will sign a suitable mediation or arbitration agreement, (including making provision for allocation of the costs associated with the decision making process).

Person who makes complaint has right to be heard

1. A **Member** or an **Officer** who makes a complaint has a right to be heard before the complaint is resolved or any outcome is determined.
2. If the **Association** makes a complaint—
  1. the **Association** has a right to be heard before the complaint is resolved or any outcome is determined; and
  2. an **Officer** may exercise that right on behalf of the **Association**.
3. Without limiting the manner in which the **Member**, **Officer**, or **Association** may be given the right to be heard, they must be taken to have been given the right if—
  1. they have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
  2. an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
  3. an oral hearing (if any) is held before the decision maker; and
  4. the **Member's**, **Officer's**, or **Association's** written or verbal statement or submissions (if any) are considered by the decision maker.

Person who is subject of complaint has right to be heard

1. This clause applies if a complaint involves an allegation that a **Member**, an **Officer**, or the **Association** (the 'respondent')—
  1. has engaged in misconduct; or
  2. has breached, or is likely to breach, a duty under the **Association's Constitution** or bylaws or this Act; or
  3. has damaged the rights or interests of a **Member** or the rights or interests of **Members** generally.
2. The respondent has a right to be heard before the complaint is resolved or any outcome is determined.
3. If the respondent is the **Association**, an **Officer** may exercise the right on behalf of the **Association**.
4. Without limiting the manner in which a respondent may be given a right to be heard, a respondent must be taken to have been given the right if—
  1. 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
  2. the respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
  3. an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
  4. an oral hearing (if any) is held before the decision maker; and
  5. the respondent's written statement or submissions (if any) are considered by the decision maker.

Investigating and determining dispute

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

3. The Association must endeavour to initiate Investigation of a complaint within 10 working days of receiving written notice of the complaint.

Association may decide not to proceed further with complaint

Despite the 'Investigating and determining dispute' rule above, the **Association** may decide not to proceed further with a complaint if—

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

Association may refer complaint

1. The **Association** may refer a complaint to—
  1. a subcommittee (of not less than 3 impartial Officers) or an external person to investigate and report; or
  2. a subcommittee (of not less than 3 impartial Officers), an arbitral tribunal, or an external person to investigate and make a decision.
2. The **Association** may, with the consent of all parties to a complaint, refer the complaint to any type of consensual dispute resolution (for example, mediation, facilitation, or a tikanga-based practice).

Decision makers

A person may not act as a decision maker in relation to a complaint if 2 or more members of the **Committee** (or a complaints subcommittee) consider that there are reasonable grounds to believe that the person may not be—

1. impartial; or
2. able to consider the matter without a predetermined view.

#### Decision maker to determine costs

Unless the parties have agreed otherwise in writing, the decision maker may also make a decision on the allocation of costs for resolving the dispute, including one party's contribution to the other party's costs, if considered appropriate by the decision maker. The parties will abide by the decision maker's decision.