



KENSINGTON PARK

RESIDENTS' ASSOCIATION

**CONSTITUTION**

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## **INTRODUCTION**

### **1. Name and Registered Office**

- 1.1 **Name:** The name of the Association is "Kensington Park Residents' Association Incorporated".
- 1.2 **Registered office:** The registered office of the Association is at 13 Parkside Drive, Kensington Park, Orewa, 0931, New Zealand or such other place as the Committee decides from time to time.
- 1.3 **Contact persons:** The Chairperson and the Manager shall be deemed to be the contact persons of the Association for the purposes of section 113 of the Act. The details of each contact person, including their name, address and contact information, shall be lodged with the Registrar and updated as necessary and immediately upon appointment, retirement or replacement of any person in their role.

### **2. Definitions and Interpretation**

- 2.1 **Definitions:** In this document, unless the context otherwise requires:
  - 2.1.1 **Act** means the Incorporated Societies Act 2022.
  - 2.1.2 **Annual General Meeting** means an annual general meeting of the Association, convened and conducted in accordance with this Constitution.
  - 2.1.3 **Association** means the Kensington Park Residents' Association Incorporated, an incorporated society registered under the Act.
  - 2.1.4 **Authority** means any local body government or other authority having jurisdiction or authority over or in respect of any part of Kensington Park or its use.
  - 2.1.5 **Body Corporate** means any body corporate resulting from the subdivision of any part of the Land under the Unit Titles Act 2010.
  - 2.1.6 **Bylaws** means bylaws made by the Association from time to time under rule 4.1.
  - 2.1.7 **Capital Improvements** means expenditure in respect of the Common Facilities relating to;
    - 2.1.7.1 new capital additions; or
    - 2.1.7.2 structural repairs, replacements, substantial renewal; or
    - 2.1.7.3 periodic maintenance where the frequency of expenditure is not less than 12 months.
  - 2.1.8 **Committee** means the committee of the Association established in accordance with this Constitution in order to manage the affairs of the Association.
  - 2.1.9 **Commercial Member** means a Member whose Property is designated to be used for commercial purposes at Kensington Park by an instrument on the Owner's Title or is reasonably determined by the Association to be, or as being, used primarily for commercial purposes at Kensington Park.
  - 2.1.10 **Common Facilities** means all land, natural features, buildings, structures, plant, equipment, facilities, services and other amenities associated with Kensington Park owned (whether directly or indirectly), leased, licensed, maintained or otherwise held, levied or operated in whole or in part by the Association from time to time including those facilities from time to time transferred to the Association by the Developer, by any other company which is directly or indirectly controlled by the Developer, or by any company of which the Developer is a subsidiary (whether directly or indirectly), including:
    - 2.1.10.1 any walkways through Kensington Park (whether public or private);

- 2.1.10.2 the landscaping of the Land, the road verges and entranceways and those areas in Kensington Park which are planted out or covered in trees, shrubs or natural ground cover material;
- 2.1.10.3 the fencing, retaining walls, gates, screening walls, seating, signs, stairs, exterior lighting fixtures, and similar external hard landscape items;
- 2.1.10.4 the playgrounds, swimming pools, fields, parks, associated equipment and any other facilities (including land and buildings);
- 2.1.10.5 the water, energy and telecommunications reticulation systems and their associated pipelines, transformers, switches, lines, cables, ducting, pumps, wells, tanks and related equipment, not otherwise the responsibility of the local authority or a third party utility supplier, from the points of entry of supply to the Land or the points of demarcation with any third party supplier, to the point of entry into a Property;
- 2.1.10.6 the signage and directory boards at the main entrance ways to Kensington Park;
- 2.1.10.7 such other facilities serving Kensington Park which, by the passing of a Special Resolution, the Members resolve should be under the control and direction of the Association.
- 2.1.11 **Constitution** means the rules and constitution of the Association and any amendments, regulations or bylaws in effect pursuant to this Constitution.
- 2.1.12 **Design Controls** means the design controls, procedures and guidelines that form part of the Bylaws.
- 2.1.13 **Design Review Board** means the board from time to time appointed under rule 18.1 to consider design approval applications by Members.
- 2.1.14 **Developer** means Kensington Park Holdings No.1 Limited and its transferees and assigns.
- 2.1.15 **Development Period** means a period which has commenced and which will end twelve (12) months after the development of Kensington Park is complete and the Developer no longer retains any material interest therein as a land developer. For the purposes of this definition, Kensington Park will be deemed complete upon the issue of the last certificate(s) of title for all Properties intended to be constructed by the Developer within Kensington Park.
- 2.1.16 **Encumbrance** means the encumbrance in favour of the Association noted or to be noted against each Owner's Title.
- 2.1.17 **Exemption Notice** means the Securities Act (Kensington Park Properties Limited) Exemption Notice (No 2007/26).
- 2.1.18 **Facility Expenses** means in each Financial Year the total sum of all rates, taxes, payments, costs, liabilities and expenses incurred by the Association, and which have been properly and reasonably assessed and paid (or assessable and payable) or otherwise incurred:
  - 2.1.18.1 in respect of the Common Facilities and the operation of the Association, including the cost of Capital Improvements;
  - 2.1.18.2 in the operation of the Association (including the Management Fees and Management Expenses as defined in the Management Agreement);
  - 2.1.18.3 in the administration and enforcement of a scheme for the provision of services, benefits and facilities to the Properties;
  - 2.1.18.4 and will include (without limitation) the following:
    - 2.1.18.4.1 all rates levied by any Authority which are at any time levied upon the Common Facilities or upon the Association in respect

- of the Association's interest in the Common Facilities or are paid or payable by the Association as a result of the receipt of any money under this Constitution;
- 2.1.18.4.2 all premiums and costs payable by the Association in respect of all policies of insurance effected on the Common Facilities for sums insured up to their full replacement value or, at the option of the Association, to their full value on an indemnity covered basis against loss, damage or destruction by such risks as the Association may deem necessary or desirable, including consequential loss and public risk liability;
- 2.1.18.4.3 the cost of operating, supplying, servicing, maintaining, inspecting, testing and repairing all and services from time to time provided to the Owners, the Properties or generally at Kensington Park, including watering equipment and systems, any water features, communications, equipment and systems (including telephone, cable television and satellite television equipment and systems), fire-fighting and protection equipment and systems, emergency or other alarm services or systems, security and monitoring services and systems; electrical and plumbing services, waste and rubbish compression and disposal systems and the plant and equipment required for any of such or other services and systems;
- 2.1.18.4.4 all charges for lighting, gas and power, and all other forms of energy incurred by the Association in connection with the Common Facilities, and other services or requirements furnished or supplied to the Common Facilities for the general benefit or purposes of the Common Facilities, including maintenance costs of lighting and power systems and equipment;
- 2.1.18.4.5 all sanitation costs in respect of Kensington Park, including the costs of the removal and disposal of all waste and garbage from all properties contained in Kensington Park;
- 2.1.18.4.6 all costs for the provision, at intervals deemed appropriate by the Association, of security services to the Common Facilities or Kensington Park generally;
- 2.1.18.4.7 all costs of repairs, maintenance, renovations and landscaping of the Common Facilities, including Common Facilities that are not owned by the Association but that the Association is obliged or agrees to maintain from time to time;
- 2.1.18.4.8 all costs and expenses (including the costs of obtaining necessary reports) payable, incurred or suffered by the Association in complying with the Association's obligations under the Building Act 2004;
- 2.1.18.4.9 all other items of expense which the Association, acting reasonably, considers necessary to incur for the good management and appearance of the Common Facilities;
- 2.1.18.4.10 all costs of managing, controlling and administering the Common Facilities, including such costs that consist of wages, allowances or other emoluments paid to persons employed by or contracted to the Association;
- 2.1.18.4.11 all wages, allowances and other emoluments and any other payments by way of compensation including redundancy compensation paid or allowed to employees engaged for any of the above purposes together with any taxes and levies on the

same;

- 2.1.18.4.12 allowances or compensation may be paid to Association committee members or those acting on behalf of, where time or personal expense is incurred;
    - 2.1.18.4.13 attendance allowance or compensation may be paid to Association committee members for attendance at Association committee meetings as per a schedule passed at an AGM;
  - 2.1.18.5 but excluding, for the purposes of calculating each member's Proportion:
    - 2.1.18.5.1 any such costs or expenses which are the sole responsibility of any Owner; and
    - 2.1.18.5.2 the costs of any Capital Improvements recovered from Transfer Levies set under rule 16.1, which comprise a sinking fund for such Capital Improvements.
- 2.1.19 **Financial Year** means:
  - 2.1.19.1 the period from the date of incorporation of the Association to the following 31 March; and
  - 2.1.19.2 each 12 month period commencing on 1 April and ending on the following 31 March or such other period selected by the Committee.
- 2.1.20 **GST** means goods and services tax charged under the Goods and Services Tax Act 1985.
- 2.1.21 **Invitee** means any invitee of or any visitor to an Owner or Occupier.
- 2.1.22 **Kensington Park** means the ongoing residential/commercial development by the Developer, comprising a master planned community to be developed and constructed on the Land.
- 2.1.23 **Land** means:
  - 2.1.23.1 the land formerly comprised in Record of Title NA74275 (North Auckland Land Registry);
  - 2.1.23.2 the land formerly comprised in Record Title NA78D/762 (North Auckland Land Registry);
  - 2.1.23.3 such further land which the Developer has incorporated and/or decides will be incorporated within Kensington Park from time to time during the Development Period; and
  - 2.1.23.4 such further land which the Association decides may be purchased from time to time.
- 2.1.24 **Manager** means the person, firm, or company appointed to manage the Association under rule 20. Where no manager has been appointed, any reference to "Manager" in this Constitution will be deemed, where appropriate, a reference to the Committee, subject to rule 19.1.
- 2.1.25 **Management Agreement** means the agreements for the management of Kensington Park.
- 2.1.26 **Member** means a member of the Association.
- 2.1.27 **Member's Proportion** means the proportion of the aggregate of the Occupied Internal Areas of the Properties owned by a Member bears to the total Occupied Internal Areas except where rule 14.4 applies.
- 2.1.28 **Occupied Internal Area** means the internal building area (excluding storage lockers, garaging/carparks and decks) of any home, commercial premises or other development on any Property.

- 2.1.29 **Occupier** means a person occupying any Property under any lease, licence or other occupancy right and will include the Owner and all members of the Owner's family.
- 2.1.30 **officer** has the same meaning set out in the Act.
- 2.1.31 **Owner** means each person registered as a proprietor (whether individually or with others) of a Property.
- 2.1.32 **Owner's Title** means the certificate of title issued for an Owner's Property.
- 2.1.33 **Ponds** means storm water treatment and detention ponds located, or to be located, on the Land.
- 2.1.34 **Postal Vote** means a vote by a Member, eligible to vote, cast in legible writing in relation to a resolution of the Association in a prescribed form and received by the Manager no later than a prescribed time prior to a general meeting, in respect of a motion to be voted on at that general meeting without material amendment (materiality to be determined by the chairperson acting reasonably – see rule 22.4.5) and such postal vote is only permitted if rule 21.5 applies.
- 2.1.35 **Principal Member** means the Developer or any transferee and/or successor whether in whole or in part or parts of Kensington Park, that continues the promotion and carrying out of such development and that the Developer nominates as the Principal Member, and its/their nominated representatives.
- 2.1.36 **Property** means a property in Kensington Park:
- 2.1.36.1 for which a separate title (including a unit title or certificate of title for an estate in fee simple) has issued; and
  - 2.1.36.2 which either:
    - 2.1.36.2.1 is a bare lot available for immediate development as:
      - 2.1.36.2.1.2 a residential property;
      - 2.1.36.2.1.3 a commercial property (including commercial accommodation); or
      - 2.1.36.2.1.4 any other use permitted within Kensington Park;
    - 2.1.36.2.2 including in each case, a lot of which development/construction has started; or
    - 2.1.36.2.3 has been fully developed as:
      - 2.1.36.2.3.2 a residential property;
      - 2.1.36.2.3.3 a commercial property (including commercial accommodation); or
      - 2.1.36.2.3.4 any other use permitted within Kensington Park,
      - 2.1.36.2.3.5 but does not include any lot capable of further subdivision.
- 2.1.37 **Public Reserve** means any public reserve within or adjoining Kensington Park which the Association is required to maintain.
- 2.1.38 **Registrar** means the person holding office from time to time as Registrar of the Incorporated Societies in terms of the Act.

- 2.1.39 **Rental Agency** means such entity(s) as is established or appointed by the Developer to control and administer the letting of the Properties for residential accommodation purposes and if no such entity(s) has been established by the Developer, means the Association or such entity(s) established or appointed by the Association for that purpose.
- 2.1.40 **Residential Member** means a Member whose Property is designated for residential purposes at Kensington Park by an instrument on the Owner's Title or is reasonably determined by the Association to be, or as being, used primarily for residential purposes.
- 2.1.41 **Shared Facility** means any part of any Property that as the result of either:
  - 2.1.41.2 shared ownership; or
  - 2.1.41.3 registration of a legal interest (by way of example only, a right of way), the responsibility for upkeep lies with more than one Member.
- 2.1.42 **Special Resolution** means a resolution of the Association in general meeting passed by a majority of not less than 75% of the Members (which must include the Principal Member, if any) entitled to vote in person, by proxy or postal vote (if permitted under rule 21.5) on the question.
- 2.1.43 **Total Occupied Internal Area** is the sum total of the Occupied Internal Areas of all of the Properties as at a given date.
- 2.1.44 **Transfer Levy** means the levy referred to in rule 16 of this Constitution.
- 2.1.45 **Working Day** means a day of the week other than Saturday, Sunday, and any New Zealand Statutory Holiday.
- 2.2 **Interpretation:** In this Constitution where the context permits:
  - 2.2.1 one gender will include the other gender.
  - 2.2.2 reference to a person will include a company.
  - 2.2.3 reference to a party will include that party's executors administrators successors and assigns.
  - 2.2.4 a reference to a statute includes:
    - 2.2.4.1 all regulations under that statute;
    - 2.2.4.2 all amendments to that statute; and
    - 2.2.4.3 any statute substituting for it which incorporates any of its provisions.
  - 2.2.5 reference to currency will mean New Zealand dollars (NZ\$) exclusive of GST.
  - 2.2.6 GST will be paid by any party in receipt of a taxable supply in addition to any consideration therefore.
  - 2.2.7 the table of contents and headings are for convenience only and will not affect the interpretation of this document.
  - 2.2.8 references to rules are references to the rules in this Constitution.

## **RESIDENTS' ASSOCIATION OBJECTS, DUTIES AND POWERS**

### **3. Objects**

- 3.1 **General objects:** The Developer intends to:
  - 3.1.1 Create a quality development;
  - 3.1.2 Establish the Common Facilities in Kensington Park for the benefit of the Members and Kensington Park generally; and
  - 3.1.3 Transfer ownership of the Common Facilities to the Association for the benefit of the Members in accordance with a deed of transfer to be prepared by the Developer.
- 3.2 **Specific objects:** The Association is formed to play a key role in preserving the financial and lifestyle interests of the Members in maintaining infrastructure and regulating the common access

and other cooperative features of Kensington Park, and to promote the following objects for the benefit of Members:

- 3.2.1 The maintenance, preservation and enhancement of the unique character, size and recreational and administrative capabilities of Kensington Park as a premium lifestyle community;
- 3.2.2 The ownership, leasing or control and continued ownership, leasing and control of the Common Facilities by the Association;
- 3.2.3 To ensure the proper supply, operation, maintenance, repair, renovation and replacement of the Common Facilities;
- 3.2.4 To promulgate and enforce the Bylaws and covenants to establish codes of behaviour applicable to Members and to benefit Members, the Common Facilities and Kensington Park generally;
- 3.2.5 To create, regulate and implement appropriate Design Controls in respect of each Property to ensure a continuity of building style and prevent the use of different and extreme building themes that are not in harmony with each other. This control is intended to emphasise and highlight the quality and value of property in Kensington Park where houses and commercial facilities blend together and flow on from each other;
- 3.2.6 To manage the use of the Common Facilities and develop further Common Facilities;
- 3.2.7 To maintain the Common Facilities and Kensington Park generally as a safe, clean and well-presented environment having regard to the age, appearance and aesthetics of Kensington Park as a whole;
- 3.2.8 The full and proper use of the Common Facilities by Members and, where appropriate, members of the public;
- 3.2.9 To liaise and consult with each Body Corporate within Kensington Park to ensure an integrated management plan for Kensington Park as a whole;
- 3.2.10 To fulfil the meeting and financial reporting requirements of the Securities Act 1978 in relation to a scheme of participatory securities;
- 3.2.11 To engage in any other enterprise or activity which the Association considers to be in the interests of the Members;
- 3.2.12 To preserve the value and integrity of Kensington Park;
- 3.2.13 To assist, and co-operate with, the Developer to procure completion of Kensington Park;
- 3.2.14 To levy Members for the purpose of meeting the objects set out in this rule 3.2; and
- 3.2.15 To do any act or thing incidental or conducive to the attainment of any of the above objects.

3.3 **Excluded objects:** The Association does not have as an object the following:

- 3.3.1 The pecuniary gain of Members, and no Member will be entitled to receive any dividend out of any levy, fee, donation or other income or funds of the Association; or
- 3.3.2 The carrying on of trading activities; or
- 3.3.3 The carrying on of business for profit.

3.4 **Members may contract:** A Member may enter any agreement or understanding with the Association for the supply of any goods or services for such consideration and on such other terms and conditions as would be reasonable if that person were not a Member.

#### 4. Duties of the Association

4.1 **Bylaws:** For the fulfilment of the purposes and objects of the Association, but subject to rule 4.2, the Association will from time to time:

- 4.1.1 Promulgate the Bylaws for the use of the Common Facilities (including any restrictions on use for security, maintenance or other reasons) and Bylaws concerning the behaviour of Owners, Occupiers and Invitees and Bylaws governing the use of Properties;

- 4.1.2 Amend and review the Bylaws as appropriate;
- 4.1.3 Enforce the Bylaws, taking such action in this regard as the Association thinks fit.
- 4.2 **Bylaws:** The current bylaws are those Bylaws attached as Schedule 1 to this Constitution.
- 4.3 **Operate and Manage the Common Facilities:** The Association will own, operate, manage, and where applicable, lease or let out on hire, the Common Facilities and all improvements located on the Common Facilities.
- 4.4 **Repair of Common Facilities:** The Association will ensure the proper use, operation, maintenance, repair, renovation and replacement of the Common Facilities, so as to keep the Common Facilities in good order consistent with standards generally proposed or adopted in superior communal facilities of similar nature, and to prevent them from becoming a danger or nuisance, and undertake such Capital Improvements as are necessary for this purpose. Each Member agrees and allows the Association (and parties engaged by it under rule 4.9) access to the Member's Property for the purposes of this rule 4.4. However, the Association will make good any damage caused by such access within a reasonable time after completion of any work carried out to give effect to this rule 4.4.
- 4.5 **Insurance:** The Association will effect and maintain all insurances as it considers prudent with respect to the Common Facilities, the Association's affairs and members of the Committee, and will meet all costs of such insurance (which will include all valuations and other professional fees required or deemed desirable for the purposes of such insurances and the cost of certificates relating to such insurances).
- 4.6 **Rates and Taxes:** The Association will pay all local and governmental authority rates and other taxes and charges levied on or with respect to the Common Facilities. The Association has all rights granted by law to contest the legality and the amount of those taxes and charges.
- 4.7 **Books of Account:** The Association will keep books and records of the Association's affairs and make those books and records, together with current copies of the Bylaws, available for inspection by Owners on request during normal business hours.
- 4.8 **Body Corporate Secretary:** The Association and/or the Manager may from time to time act as Body Corporate Secretary for all or some of the Bodies Corporate within Kensington Park.
- 4.9 **Service contractors and utility suppliers:** The Association may, from time to time, nominate a service contractor (with respect to management, maintenance, security, landscaping or other such services as the Association considers desirable) or a utility supplier (with respect to the supply of utilities to the Common Facilities) as a service contractor (on an exclusive or non- exclusive basis) to Kensington Park. Any Member wishing to contract for services within Kensington Park will, where a service contractor has been nominated in respect of those services wherever reasonably possible use that nominated service contractor.
- 4.10 **Register of Members:** The Association will maintain a register of Members recording:
  - 4.10.1 The name, address, occupation, contact details (at home and work) of each Member, or if the Member is not a natural person, of a contact person for that Member. No notice of any trust express, implied or constructive will be entered on the register of Members;
  - 4.10.2 The name, address, occupation, contact details (at home and work) of each Occupier, or if the Occupier is not a natural person, of a contact person for that Occupier;
  - 4.10.3 The date on which each Member became a member of the Association;
  - 4.10.4 Where there is more than one Owner of a Property, which of such Owners is entitled to vote in accordance with rule 7.1.4;
  - 4.10.5 The name, contact person and contact details of any mortgagee over a Property.

The Committee will ensure that the register of Members is audited by a full and current member of NZ Institute of Chartered Accountants (NZCIA) or a full and current member of an accounting body affiliated with the International Federation of Accountants (IFAC) after all Properties have been sold by the Developer and thereafter once every two years.
- 4.11 **Public Reserve:** The Association will ensure the proper maintenance of the Public Reserve(s) in

accordance with any agreement entered into between the Association, the Developer and the Auckland Council.

- 4.12 **Transfer of Facilities:** The Association acknowledges that the Developer may, from time to time, transfer land and/or facilities for communal use of the Association, and the Association must accept transfer of such land and/or facilities.
- 4.13 **Pond:** The Association shall maintain, repair and renew the fountains and aeration devices located in the Pond, ensure the proper maintenance of all landscaping improvements and landscaped areas within or adjacent to the Pond and shall within such reasonable time following request by Auckland Council (or its successor) remove the fountains and aeration devices so that Auckland Council (or its successor) may undertake routine maintenance (annual maintenance and de-silting) or as otherwise required for the effective operation of the Pond.
- 4.14 **Incidental Activities:** The Association may carry out any other duty or activity which is necessary or incidental to any other specific duty contained in this Constitution.

## 5. Powers of Association

- 5.1 **Powers of the Association:** Subject to the express terms of this Constitution, and to the Act, the Association will have all the powers as are expressly set out in this Constitution or as are necessary to further the objects and duties set out above.
- 5.2 **Powers vested in Committee:** Without limiting the above, the administration of the Association will be vested in the Association in general meeting, and will be delegated to the Committee. The Committee may exercise all of the powers, authority and discretions of the Association as permitted by this Constitution and do on its behalf all such acts as the Committee deem necessary or expedient. The powers, authority and discretions as exercised by the Committee are subject always to any limits which may, from time to time, be imposed by the Association. The Committee may delegate any of its powers to committees consisting of such member or members of their body as they think fit or to the Manager. Any committee so formed will in the exercise of the powers so delegated conform to directions of the Committee.
- 5.3 **Bank Accounts:** The Association will establish an account or accounts at a bank, and any drawings on such account(s) (including any cheque(s) drawn on such account(s)) will be made by two authorised persons. Authorised signatories may only be added or removed by approval of the Committee.
- 5.4 **Legal Proceedings:** The Association may initiate and pursue legal proceedings for itself or on behalf of any or all of the Members.
- 5.5 **Granting Access:** The Association may, from time to time, grant access to the Common Facilities to any person for the purpose of constructing, erecting, operating or maintaining the Common Facilities.
- 5.6 **Management:** The Association may enter into a management agreement or agreements for such period, at such remuneration and on such terms and conditions as the Association may think fit, for the delegation of its responsibilities to ensure the proper operation, repair, maintenance and replacement of the Common Facilities and to fulfil any other duties of the Association.
- 5.7 **Deeds:** Any contract, if made between private persons, will be entered into by the Association in writing and signed by the chairperson or under the common seal of the Association, in each case in accordance with a resolution of the Committee.
- 5.8 **Other Documents:** All other documents and written announcements, requiring execution on behalf of the Association, must be signed by the chairperson.

## 6. Limitation of Powers

- 6.1 **Limitations:** Notwithstanding any other provision of this Constitution or any other enabling power, except as otherwise authorised by Special Resolution, the Association's powers will be restricted as follows:
  - 6.1.1 The Association may not borrow any money other than short-term borrowing to cover any temporary shortfall in meeting the Association's obligations under this Constitution;

- 6.1.2 The Association will hold the Common Facilities in its own name and will not mortgage, charge, encumber, transfer or otherwise deal with such Common Facilities provided that where the Association is obliged to grant any interest in or right in respect of the Common Facilities by any agreement with the Developer, such interests or rights may be granted by the Committee;
- 6.1.3 The Association will hold all funds with a Bank registered under the Reserve Bank of New Zealand Act 1989, and will not invest those funds other than in term deposits not exceeding 3 years;
- 6.1.4 All Common Facilities designed for recreational purposes will be used only for such purposes.

## **MEMBERSHIP**

### **7. Owner Members**

- 7.1 **Owners to be Members:** Each Owner will be a Member, and only Owners will be Members, and for that purpose.
  - 7.1.1 The Encumbrance and restrictive covenants will be noted against the Owner's Title in favour of the Association, whereby each Owner covenants and consents to become and remain a Member, and to perform the obligations of a Member as set out in this Constitution and otherwise containing terms required by the Association.
  - 7.1.2 Each Member will, prior to settling the sale of a Property, procure the purchaser to enter into, execute and deliver to the Association a deed of covenant in favour of the Association, wherein the purchaser covenants and consents to become (contemporaneously with the transfer of the Property), and remain, a Member, and to observe and perform the obligations of a Member as set out in this Constitution. The deed of covenant or encumbrance will be prepared by the Association's solicitors, and the selling or transferring Member will pay the reasonable legal costs and disbursements of the Association's solicitors.
  - 7.1.3 The rights, privileges and obligations of a Member are not assignable (except by transfer of the Property to which membership is associated).
  - 7.1.4 If there is more than one Owner of a Property, such Owners must collectively constitute one Member and the liability of such Owners, in relation to their membership, will be joint and several.
  - 7.1.5 Membership of the Association cannot be terminated and an Owner cannot resign as a Member.
  - 7.1.6 A member ceases to be a Member immediately on the registration of a transfer of the Owner's Title (after the Association has consented to the transfer in terms of rule 9.2.3) provided that such cessation will not relieve a person of any obligation or liability arising before that person ceased to be an Owner.
  - 7.1.7 Each Member will, immediately before ceasing to be an Owner, provide the Association with the details and documents necessary for maintenance of the register of Members pursuant to rule 4.10 in respect of the new Owner of the Property and, upon entry of the details into the register, the new Owner will become a Member.
- 7.2 **Fee.** The Association will be entitled from time to time to set such reasonable fee in relation to the issue of a membership or transfer of a membership as the Association in its sole discretion determines. If the Association incurs third party costs in relation to the issue, or transfer, of a membership, the applicant or seller will meet those reasonable third party costs.
- 7.3 **Members of Staged Development.** The Members acknowledge that the Kensington Park may be developed in stages, with new Owners becoming Members as additional land is added adjacent to Kensington Park and/or as each stage is completed.
- 7.4 **Companies and trusts.** Where a company, trust or other non-natural person is an Owner, that company, trust or non-natural person must nominate a natural person (being a Committee

Member, officer, trustee or equivalent of that non-natural person) to be the Member for and on behalf of that non-natural person.

- 7.5 **Categories of membership.** The Association may, at any time, specify categories of membership (including between Residential Members and Commercial Members) to recognise any category of usage that may be appropriate.

## 8. Principal Member

- 8.1 **Principal Member.** Until Kensington Park is completed, the Developer will be the Principal Member, regardless of whether the Developer is at any time a Member. The purpose of the Principal Member is to ensure that the Developer can develop Kensington Park as a premium development.
- 8.2 **Limited rights.** The Principal Member will have only the rights and obligations specified in this Constitution, and will have no other rights or obligations as a Member. No reference in this Constitution to a Member will be taken as including a reference to the Principal Member.
- 8.3 **Resignation of Principal Member.** At the end of the Development Period, the Developer will be deemed to have resigned as Principal Member and, thereafter, there will be no Principal Member.

## 9. Obligations of Members

- 9.1 **Compliance with Constitution and Bylaws.** Each Member agrees to promptly and fully comply with the terms of this Constitution, the Bylaws and any covenants given in favour of the Association by such Member (whether by separate deed of covenant or as noted against each Owner's Title). No amendment to this Constitution will be made which results in there being any conflict between the provisions of this Constitution (including any rule or Bylaw) and the provisions of any such covenant.
- 9.2 **Sale of a Property.** Where a Member sells (the "Seller") a Property:
- 9.2.1 The Seller will, notwithstanding any other provision in this Constitution, remain liable for sums owed to the Association by that Seller including unpaid levies (annual, special or otherwise) and the Transfer Levy.
- 9.2.2 Without limitation, the Seller will continue to be liable as a primary and principal debtor for all indebtedness of the purchaser of the Property (the "Purchaser") to the Association until such time as:
- 9.2.2.1 The transfer of the certificate of title for that Property to the Purchaser is registered at the Land Transfer Office; and
- 9.2.2.2 The deed of covenant, specified in rule 7.1.2 is received by the Association; and
- 9.2.2.3 The Seller has complied with its obligations under this rule 9.2.
- 9.2.3 The Seller must obtain the consent of the Association to the transfer of the Seller's property prior to the date of transfer, which the Association will not be obliged to provide unless:
- 9.2.3.1 The Seller has:
- 9.2.3.1.1 paid all sums owed by it to the Association in full (including all levies, and all fees charged or costs incurred under rule 7.2); and
- 9.2.3.1.2 provided the Purchaser's particulars and documentation in accordance with rule 7.1.7.
- 9.2.3.2 the Purchaser has given a written acknowledgement to the Association that it has read and understood this Constitution, all the then current Bylaws and any covenants noted against the Owner's Title.
- 9.2.4 The Seller will not be entitled to any refund of any levies or any other financial contribution paid to the Association.
- 9.3 **Lease of Property:** For the purpose of this rule 9.3, the term "lease" means any change in possession of a Property for consideration including any form of lease, tenancy, licence or

assignment and includes providing accommodation to any paying guest, and the term "tenant" means any person taking possession under a lease.

- 9.3.2 No Member will lease the Member's Property for a period shorter than 32 days and all leases must be through an approved Rental Agency. Where rule 9.3.1 applies, Members must not advertise the Member's Property for lease other than through the Rental Agency(s). This rule 9.3.1 will not apply to a lease to friends or family of the Member, being persons known to the Member who have not been introduced to the Member's Property through any form of marketing, provided that the Member notifies the Manager.
- 9.3.3 Any Property leased through an approved Rental Agency pursuant to this rule will be leased by the Rental Agency on behalf of the Member at the market rent applicable for that type of Property in Kensington Park and otherwise on normal residential letting and commission conditions applicable as between landlord/rental agent and landlord/tenant.
- 9.3.4 Any member landlord is responsible for the compliance of tenants, and guests of tenants, adherence to the Constitution and Bylaws.
- 9.4 **Assignment or subletting:** Any assignment or subletting of the type or in the manner referred to in section 227 of the Property Law Act 2007 will be a breach of the provisions of this Constitution.
- 9.5 **Payment of Rates and Compliance with Obligations:** Each Member acknowledges that it is still liable to pay rates and charges levied by the Auckland Council (or their respective successors) and to otherwise comply with all legal obligations in respect of the Member's Property.
- 9.6 **Agreement to grant access and easements.** Each Member agrees to grant the Association:
  - 9.6.1 access to; and
  - 9.6.2 any easements, encumbrances and/or covenants over or under; that Member's Property reasonably necessary to permit the Association give effect to this constitution and any Bylaw.
- 9.7 **Agreement for Association to Maintain Shared Facility:** Each Member agrees the Association has the right to determine that the maintenance and upkeep of a Shared Facility will be managed by the Association and maintained as if it was Common Property.

## 10. Compliance by Occupiers and Invitees

- 10.6 **Application to Occupiers and Invitees.** A reference to an act or omission by any Member will include any act or omission by any mortgagee in possession of that Member's Property, the Occupiers of the Member's Property, and any Invitees.
- 10.7 **Details of Occupiers.** A Member must advise the Association of details of the Occupiers of the Member's Property.
- 10.8 **Compliance with Constitution and Bylaws.** Each Member must ensure Occupiers comply with this Constitution and the Bylaws. In any case of persistent default by an Occupier, the Member will on demand by the Association, terminate the Occupier's right to occupy the Property. A copy of this Constitution, the Bylaws and any covenants given in favour of the Association by that Member will be attached to every lease, licence, or other document defining occupancy rights.

## 11. Members' Assistance to Developer for Common Facilities

- 11.1 **Future Development.** The Members acknowledge that development of Kensington Park is ongoing. The Association is required to allow the Developer such access to, and interests in, the Common Facilities as are necessary or desirable for the development of Kensington Park to proceed, and to allow the Developer to add, replace, alter or remove structures and services forming part of the Common Facilities, and to procure that its Members amend this Constitution if such amendment is necessary or desirable for the development to proceed. The Members further acknowledge that the provisions of this rule 11.1 do not limit any other obligations agreed to by a Member or otherwise binding on a Member. The Association and each Member individually agrees:

- 11.1.1 To grant and now grants to the Developer access to the Common Facilities and the Member's Property with such vehicles, machinery and tools as the Developer desires for the purpose of proceeding with the development. However, the Developer will:
  - 11.1.1.2 Make good any damage caused by the Developer accessing a Member's Property under the provisions of this rule 11.1;
  - 11.1.1.3 In so doing, will not unreasonably interfere with that Member's quiet enjoyment of that Member's Property.
- 11.1.2 To grant, and now grants, such easements in favour of the Developer, any Member and/or the Association over or under the Member's Property as are required for Kensington Park to proceed or as may be necessary or desirable for development of Kensington Park, that easement to include terms equivalent to those set out in rule 11.1.1.
- 11.1.3 Not to prevent, hinder or obstruct the use by the Developer of the Common Facilities, the addition, replacement, alteration or removal where not required of structures and/or services forming part of the Common Facilities by the Developer, or the granting of any interests in the Common Facilities by the Association to the Developer.
- 11.1.4 Not to oppose, or permit or take part in any opposition to the development of Kensington Park.
- 11.1.5 To support any resolution to amend this Constitution, where the Association is bound by agreement with the Developer, to procure such amendment.
- 11.1.6 To sign any document or do any other thing reasonably necessary to support any resource consent or other authorisation applied for by or on behalf of the Developer in respect of Kensington Park.
- 11.1.7 To permit the Association to temporarily close the Common Facilities as may be required for the development to proceed or as may be necessary or desirable for the development of Kensington Park.
- 11.2 **Encumbrance.** The Encumbrance must be noted against each Owner's Title in favour of the Association. The Association must not, except by Special Resolution and with the prior written consent of the Principal Member (if there is one), agree to any alteration of the terms of the covenants as first noted against each such Owner's Title.

## **12. Use of Common Facilities by Members, Occupiers and Invitees**

- 12.1 **Use of Common Facilities.** Subject to this Constitution and the Bylaws relating to the use of the Common Facilities, and subject to rule 12.4, each Member and Occupier will be entitled to use the Common Facilities for the proper purposes for which they were designed.
- 12.2 **Use by Invitees.** Limitations on the number of Invitees per Property exist for the use of the Common Facilities. Bylaws and facility specific rules govern their use.
- 12.3 **Designated Use of Common Facilities.** The Association may from time to time determine that:
  - 12.3.1 Some or all of the Common Facilities ("Designated Facilities") are to be available for the use by one or more of the Members ("Designated Members") and by Occupiers of those Designated Member Properties and their Invitees, where such Properties are located within one or more discrete areas within Kensington Park and have common interests by reason of their proximity, use, size and/or demand on the Common Facilities; and
  - 12.3.2 Other Members ("Non-Designated Members") and their Occupiers and Invitees are not entitled to use those Designated Facilities, and in those circumstances, Designated Facilities will be available for use only by Designated Members and their Occupiers and Invitees.
- 12.4 **User Charges for Use.** The Association will be entitled to set a user fee or charge for persons who wish to use any of the Common Facilities. The Manager will collect or arrange for the collection of the user fees and charges on behalf of the Association and these will be paid into the

Association's bank account and will form part of its general assets provided that the Developer, Principal Member and Manager will be entitled to use the Common Facilities at any time and invite any number of guests to view or use the Common Facilities and will not be required to pay any user fees and charges.

- 12.5 **Restrictions and Reservations.** The Association will be entitled to refuse any person (including a Member) access to the Common Facilities if in its sole discretion it considers that:

12.5.1 the Common Facilities are at or near full capacity;

12.5.2 to do so is in the interests of safety; or

12.5.3 admittance of any further persons would interfere with the use and enjoyment of the Common Facilities by Members and Occupiers using the Common Facilities at that time.

- 12.6 **No warranty as to capacity.** The Association makes no warranty as to the availability and capacity of the Common Facilities or their suitability for use as recreational facilities.

- 12.7 **Ownership of the Common Facilities.** From the date that the ownership of any of the Common Facilities is transferred to the Association, the Developer will not be responsible for the upkeep, maintenance or improvement of the Common Facilities nor will it be required to provide any further facilities, equipment, services, fixtures, fittings or chattels for the Common Facilities.

- 12.8 No acceptance of the transfer of common facilities to the Association will be automatically given if the facility fails to meet common building regulations, standards, and is fit for the purpose intended.

### 13. Breach of Obligations

- 13.1 **Breach of obligations.** Upon any breach of this Constitution or any Bylaw by a Member ("Defaulting Member"):

13.1.1 Where damage has been caused to the Common Facilities or any other Member's Property, the Defaulting Member will immediately make good such damage or, at the option of the Association or other Member, as the case may be, reimburse the Association/Member for the costs of such making good;

13.1.2 If the breach continues for three (3) Working Days after notice is given by the Association or the Manager to the Defaulting Member to remedy the breach, the Association/Manager may do anything, including paying money, necessary to remedy the breach;

13.1.3 All money paid and expenses incurred by the Association or Manager (including any legal costs) in remedying, or attempting to remedy, a breach of this Constitution or any Bylaw by a Defaulting Member, 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, will be a debt due from the Defaulting Member to the Association;

If any money payable, by a Defaulting Member to the Association or the Manager, is in arrears and unpaid for five (5) Working Days (whether or not formal demand for payment has been made and without any formal demand being necessary) such money will be payable on demand and will bear interest at the rate of 5% per annum above the Association's banker's overdraft rate (or in the absence of such rate such other benchmark lending rate (as nominated by the Association)) applicable during the continuance of the default computed on a daily basis from the due date until the date of payment in full;

13.1.4 After receipt of a default notice under rule 13.1.2, the Defaulting Member will not be entitled to exercise the rights and benefits of membership of the Association (including any right to vote at a general meeting) and will not be entitled to use the Common Facilities (except roads and access ways). This rule will not relieve the Defaulting Member from the obligation to pay all monies due to the Association or the Manager under the terms of this Constitution.

- 13.2 **Enforcement of covenants.** Without prejudice to rules 13.1.1 to 13.1.5, each Member

acknowledges that there are, or are likely to be, covenants and/or encumbrances registered over the Owner's Title in favour of the Association. In the event of the Defaulting Member's breach of the Constitution and/or any Bylaw, the Association may:

- 13.2.1 take action to enforce the terms of the relevant covenants;
  - 13.2.2 take action to enforce the terms of any encumbrance;
  - 13.2.3 take any other action at law or in equity that may be available to the Association for the enforcement of this Constitution.
- 13.3 **Principal Member may take action.** Notwithstanding any other rule in this Constitution, the Principal Member is irrevocably authorised to, at any time and in its sole discretion, on behalf and in the name of the Association, take action, including court or tribunal proceedings, against any Defaulting Member to enforce or require remedy of a breach by the Defaulting Member of this Constitution. The Principal Member will not be required to obtain the prior consent of the Association to any such action, proceeding or claim but will upon request inform the Association about any action, proceeding or claim and the Association will give its full co-operation to the Principal Member, including the prompt reimbursement of the Principal Member's costs (including solicitor/own client costs) of any such action, proceeding or claim.
- 13.4 **Persistent default of an Occupier.** In the event of persistent default by an Occupier of a Member's Property of this Constitution or the Bylaws, the Member will, on demand by the Association and at the Member's cost, and where legally possible, terminate the Occupier's rights to use and occupy the Member's Property.

## **FACILITY EXPENSES**

### **14. Computation and Payment of Levies**

- 14.1 **Levies to be fair.** Each Financial Year, the Association will set the levies described in this rule 14 and rule 15. All levies must be set in a way that is fair and equitable to the Association and to all Members, including the Residential Members, the Commercial Members, and any category of Membership specified in rule 7.5, and any group(s) of Designated Members (as defined in rule 12.3.1). The levies for a Financial Year will be set taking into account the estimated Facility Expenses for the Financial Year and any contingency sums/special levies contemplated under rule 15.2.
- 14.2 **Estimate of Facility Expenses.** Prior to or as soon as practicable after the commencement of each Financial Year, the Association will set an annual levy and, by written notice, advise each Member of the Association's estimate ("Association's Estimate") of each Member's Proportion of the Facility Expenses for that Financial Year, plus any contingency sum or special levy as the Association, in its sole discretion, elects for that Financial Year.
- Payment of Facility Expenses.** Subject to rule 14.8, each Member will by the 20<sup>th</sup> of the month following the date of the Association's invoice pay to the Association the Association's Estimate of the Member's Proportion of the Facility Expenses for the current Financial Year in the manner set by the Association.
- 14.3 **Excluded Property.** For the purposes of setting and collecting levies under this rule 14, rule 15 and, where applicable, rule 16:
- The Association must not levy any "Excluded Property". For the purposes of calculating the payment of levies, an "Excluded Property" is defined as:
- 14.3.1 The earlier of the dates either the Developer notifies the Association that it may levy such Property from, or the date that is 15 months after the date the property meets the definition of Property, whichever date first occurs; or
  - 14.3.2 While the Owner of the Property is the Principal Member.
- 14.4 **Statement of Facility Expenses.** Until Kensington Park is completed, then as soon as practicable after the end of each Financial Year the Association will provide each Member with an itemised statement of the actual Facility Expenses for the just completed Financial Year or any

period in terms of rule 14. 7.1, as the case may be, and:

- 14.4.1 If the Member's Proportion of the actual Facility Expenses for the previous Financial Year or any period is greater than the total of the monthly payments made by the Member under rule 14.3 or 14.7.1.1, the Member will within one month of notification pay to the Association the difference, or;
  - 14.4.2 If the Member's Proportion of the actual Facility Expenses for the previous Financial Year or any period is less than the total of the monthly payments made by the Member under rule 14.3 or 14.7.1.2, the Association will credit the difference to the Association's Estimate for the then current Financial Year, or;
  - 14.4.3 If on completion of Kensington Park the actual Facility Expenses in any financial year is greater or less than all the Member's Proportions the difference will be carried forward to the following financial year and reflected in the following year's Estimate of the Members' Proportions of the Facility Expenses.
- 14.5 **Estimate not available.** If the Association has failed to advise a Member of the Association's Estimate for the Financial Year before the date on which the first payment is due under rule 14.3, the Member will on that date and every other date on which a payment is due under rule 14.3 pay 1/12th of the Association's Estimate applicable to the previous Financial Year. On the Association's Estimate for the Financial Year being advised to that Member:
- 14.5.1 Rule 14.3 will apply thereafter.
- 14.6 **New Properties.** Where in any Financial Year new Properties ("New Properties") become available:
- 14.6.1 The Association will, on any New Properties becoming available, levy the Owners of those Properties such proportion of the Association's Estimate of the Member's Proportion of the Facility Expenses for the balance of the current Financial Year. The Association may at its discretion, revise the Association's Estimate of each Member's Proportion of Facility Expenses. If on revision, of the Association's Estimate of each Member's Proportion of Facility Expenses, it is found that any Member's Proportion of Facility Expenses for the current Financial Year is:
    - 14.6.1.1 greater than the total payment(s) made or due for the current Financial Year, then the Member will within one month of written notification pay the Association the difference between the Member's Proportion of Facility Expenses and the revised Member's Proportion of Facility Expenses, or;
    - 14.6.1.2 less than the total payment(s) made for the current Financial Year then the Association will credit the difference to the Association's Estimate for the succeeding Financial Year.
- 14.7 **Charge against the Property.** If a levy or any instalment of the Association's Estimate is in arrears, the defaulting Member may be required by the Association to pay a late charge including interest at the rate of 5% per annum above the Association's banker's overdraft as the Association may determine. That late charge (plus any reasonable handling costs) is to be a charge against the Member's Property to which the levy relates and will be added to that levy.
- 14.8 **Personal Obligation.** Levies are the personal and individual debt of the Member. No diminution or abatement of levies is allowed for inconveniences arising from making of repairs or improvements to the Common Facilities. A Member is not exempted from liability for any levies through non-use of Common Facilities or otherwise.
- 14.9 **Certificate of Indebtedness.** The Association will, on the application of a Member, or any person authorised in writing by such Member, provide the Member or authorised person with a certificate of the indebtedness of the Member to the Association calculated to the date specified in the application. The statement will show:
- 14.9.1 the Association's Estimate of such Member's Proportion of Facility Expenses for the current Financial Year;
  - 14.9.2 the manner and time of payment of the Association's Estimate;

- 14.9.3 payments made by the Member on account of Facility Expenses in the current Financial Year;
  - 14.9.4 payments due from the Member on account of Facility Expenses in the current Financial Year and not paid by the Member; and
  - 14.9.5 the amount of any Transfer Levy of the Member which is then recoverable or will be recoverable for a given sale price by the Association pursuant to rule 16;
  - 14.9.6 any accumulated unpaid default interest;
  - 14.9.7 whether or not it has received notice that any proceedings are pending against the Association, and, in favour of any person dealing with that Member, the certificate will be conclusive evidence of the matters certified therein. The Member may only apply for a certificate of indebtedness once in any year and on each occasion that a Member transfers ownership of a Property.
- 14.10 Information for estimates during Development Period. The Association will provide to a Member, within five (5) Working Days of receiving a request, a statement of the levies that are estimated to be or were payable by that Member under this rule 14. that:
- 14.10.1 comprises estimates, historical data or both;
  - 14.10.2 is itemised in relation to the different Common Facilities and services provided in relation to Kensington Park;
  - 14.10.3 contains a statement in relation to each of the Common Facilities and services as to whether the levy is fixed, variable or based on the Member's Proportion;
  - 14.10.4 contains a statement as to which of the Common Facilities and services were, or are expected to be, provided in each Financial Year within the period;
  - 14.10.5 contains a statement as to what stage of development Kensington Park is at, at the end of each Financial Year within the period;
  - 14.10.6 contains, if a levy is based on the Member's Proportion, a statement of a formula by which the levy can be calculated together with a worked example; and
  - 14.10.7 contains a statement of the principal assumptions on which any estimates are based.

## 15. Special and Differential Levies

- 15.1 **Capital Improvements levy.** At any special meeting of the Association, the Association may, from time to time, fix an additional levy to be paid by each Member together with the monthly instalments of the Association's Estimate for that Member, to be set aside as a sinking fund to allow for and meet the costs of Capital Improvements.
- 15.2 **Special levies.** At any special meeting of the Association, the Association may make a special levy, payable by any or each Member at such times as are set by the Association, as the Association considers necessary, including:
- 15.2.1 for it to meet its obligations under this Constitution;
  - 15.2.2 where costs are incurred as a result of a Member's breach of any provisions of this Constitution provided that in the case of wilful or negligent damage caused by, or purposeful work undertaken at the request of, one or more but not all of the Members or their agents, contractors, employees, residents or invitees (not being maintenance or repair), then such cost will be at the sole expense of the Member(s) creating the damage or requesting the work;
  - 15.2.3 where circumstance and fairness dictates that particular costs should be otherwise allocated then such costs will be fairly allocated between the Members having the benefit thereof.
- 15.3 **Levies for Designated Members.** Where the Association has made a determination under rule 12.3, the Association may in setting or fixing any annual levy or special levy, to the extent that the amount to be set or fixed relates to any Designated Facility, calculate the amount required from

Members on the basis that only Designated Members are liable to contribute to that levy and that Non-Designated Members are not required to contribute to that levy.

15.3.1 For the purposes of this rule 15.3, where any levy is set or fixed in relation to a Designated Facility a Member's Proportion will mean that proportion which the Occupied Internal Areas of the Property or Properties owned by a Designated Member bear to the sum total of the Occupied Internal Areas of all Properties owned by all of the relevant Designated Members.

15.4 **Levies for Shared Facilities.** Where the Association has made a determination under rule 9.7, the Association may set or fix an annual levy or special levy, to the extent that the amount to be set or fixed relates to the upkeep and maintenance of the Shared Facility and calculate the amount required from the Members responsible for the upkeep and maintenance of that Shared Facility. For the purposes of this rule 15.4, where any levy is set or fixed in relation to a Shared Facility a Member's Proportion will be determined by the Association having regard to ownership, registered interests and that proportion which the Occupied Internal Areas of the Property or Properties owned by a contributing Member bears to the sum total of the Occupied Internal Areas of all Properties owned by all of the contributing Members.

## 16. Transfer Levy

16.1 **Transfer Levy.** A Member may not sell, assign, gift, transfer or otherwise dispose of their Property or any part or interest in the Property to any other person, firm or company unless such Member has first paid to the Association in cash on the date of settlement or on such other terms and conditions as the Association will agree a levy equal to one percent (1%) plus GST (if any), of the gross transaction value (the "Transfer Levy").

16.2 **Assessing the Transfer Levy.** The term "gross transaction value", for the purposes of rule 16.1, means at the option of the Association the actual gross sale price received by the Member for each Property and improvements on each Property in money or money's worth or the market value of the Property and improvements to be determined by a registered public valuer agreed to by the Member and the Association and failing agreement by two valuers, one appointed by each party, and their umpire and otherwise in accordance with the Arbitration Act 1996 and its amendments.

16.3 **Exceptions.** Notwithstanding the above provisions of this Constitution, the Transfer Levy will not be payable on any of the following transactions:

16.3.1 any transfer from the Principal Member;

16.3.2 inter Kensington Park transactions (namely where the Member is contemporaneously purchasing a replacement Property within Kensington Park);

16.3.3 inter party transactions (that is to say, a transaction between Owners who are already joint tenants or tenants in common of a Property);

16.3.4 immediate family transactions (that is to say transactions between spouses or de facto partners or parents and their children);

16.3.5 estate planning transactions (that is to say transactions between an Owner and a trustee of an inter vivos trust settled by one or more of those Owners where the trust is substantially for the benefit of that Owner and their descendants);

16.3.6 the distribution of the Property in specie from the trustees of an inter vivos trust to a beneficiary of such inter vivos trust, provided that such beneficiary is a spouse, defacto partner, parent, child or other descendent of the settlor of such inter vivos trust;

16.3.7 the transmission of the Property on the death of an Owner to a trustee or executor and the subsequent transfer of the Property to the Owner's beneficiaries;

16.3.8 mortgages; or

16.3.9 leases for less than three (3) years.

16.4 **Variations.** Notwithstanding the above provisions of the Constitution and the amount stipulated in rule 16.1, the amount of the Transfer Levy may be varied by any of the following:

- 16.4.1 At any Special Meeting of the Association the amount of the Transfer Levy may be varied with a resolution passed with a majority of 75% of those in attendance.
- 16.5 **Transfer Levies used primarily for Capital Improvements only.** Transfer Levies paid to the Association must be held by the Association in a separate account(s) and used primarily as a sinking fund for the Capital Improvements.
- 16.6 **Application of sinking fund for cash flow.** The Association may authorise the use of a portion of any money in the Transfer Levy account(s) to temporarily fund any short term cash flow timing difference in the collection of the annual levy and payment of Facility Expenses.
- 16.7 **Application of sinking fund for annual maintenance costs.** If the Transfer Levy sinking fund reaches a level which the Committee considers is adequate to cover future foreseeable capital improvements, then any excess may be applied to cover a portion of the annual maintenance costs of the Common Facilities.

## **OPERATION OF THE RESIDENTS' ASSOCIATION**

### **17. The Committee**

- 17.1 Role of the Committee. The Committee is responsible for the management of the affairs of the Residents Association.
- 17.1.1 Membership of the Committee. The Committee (collectively called "Committee Members") shall consist of:
- 17.1.1.1 a chairperson (who will be chosen from the general Committee Members subject to rule 17.3.2) and;
- 17.1.1.2 a minimum of five and a maximum of nine general Committee Members, as determined by the Association in general meeting. The Committee has the ability to co-opt members to the Committee should the Committee believe there is a requirement.
- 17.2 **Powers.** The administration of the Association will be vested in the Association in general meeting, and will be delegated to the Principal Member until the end of the Development Period and, following that, will be vested in the Committee in accordance with this rule 17. The Committee may exercise all of the powers, authority and discretions of the Association as permitted under this Constitution and do on its behalf all acts as it deems necessary or expedient. The powers, authority and discretions as exercised by the Committee are subject always to any limits which may from time to time be imposed by the Association. The Committee may delegate any one or more of its powers to a sub-committee of Committee Members, a Committee member, the Manager or any other person(s). In exercising the Committee's delegated powers, any delegate must comply with any directions that the Committee may impose.
- 17.3 **Election of Committee Members**
- 17.3.1 Nominations for Committee Members shall be received by the Manager (30) thirty days prior to the date set for the annual general meeting and shall be promptly circulated to Members. Nominations must be submitted on the prescribed form and shall contain the nominee's signature by way of consent. In the event of there being insufficient or no nominations for the positions, nominations from the floor shall be accepted by the meeting, provided any person whose nomination has been submitted in writing for any of the Committee positions shall automatically be elected to that position.
- 17.3.2 The elected Committee shall, at its first meeting following each Annual General Meeting, elect a Chairperson of the Committee from within the elected Committee Members.
- 17.3.3 The term of office for all Committee Members shall be two (2) years, expiring at the conclusion of the relevant Annual General Meeting. Any Committee Member may be re-elected to the Committee for a maximum of two (2) subsequent and consecutive term of office, provided that this maximum may be exceeded if:
- 17.3.3.1 There are no alternative eligible nominees; and

- 17.3.3.2 It is necessary to achieve the minimum number of Committee Members required by rule 17.1.1.2.
- 17.3.4 The terms of office for Committee Members elected or appointed in 2014 shall be between one (1) and two (2) years so as to ensure the rotation of Committee Members. The terms of office shall be determined by agreement of the Committee and failing such agreement by vote of the Committee. Thereafter the terms of office of Committee Members shall be for two (2) years.
- 17.3.5 Retirement of any Committee Member can at any time supersede rule 17.3.4 from the date of the written resignation from the Committee is received by the Chairperson.
- 17.3.6 The election or appointment of any Committee Member shall be contingent on that person meeting the requirements under section 47 of the Act, and providing the certificate required thereunder.
- 17.4 **Rights of Committee Members.** All Committee Members shall have the right to attend, speak and vote at all Committee meetings.
- 17.5 **Vacancies on the Committee.** Any vacancy in the Committee, which occurs during any Committee Member's term of office, may be filled by the Committee.
- 17.6 **Removal of Committee Member.** The Residents Association in a special general meeting, called for this purpose, may by resolution remove any Committee Member, before the expiration of their term of office. The vacancy caused by such removal will be filled in accordance with rule 17.5. Notification of the special general meeting shall be given to the Committee Member affected by the proposed resolution and she or he shall be given the opportunity prior to, and at, the special general meeting, to make submissions in writing and/or verbally to the Members about the proposed resolution.
- 17.7 **Chairperson.** Subject to rule 17.3, the Committee from time to time will appoint, remove and replace a chairperson for such term as it sees fit from one of their number to chair Committee meetings and otherwise exercise the powers of the Chairperson set out in this Constitution.
- 17.8 **Quorum for Committee Meetings.** Where a majority of the Committee Members are present at a Committee Meeting, this will constitute a quorum.
- 17.9 **Voting.** Resolutions of the Committee will be passed by the majority. Each Committee Member will be entitled to exercise one vote. Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by all of the Committee Members will be as valid and effectual as if it had been passed at a meeting of the Committee duly convened and constituted.
- 17.10 **Casting Vote.** Subject to rule 17.9 in the case of an equality of votes the Chairperson may exercise a casting vote.
- 17.11 **Seal.** The Committee will obtain a common seal for the use of the Association and will provide for its safe custody. The common seal will not be used except by resolution of the Committee. Every instrument to which the common seal is affixed will be signed by any two members of the Committee.
- 17.12 **Powers of the Committee.** The Committee shall have the power to:
- 17.12.1 develop and implement strategies, policies and procedures for the administration, promotion and development of the Kensington Park Residents Association;
  - 17.12.2 establish and delegate such powers as it considers appropriate, such other commissions, committees and groups as it considers appropriate to assist it to carry out its responsibilities;
  - 17.12.3 co-opt, engage, contract or otherwise agree to obtain the assistance or advice of any person or organisation for the Committee;
  - 17.12.4 appoint a General Manager/Chief Executive Officer/Contracted Management Company and such appointment may be on such terms and conditions as the Committee may determine.
    - 17.12.4.1 Where such a person is appointed that person/company shall be an ex officio

member of the Committee but shall possess no power of voting;

17.12.4.2 Where such entity is a commercial operation then such appointment will be made through an open and transparent selection process.

17.12.5 publish the rules for the Residents Association;

17.12.6 subject to this Constitution, fill vacancies of the Committee, any commissions, committees and other groups which are established by it.

#### 17.13 Meetings of the Committee:

17.13.1 The Committee shall meet at such places and times, and in such manner, as it shall determine.

17.13.2 The Chairperson shall chair Committee meetings, or in his/her absence any other Committee Member determined by the Committee.

17.13.3 A resolution in writing, signed or assented to by facsimile, or other form of visible or other electronic communication by all the Committee Members shall be as valid and effectual as if it had been passed at a meeting of Committee Members. Any such resolution may consist of several documents in like form each signed by one or more Committee Members.

17.13.4 A meeting of the Committee may be held where one or more of the Committee Members is not physically present at the meeting, provided that:

17.13.4.1 all persons participating in the meeting are able to communicate with each other effectively simultaneously and instantaneously whether by means of telephone or other form of communication;

17.13.4.2 notice of the meeting is given to all the Committee Members in accordance with the procedures agreed from time to time by the Committee and such notice specifies that Committee Members are not required to be present in person at the meeting;

17.13.4.3 if a failure in communications prevents rule 17.13.4.1 from being satisfied and such failure results in the quorum not being met, the meeting shall be suspended. If communication is not re-established within 15 minutes from the interruption the meeting shall be deemed to have terminated or adjourned.

#### 17.14 Committee Minutes and Records:

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

### 18. The Design Review Board

18.1 **Composition.** The Design Review Board will comprise the Principal Member and, after the resignation of the Principal Members, the following persons:

18.1.1 Three (3) representatives of the Association appointed by the Committee;

18.1.2 Additional representatives may be co-opted by the Committee from time to time;

18.1.3 A landscape architect with appropriate qualifications and expertise appointed from time to time by the representatives of the Association subject to approval by the Committee;

18.1.4 An architect appointed from time to time by the representative(s) of the Association subject to approval by the Committee.

18.2 **Design Controls.** The Design Review Board may revise and publish from time to time the Design Controls in respect of any home, commercial premises or other development within Kensington Park. Each Member is to fully comply with the Design Controls and any other rule relevant to design control.

18.3 **Design approval.** Members are to familiarise themselves with the Design Controls before

commencing any alteration, addition or modification in any building or other structure within Kensington Park.

This includes, but is not limited to, the appearance of a building and immediate surroundings as laid out in the Design Controls including:

- 18.3.1 window treatments, or
- 18.3.2 colour, or
- 18.3.3 gardens, decks, fences, or
- 18.3.4 ornaments and sculptures.

The Member must first submit the design for the proposed work to the Design Review Board for written approval in accordance with the Design Controls. The Design Review Board may refuse plans which, in its reasonable opinion, do not comply with the Design Controls.

- 18.4 Before commencing any alteration, addition or modification to any building or other structure (including fencing, garden features) within Kensington Park, the Member must first submit the design for the proposed work to the Design Review Board for its written approval in accordance with the Design Controls. The Design Review Board may refuse any plans which, in its reasonable opinion, do not comply with the Design Controls.
- 18.5 **Approval costs.** All costs of the design approval process will be met by the Design Review Board unless the Design Review Board considers, in its sole discretion, that negotiation relating to disputed designs is in wide variation to the Design Controls in the event of which the Member seeking approval will pay the Design Review Board the hourly rate equivalent to an arm's length architect's fee to consult and make recommendations to make such design compliant.

## 19. Principal Member

- 19.1 **Principal Member.** Until Kensington Park is fully completed and while the Principal Member is in office in accordance with rule 8.1:
  - 19.1.1 The full government and control of the Association will be vested in the Principal Member, which may exercise all the powers, authorities and discretions vested in the Committee and in addition may exercise all the powers of the Association which are not by statute required to be exercised by the Association in general meeting;
  - 19.1.2 The Principal Member will be entitled to exercise the number of votes equal to one more than the number of Members voting in person, by proxy or by postal vote (if permitted under rule 21.5) at any meeting of the Association and, for the avoidance of doubt but subject to rule 24.3, this right may without limitation be exercised on any matters requiring a Special Resolution;
  - 19.1.3 Any minute entered in the minute book of the Association's proceedings signed by the Principal Member will, in any matter not expressly required by the statute to be done by the Association in general meeting, have the effect of a resolution of the Association;
  - 19.1.4 The Committee will be under the control of the Principal Member, whose opinion will prevail in the event of any difference of opinion, and they will be bound to conform to the Principal Member's directions in regard to the Association's business. For the avoidance of doubt, the Committee will act in an advisory role to the Principal Member to enable the Principal Member to form its opinions and make decisions under this rule;
- 19.2 **Effect on Meeting.** Notwithstanding anything contained or implied in this Constitution:
  - 19.2.1 So long as the Principal Member is in office, no resolution that is passed by the Association in general meeting or by the Committee will have any force unless the resolution is in writing and signed by the Principal Member; and
  - 19.2.2 So long as the Principal Member is in office, it is not necessary to hold the formal meetings of the Committee, but any resolution signed by the Principal Member will be as valid and effectual as if it were a resolution unanimously passed at any meeting of the

Committee.

- 19.3 **Right to Convene General Meetings.** The Principal Member may at any time convene upon such notice as he/she/it thinks fit a general meeting of the Association and, to the extent permissible by law, may regulate all proceedings at such meetings and from time to time determine the quorum for any meeting whether of Members or of the Committee, notwithstanding anything to the contrary to this Constitution.
- 19.4 **Principal Member Provisions Paramount.** This Constitution in so far as it relates to the proceedings and powers of the Committee and/or the Association will in all respects be read subject to the provisions relating to the Principal Member in this rule 19. Should there be any inconsistency or contradiction, the provisions relating to the Principal Member in this rule 19 will be paramount.

## 20. Manager

- 20.1 **Duties.** Subject to rule 17.12.4.2, the Committee will appoint, remove and replace a Manager from time to time to carry out such of the obligations of the Association, and exercise such of the discretions and powers of the Association, as the Committee sees fit. Such appointment will be for the term, at the remuneration and on such terms and conditions as the Committee may agree with the Manager.
- 20.2 **Rights and responsibilities.** The appointed Manager will enter into a contract with the Association to provide management and other services to the Members (amongst other things);
- 20.2.1 the appointment and management of landscaping contractors to maintain Kensington Park;
  - 20.2.2 management of the security arrangements for Kensington Park and employment of relevant contractors (if necessary);
  - 20.2.3 the monitoring and enforcement of the Bylaws, including the control of behaviour of Residents and visitors to Kensington Park to a level deemed generally acceptable by a majority of Members;
  - 20.2.4 coordination of rubbish collections for Kensington Park;
  - 20.2.5 coordination of minor repairs/maintenance with subcontractors;
  - 20.2.6 management of the provision of external services to a Property (e.g. gas, electricity, water, sewer, telecommunications, fibre optics);
  - 20.2.7 the bulk purchase of utility services for Kensington Park;
  - 20.2.8 operation and maintenance of an 'intranet' for communications between Members of Kensington Park;
  - 20.2.9 management of a booking system (if required) for any Common Facilities;
  - 20.2.10 maintenance of the cleanliness of all Common Facilities through employment of external contractors;
  - 20.2.11 co-operate with the Rental Agencies within Kensington Park.
  - 20.2.12 co-operate with the Principal Member;
  - 20.2.13 convene general meetings when requested to do so in accordance with this Constitution, including convening the passing of a resolution without a meeting;
  - 20.2.14 attend all meetings of the Committee and have full speaking rights at such meetings;
  - 20.2.15 give all notices required to be given by these rules or as directed from time to time by the Association or the Committee;
  - 20.2.16 keep minutes at all general meetings and Committee meetings and enter into the minute book:
    - 20.2.16.1 the time, date and venue of such meeting;
    - 20.2.16.2 all business considered and resolutions passed at such meeting;

- 20.2.17 hold in safe custody the common seal of the Association;
  - 20.2.18 receive, and issue receipts for, all annual and special levies, additional fees and any other moneys paid to the Association;
  - 20.2.19 operate and maintain a current bank account in the name of the Association;
  - 20.2.20 pay all accounts properly incurred by or on behalf of the Association;
  - 20.2.21 report immediately to the Association any Member who fails to pay special levies or additional fees within the prescribed period;
  - 20.2.22 keep all financial records and any security documents in safe custody;
  - 20.2.23 compile all proper accounting records from time to time as required by the Act or by the Committee which give a true, fair and complete account of the financial affairs and transactions of the Association; and
  - 20.2.24 compile the financial statements immediately following each Financial Year as required by the Act, and provide for the auditing of those records and the distribution of the audited financial statements to Members as soon as is reasonably practicable after each audit is completed and, in any event, no later than five (5) months of the end of the Financial Year.
- 20.3 **Changes to Scope of Services.** The scope of services supplied by the Manager may be altered by the Committee in a fair and equitable manner. Should the scope of services be materially altered, the management fee for the affected Properties will be adjusted, up or down, in a fair and equitable manner. Likewise, the scope of services offered by the Manager may be varied with the approval of the Committee.
- 20.4 **Reporting.** The Manager must report on a regular basis to the Committee.

## 21. General Meetings

- 21.1 **Annual General Meeting.:** In addition to any other meetings in that year, the Association will hold an Annual General Meeting each year. Not more than 15 months will elapse between the date of one Annual General Meeting and that of the next. The Committee will determine the time and place of each year's Annual General Meeting.
- 21.2 **Special General Meetings.** A general meeting other than an Annual General Meeting may be requested by the Committee, or by written requisitions signed by not less than 25% of the Members, or by written notice of the Principal Member (if there is one). The Chairperson of the Committee will call a special general meeting within 15 Working Days of receiving an effective request.
- 21.3 **Powers of the Association in general meeting.** The Association in general meeting may, by resolution, exercise all powers, authorities and discretions of the Association notwithstanding that any such power, authority and discretion may have been delegated to the Committee by or pursuant to this Constitution.
- 21.4 **Power of the Association to pass a resolution without a meeting.** Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by 75% of the Members entitled to vote in person, by proxy, or by postal vote (if permitted under rule 21.5) at general meetings together with the Principal Member (if there is one), will be as valid and effectual as if it had been passed at a general meeting of the Association duly convened and constituted.
- 21.5 **Postal Voting.** Notwithstanding any contrary provision in this Constitution, a Member (including the Principal Member, if any) is only permitted to exercise a postal vote at a general meeting of the Association if a local authority, government department, the Minister of Health, the Prime Minister, or the New Zealand government (or similar entity or person) orders restrictions on the gatherings of people for reasons such as (but not limited to) a pandemic or other emergency, causing the Association to be unable, by law, to allow Members (all or some) to attend a general meeting in person.
- 21.6 **Quorum.** No business will be transacted at any general meeting of the Association unless the quorum is present when a meeting proceeds to business. Quorums will be not less than 20% of all Members or 10 Members (whichever is the lesser) eligible to vote at general meetings, present in person, by proxy, or by postal vote (if permitted under rule 21.5) and the Principal Member (if there

is one).

- 21.7 **Notice of General Meeting.** A notice of general meeting of the Association will be sent to every Member not less than 10 Working Days before the date of such meeting. Such notice will specify the date, time and venue of such meeting. In the case of a general meeting, other than an Annual General Meeting, such notice will specify all business and all notices of motions to be considered at such meeting, and include a postal vote form (if permitted under rule 21.5). No business or notice of motion which is not specified will be discussed or transacted at such meeting.
- 21.8 **Notice of Annual General Meeting.** A notice of the Annual General Meeting (AGM) of the Association will be sent to every Member not less than 40 Working Days before the date of such meeting. Such notice will specify the date, time and venue of such meeting. At such time of notification, Members will be invited to submit items in writing for discussion at the meeting within 10 working days of meeting notification. An agenda and postal vote form (if permitted under rule 21.5) and associated business documents will be made available 10 working days prior to the Annual General Meeting. No business or notice of motion which is not specified will be discussed or transacted at the notified AGM.
- 21.9 **Failure to give notice.** The accidental omission to give notice to any member, or the non- receipt of such notice, by any Member, will not invalidate the proceedings at any such meeting.
- 21.10 **The Chairperson.** The chairperson at any general meeting will be:
- 21.10.1 the chairperson of the Association; or
  - 21.10.2 if the chairperson is not present or is unwilling to take the chair, then those Committee Members who are present may choose one of their number to chair the meeting; or
  - 21.10.3 if for any reason no chairperson is selected by the Committee, any Member appointed by a majority of Members present in person or by proxy.
- 21.11 **Adjournment.** If a quorum is not present within half an hour from the time appointed for the holding of a general meeting convened on requisition of Members, the meeting will be dissolved. In any other case the meeting will stand adjourned to the same day in the next week, at the same time and place, or to such other day and such other time and place as the Committee will determine (such date not to be later than 14 days from the date of the adjourned meeting). If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present (including in person, by proxy and postal vote (if permitted under rule 21.5) together with the Principal member (if there is one) will constitute a quorum.
- 21.12 **Adjourned Meetings:** No business other than that business which might have been transacted at the meeting from which the adjournment took place, will be transacted at any adjourned meeting. Members will not be entitled to receive any notice in respect of adjourned meetings.
- 21.13 **Information presented.** At each Annual General Meeting the Committee must present:
- 21.13.1 an annual report on the operations and affairs of the Association during the most recently completed accounting period (such report to contain the information prescribed by any regulations passed under the Act);
  - 21.13.2 the financial statements of the Association for that period; and
  - 21.13.3 notice of any disclosures, or types of disclosures, made under section 63 of the Act during that period (including a brief summary of the matters, or types of matters, to which those disclosures relate).

## 22. Voting

- 22.1 **One Member one Vote.** At a general meeting of the Association, each Member (not at that time being in breach of the Constitution) will be entitled to one vote for each Property of which that Member is a registered proprietor, which may be exercised either in person, by proxy or by postal vote (if permitted under rule 21.5). Where there is more than one Owner in respect of a Property, and such Owners are collectively a Member pursuant to rule 7.1.4 only one such Owner will be entitled to vote. In the absence of agreement between such Owners as to who will exercise this

vote, the Owner appearing first on the certificate of title to the Property will be entitled to exercise the vote. On the death of any Member, and pending the transfer of the Member's Property, the executor of that Member's estate will be entitled to exercise that Member's vote.

- 22.2 **Corporation representatives.** Any corporation which is a Member may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Association, and the person so authorised will be entitled to exercise the same powers on behalf of the corporation which that person represents as that corporation could exercise if it were an individual Member, and references in this Constitution to a Member being present in person will mean and include a representative appointed pursuant to this rule, and such person may also stand for election to the Committee.
- 22.3 **No vote if fees unpaid.** Unless all invoiced levies and additional fees for the immediately preceding financial year have been paid in full, by the Member to the Association, the Member will not be entitled to vote at any general meeting of the Association, whether in his/her/its own right or as a proxy for another person. This rule will not apply to the Principal Member, however to the extent that money is apportioned to the Principal Member, the Principal Member will be liable to pay those moneys.
- 22.4 **Voting at meetings.** At any general meeting:
- 22.4.1 A motion may be put to the vote by the Chairperson or by any Member present, which has previously been included in the Agenda.
- 22.4.2 Motions put to the vote will be decided on voices or a show of hands and shall include postal votes (if permitted under rule 21.5), unless a poll is demanded on or before declaration of the result of the voices or show of hands by:
- 22.4.2.1 the chairperson of the meeting; or
- 22.4.2.2 at least five Members present in person or by proxy.
- 22.4.3 A declaration by the chairperson that a resolution has been carried or lost or any entry to that effect in the Association's minute book, will be conclusive evidence of that fact, without further proof of the number or proportion of votes recorded in favour of or against such resolution.
- 22.4.4 If postal votes are permitted under rule 21.5, postal votes shall be included in the count of votes on the motion at the general meeting or adjourned general meeting at which the motion is to be voted on.
- Every postal vote that is permitted under rule 21.5 must be in a form prescribed by the Manager from time to time.
- 22.4.5 In the event that an amendment to a motion is moved at a general meeting, the chairperson shall determine whether that amendment is material (acting reasonably in all respects) and if determined to be a material amendment, no postal votes (if permitted under rule 21.5) will be counted in respect of that affected motion.
- 22.4.6 Resolutions will be passed by a majority of votes, except where a Special Resolution or the unanimous resolution of all Members is required by the Constitution.
- 22.4.7 In the case of a tie in votes, the chairperson may exercise a casting vote.
- 22.5 **Good Faith.** Members will, in exercising any vote at any general meeting, or as a Committee member, exercise such vote in good faith with a view to ensuring that all Members are treated equally by the Association, and that each Member will bear that Member's Proportion of all Facility Expenses and of all costs and expenses to be met by levies made by the Association under rule 14 and/or 15, irrespective of whether any expenditure by the Association benefits all Members.
- 22.6 **Conflict of Interest Exclusions.** For the purpose of section 62(2)(d) of the Act, a party is deemed not to be interested in a matter under section 62(1) of the Act if that party's interest:
- 22.6.1 Arises in relation to commercial interests related to the development of Kensington Park and/or any of the matters referred to in rules 3.1 or 11;
- 22.6.2 Is a commercial interest of the Developer or any related person or related company (as

that term is defined in the Companies Act 1993); or

22.6.3 Is ancillary to the development activities and objectives of the Developer.

22.7 **Appointment of Mediator.** An independent mediator will be appointed to act in a dispute between any Members and the Developer concerning the Developer's compliance with this Constitution when exercising its powers or performing its duties as the Principal Member if 51% or more of all Owners vote to appoint a mediator. The Members in question must promptly give full written particulars of the failure ("dispute") to the Principal Member, and the dispute will be referred to mediation. The mediation process is:

22.7.1 the parties will appoint a mediator and if they fail to agree the mediator will be appointed by the President of the New Zealand Law Society or the President's nominee;

22.7.2 the parties must co-operate with the mediator in an effort to resolve the dispute;

22.7.3 if the dispute is settled, the parties must sign a copy of the terms of settlement;

22.7.4 if the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease;

22.7.5 the cost of the mediator's fee and costs including travel, room hire, refreshments etc must be met as to half by the Association and as to half by the Principal Member;

22.7.6 the terms of settlement are binding on the parties; the terms of settlement may be tendered in evidence in any legal proceedings;

22.7.7 the parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator, during the mediation period are not admissible in any arbitration or legal proceedings.

## 23. Dispute Resolution

23.1 **Dispute:** Any dispute or difference which may arise between a Member, an officer and the Association concerning this Constitution or any act or thing to be done, suffered or omitted under this Constitution, or concerning the construction of this Constitution, including misconduct, any breach or likely breach of the Constitution, bylaws or the Act, the Association breaches, or is likely to breach, a duty under the Association's Constitution or bylaws or the Act, or damage to a Member's rights or interests as a Member shall be dealt with as set out in rules 23.2 to 23.12.

23.2 **Basis of Complaint:** A Member or an officer may make a complaint by giving to the Committee (or a complaints subcommittee) a notice in writing that:

23.2.1 states that the Member or officer is starting a procedure for resolving a dispute in accordance with the Association's Constitution;

23.2.2 sets out the allegation(s) to which the dispute relates and whom the allegation or allegations is or are against; and

23.2.3 sets out any other information or allegations reasonably required by the Association.

23.3 **Association may make Complaint:** 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:

23.3.1 states that the Association is starting a procedure for resolving a dispute in accordance with the Association's Constitution; and

23.3.2 sets out the allegation to which the dispute relates.

23.4 **Sufficient Detail:** 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.

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

23.6 **Fair manner:** Disputes must be dealt with under the Constitution in a fair, efficient and effective manner in accordance with the provisions of the Act.

23.7 **Right to be heard:** 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. If the Association makes a complaint the Association has a right to be heard before the complaint is resolved or any outcome is determined and an officer may exercise that right on behalf of the Association. 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:

- 23.7.1 They have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held);
  - 23.7.2 An oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing;
  - 23.7.3 An oral hearing (if any) is held before the decision maker; and
  - 23.7.4 The Member's, officer's or the Association's written or verbal statement or submissions (if any) are considered by the decision maker.
- 23.8 **Investigate:** The Association must, as soon as is reasonably practicable after receiving or becoming aware of a complaint made in accordance with its Constitution, ensure that the dispute is investigated and determined.
- 23.9 **Association may Determine not to Proceed:** Despite rule 23.7, the Association may decide not to proceed further with a complaint if:
- 23.9.1 The complaint is considered to be trivial;
  - 23.9.2 The complaint does not appear to disclose or involve any allegations of at least one the following kinds:
    - 23.9.2.1 That a Member or officer has engaged in material misconduct;
    - 23.9.2.2 That a Member, officer or the Association has materially breached, or is likely to materially breach, a duty under the Association's Constitution, the bylaws, or the Act; or
    - 23.9.2.3 That a Member's rights or interests, or Members' rights or interests generally have been materially damaged;
  - 23.9.3 The complaint appears to be without foundation or there is no apparent evidence to support it;
  - 23.9.4 The person who makes the complaint has an insignificant interest in the matter;
  - 23.9.5 The conduct, incident, event or issue giving rise to the complaint has already been investigated and dealt with under the Constitution; or
  - 23.9.6 There has been an undue delay in making the complaint.
- 23.10 **Refer to subcommittee:** The Association may refer a complaint to a subcommittee or an external person to investigate and report, or a subcommittee, an arbitral tribunal or an external person to investigate and make a decision. 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).
- 23.11 **No Conflict:** 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 impartial or able to consider the matter without a predetermined view.
- 23.12 **Minimum disruption:** 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, must consider and discuss whether a dispute may best be resolved through informal discussions, mediation, or a tikanga-based practice. Where mediation is agreed on, the parties will follow the procedure set out in rules 22.7.1 to 22.7.7.

## 24. General

- 24.1 **Dissolution.** The Association may be wound up in accordance with Section 208 of the Act. If upon the winding-up or dissolution of the Association there remains after the satisfaction of all its debts and liabilities any remaining property whatsoever, such property shall not be paid to or

distributed among the Members but shall be given or transferred to some other not-for-profit entity (within the meaning of section 5(3) of the Act), having objects similar to the purposes of the Association as nominated by the Committee or Chairperson.

- 24.2 **Alteration of Constitution.** This Constitution will not be amended, added to or rescinded except at an Annual General Meeting, or a general meeting convened for that purpose, and unless written notice of the proposed amendment, addition or rescission will have been given to all Members in accordance with this Constitution. Notwithstanding any other rule in this Constitution, this Constitution will not be amended, added to or rescinded without the prior written consent of the Principal Member (if there is one) or so as to alter, add to or rescind rules 4.1, 4.2, 7.1, 8, 9.1, 11.1, 13.2, 13.3, 14.4, 14.9, 17.1, 17.2, 17.3, 18, 19, and 24.2, or otherwise so as to detrimentally affect the rights of the Principal Member. The Members each irrevocably appoint the Principal Member their attorney for the purposes of signing any alteration, addition or rescission of rules pursuant section 30 of the Act.
- 24.3 **Alteration of Certain Rules.** Notwithstanding rule 24.2, rules 14.10 and 22.7 or any rule or part of a rule that would, if amended, have the effect of altering these rules so that a condition in the Exemption Notice would no longer be met must be approved by a Special Resolution (excluding the Developer and Principal Member) provided that rule 3.3 is not to be amended, added to or rescinded under any circumstances whatsoever.
- 24.4 **Introduction, Alteration or Cancellation of Bylaws.** If the Committee wishes to promulgate new Bylaws, or vary or cancel any Bylaws, the Bylaw will not be effective until it is approved by the Members by Special Resolution and the prior written consent of the Principal Member (if there is one).
- 24.5 **Acceptance by Registrar.** No such amendment, addition or rescission will be valid unless and until accepted by the Registrar.
- 24.6 **Liability of Members.** No Member will be under any liability in respect of any contract or other obligation made or incurred by the Association.
- 24.7 **Association to Indemnify.** The Association will indemnify and keep indemnified, to the extent of property owned by the Association:
- 24.7.1 each Member against any liability to any person other than the Association for any act or omission in their capacity as Member, except in respect of any liability:
    - 24.7.1.1 that is criminal liability; or
    - 24.7.1.2 that arises out of a failure to act in good faith and in what the Member believes to be the best interests of the Association when acting in their capacity as a Member of the Association.
  - 24.7.2 members of the Committee, and any other officers of the Association, from and against:
    - 24.7.2.1 liability to any person other than the Association for any act or omission in their capacity as a Committee Member and/or officer of the Association; and
    - 24.7.2.2 costs incurred in defending or settling any claim or proceeding relating to that liability,except in respect of any liability:
    - 24.7.2.3 that is criminal liability; or
    - 24.7.2.4 that arises out of a failure to act in good faith and in what the Committee member/officer believes to be the best interests of the Association when acting in their capacity as a Committee member/officer of the Association.
- 24.8 **Association authorised to indemnify.** For the purposes of section 98 of the Act, the Association is authorised to:
- 24.8.1 Indemnify each Committee Member and officer of the Association in respect of:
    - 24.8.1.1 liability (other than criminal liability) for a failure to comply with any duty imposed on them in their capacity as a Committee Member or officer by the Act, this constitution or otherwise;
    - 24.8.1.2 costs incurred by the Committee member/officer for any claim or proceeding relating to that liability.

- 24.8.2 Effect insurance for any Committee Member or officer for the liability and costs specified in rule 24.7.2 and/or 24.8.1.
- 24.9 **Action in Law.** No action in law or otherwise will lie in favour of any Member against any other Member or the Committee, or any Committee Member in respect of any act or omission pursuant to this Constitution. Nothing in this rule will prevent an action in respect of any loss or expense arising from the wilful default of the person against whom such action is taken.
- 24.10 **Member to Indemnify Association.** Each Member will indemnify and keep indemnified the Association from and against any action, claim, demand, loss, damage, cost, expense and liability which the Association may suffer or incur, or for which the Association may become liable, in respect of or arising from any breach of this Constitution or the Bylaws by the Member.
- 24.11 **Approval.** Where in this Constitution any reference is made to the approval or consent of the Association or the Principal Member:
- 24.11.1 Such approval or consent will be given at the sole discretion of the Association, or the Principal Member, as appropriate;
  - 24.11.2 No approval or consent given on any occasion by either of the Association or the Principal Member will serve as a precedent for, or be binding in any way with respect to, any future application for consent or approval; and
  - 24.11.3 Such reference will mean the prior written approval or consent of the Association or the Principal Member as appropriate.