

AMENDED CONSTITUTION
of
**Hobsonville
Point Residents
Society
Incorporated**

Daniel Deen
Member

J. Palmer
Member

J. Palmer
Member

Signed in the presence of:

G. Palmer
Witness Signature

Jodie Rahman
Witness Full Name

Secretary
Witness Occupation

525 Manukau Rd, Epsom.
Witness Address

Glaister Ennor
Barristers | Solicitors | Notary Public

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Name and Registered Office

- 1.1 **Name:** The name of the Society shall be Hobsonville Point Residents Society Incorporated.
- 1.2 **Registered office:** The registered office of the Society shall be care of Crokers Property Management Limited, 525 Manukau Road, Epsom, Auckland or such other place as the Committee shall nominate from time to time.

2 Definitions and Interpretation

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

"Act" means the Incorporated Societies Act 1908 and any amendment, consolidation or replacement.

"AGM" means an annual general meeting of the Members held pursuant to clause 10.1.

"Bank" means a registered bank as defined in the Reserve Bank of New Zealand Act 1989.

"Breach" means any act or omission that constitutes or causes a breach or default of this Constitution, the Society Rules, encumbrances in favour of the Society and/or its Members, the terms and conditions for the supply of any Services by the Society and/or any other arrangements between the Society and Members ancillary to or related to the use, enjoyment and occupation of Hobsonville Point.

"Business Association" means any society (incorporated or un-incorporated) whose purposes include (in part or whole) coordinating, controlling and managing the implementation, development and growth of businesses and commercial, industrial and retail space in Hobsonville Point in a way that creates a harmonious and functional commercial environment for the benefit of Members and Occupiers.

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

"Committee Duties" means the responsibilities of the Committee set out at Schedule 2.

"Common Areas" means any open areas of non-built upon land (but which may contain Facilities or Services) within Hobsonville Point, howsoever owned, and which the Society is required to maintain and/or manage or has agreed in writing to maintain and/or manage pursuant to Consents or other arrangements entered into by the Society with a Relevant Authority or any owner of any such land from time to time. For the avoidance of doubt, reserves, parks and other land within Hobsonville Point that have vested in a Relevant Authority remain the responsibility of that Relevant Authority, unless the Society has entered into maintenance and/or management arrangements.

"Consents" means all resource and building consents and approvals issued by the Relevant Authority for Hobsonville Point.

"Constitution" means this Constitution as amended or added to, including Schedule 2, Schedule 3 and Schedule 4 to this Constitution.

"Controlling Member" means Hobsonville Land Company Limited and its assigns.

"Default Interest " means interest accruing daily at an interest rate equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 plus 5% per annum set annually as at the commencement of the Expense Year.

"Design Guidelines" mean the guidelines for property development, presentation, variation, design and colour at Hobsonville Point set by the Controlling Member from time to time.

"Expense Year" means each 12 month period commencing on 1 September and ending on 31 August, or such other 12 month period as the Committee from time to time sets.

"Facilities" means the improvements, infrastructure for Services, conveniences and equipment owned, leased or licensed by the Society for the use and enjoyment of Members as permitted by the Society from time to time.

"Facilities Manager" means a manager appointed by the Committee pursuant to clause 9.2 from time to time (if any).

"Hobsonville Point" means the land and improvements thereon generally known as Hobsonville Point and shown outlined in red on the plan attached as Schedule 4 to this Constitution.

"Invitee" means any person invited by or any visitor to an Owner and/or Occupier.

"Land" means all of the land within Hobsonville Point.

"Land Covenants" means any covenants and easements registered on any Title to any Property.

"Laneways" means the shared access lanes (including but not limited to any landscaping, vegetation and improvements thereon) vested, maintained and/or managed by any Laneway Society from time to time.

"Laneway Society" means any society (incorporated or un-incorporated) whose purposes include (in part or whole) owning, maintaining, operating, repairing and/or controlling or monitoring use of shared laneways within Hobsonville Point.

"Long Term Maintenance Fund" means a fund established from time to time to meet the expenses anticipated by the Society's Long Term Maintenance Plan (if any).

"Long Term Maintenance Plan" means a 10-year plan for future works and improvements to Common Areas (where this is a Society responsibility), Facilities and Services at Hobsonville Point endorsed by the Society from time to time.

"Master Plan" means the Controlling Member's master plan for Hobsonville Point as developed by the Controlling Member and as updated from time to time.

"Member" means each person who shall from time to time be a Member of the Society, as required by clause 5 and the Controlling Member.

"Occupier" means any person occupying (permanently or temporarily) the whole or any part of any Property under any lease, tenancy agreement, licence or other occupancy right and shall include all members of an Owner or Occupier's family.

"Operating Expenses" means the total sum of any rates, taxes, costs and expenses of the Society properly assessed or assessable paid or payable or otherwise incurred in respect of

the Common Areas and the operation of the Society (including, without limitation, any expenses and remuneration payable to the Security and/or Facilities Manager (if any)) but shall exclude any amount payable as a Special Levy.

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

"Postal Vote" means a vote by a Member eligible to vote cast in legible writing (including but not limited to verifiable email or portal votes by authenticated users) in favour of or against a resolution of the **Society** received by the Secretary in the prescribed form at or 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 clause 11.5(e)).

"Property" means any dwelling for which a separate Title for a residential lot has issued within Hobsonville Point or any land for which a separate Title for a residential lot has issued upon which a dwelling is or will be completed and **"Properties"** means one or more of them.

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

"Relevant Authority" means Auckland Council (or any other statutory or local authority having jurisdiction over Hobsonville Point).

"Secretary" means the person appointed pursuant to clause 9.12 to carry out the duties of the Secretary, and where the context so requires means any individual appointed by the Secretary to provide services to the Society.

"Services" means any utilities, technology or other convenience services that may be offered by the Society to the Members from time to time.

"Society" means Hobsonville Point Residents Society Incorporated, society number 2543330.

"Society Rules" means rules and operating regulations promulgated by the Society. The Society Rules current at the date of this Constitution (but subject to amendment from time to time) are set out in Schedule 1 but do not form part of this Constitution.

"Special Levy" means a levy payable by a Member under clause 6.3.

"Special General Meeting" means a meeting of the Members held pursuant to clause 10.2.

"Special Resolution" means a resolution of the Society in general meeting passed by a majority of not less than 75% of such Members present in person or by proxy or by Postal Vote and entitled to vote.

"Title" means the computer freehold register issued for a Property.

"Working Day" means any day of the week, which shall be deemed to commence at 9.00am and to terminate at 5.00pm, other than:

- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday and Labour Day; and
- (b) A day in the period commencing on the 23rd day of December in any year and ending on the 5th day of January in the following year, both days inclusive; and

- (c) The day observed as the anniversary of any province in which an act is to be done.

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

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

3 **Purposes**

3.1 **Purposes:** The Society is formed to promote the following purposes for the benefit of Members:

- (a) to ensure Hobsonville Point is a strong community with good communication, engagement and respect between Members; and with regular opportunities for participation in community events, the Common Areas, Facilities and Services;
- (b) to ensure Hobsonville Point maintains its focus on sustainability;
- (c) to ensure Hobsonville Point and the Properties are kept to a high standard of repair, maintenance and appearance;
- (d) to ensure the proper control, operation, maintenance, repair, renovation and replacement of the Common Areas (where this is a Society responsibility), Facilities and Services by the levying of Members for the purpose of providing funds for and to meet the costs and expenses of such work;
- (e) the full and proper use of the Common Areas, Facilities and Services by Members;

- (f) to promulgate and actively enforce this Constitution, the Society Rules, encumbrances in favour of the Society and/or its Members, the terms and conditions for the supply of any Services by the Society and/or any other arrangements between the Society and Members ancillary to or related to the use, enjoyment and occupation of Hobsonville Point;
- (g) to maintain the Common Areas (where this is a Society responsibility), Facilities and Services generally as a safe, clean and well-presented environment as a whole;
- (h) to meet the Relevant Authority's requirements (if any) or any other agreed (in writing) obligations with relevant parties for maintaining Common Areas (where this is a Society responsibility), Facilities and Services;
- (i) to liaise and consult with the Laneway Societies and other societies that own land in Hobsonville Point to ensure an integrated management and maintenance plan for Hobsonville Point;
- (j) to liaise and consult with the Business Association to ensure the growth of businesses and commercial, industrial and retail space at Hobsonville Point is undertaken in a manner beneficial to and sensitive to the needs of Members, Occupiers and Invitees;
- (k) to comply with its financial recording and reporting obligations required by law and to maintain accounting records in accordance with accepted accounting practices and to maintain adequate funding through levying and Special Levies in order to meet both general expenditure and that anticipated by the Long Term Maintenance Fund;
- (l) when determined by the Society to be necessary and practically feasible from time to time, to establish, maintain and update a Long Term Maintenance Plan and supporting Long Term Maintenance Fund for future works and improvements to Common Areas (where this is a Society responsibility), Facilities and Services and to operate that fund generally pursuant to s.115 – s.120 of the Unit Titles Act 2010 (with such changes are necessary, required or implied by this Constitution);
- (m) where requested, agreed by the Society and practically feasible, to administer and manage on behalf of Laneway Societies those societies' purposes and activities
- (n) where requested, to assist with the resolution of disputes between societies whose purposes impact on Hobsonville Point;
- (o) to assist with funding the Society's purposes by entering into from time to time such marketing, sponsorship or advertising arrangements in respect of the Common Areas, Facilities and/or Services provided always the ambience, use and enjoyment of the Common Areas, Facilities and/or Services is not materially negatively impacted; and
- (p) to prevent and/or rectify Breaches;

AND the Society shall have power to do anything necessary to advance any of those purposes.

3.2 **No Pecuniary Gain**

3.2.1 The Society does not have any of the following as a purpose:

- (a) The pecuniary gain of Members, and (subject to clauses 3.5 and 13.1) no Member shall be entitled to receive any dividend out of any levy, fee, donation or other income or funds of the Society or benefit from Property value increases caused by specific expenditure (except value increases that are consequences of pursuance of other purposes that benefit Hobsonville Point generally); or
- (b) The improvement of specific Properties to the exclusion of others in Hobsonville Point (excepting aesthetic improvements that are consequences of pursuance of other purposes that benefit Hobsonville Point generally);
- (c) The carrying on of trading activities; or
- (d) The carrying on of business for profit.

3.2.2 The Society must not operate for the purpose of, or with the effect of:

- (a) Any Member of the Society deriving any personal monetary gain from membership of the Society, other than as may be permitted by law, or
- (b) Returning all or part of the surplus generated by its operations to Members, in money or in kind, or
- (c) Conferring any kind of ownership in the Society's assets on Members,

BUT the Society will not operate for the monetary gain of Members in breach of the Statute simply if the Society:

- (i) Trades on its own behalf,
- (ii) Provides a Member with payments that are incidental to the purposes of the Society, and that Member is a body corporate or trust that is prevented by its constitutional documents or deed from acting for the monetary gain of its members,
- (iii) Reimburses a Member for reasonable expenses legitimately incurred on behalf of the Society or while pursuing the Society's purposes,
- (iv) It provides benefits to the public some of whom may be Members or their families,
- (v) Provides a Member with salary, wages or other payment for services to the Society, so long as such payment is at arm's length and in accordance with normal commercial terms and does not include any profit share, percentage of revenue or other reward linked to gains made by the Society, or
- (vi) Provides a Member with incidental benefits such as prizes or discounts on products or services, provided that the purpose of the provision is in accordance with the purposes of the Society.

- 3.3 **Honoraria:** Despite any other provision in this constitution, Committee members, and members of its sub-committees:
- (a) May be offered such honoraria as may be approved by resolution of a General Meeting, and
 - (b) Shall be entitled to be reimbursed by the Society for any reasonable actual expenses incurred by them on behalf of the Society as approved by resolution of the Committee.
- 3.4 **Indemnity by Society:** The Society may indemnify Members and employees who act in good faith in seeking to advance the Society's activities, and may take insurance for the purposes of that indemnity.
- 3.5 **Ability to Contract:** A Member may enter into any agreement or understanding with the Society for the supply of any goods or services for such consideration and on such other terms and conditions as would be reasonable if that person were not a Member.

4 **Controlling Member**

- 4.1 The Controlling Member is currently undertaking, managing and guiding the development of Hobsonville Point. The Controlling Member shall offer information and advice to assist the Society and Members with resolving any development-related issues in an effective and timely manner, provided however that the Controlling Member shall be entitled to ensure that Society and Member activities (or omissions) do not impinge its development activities or have any other negative effect.
- 4.2 Having regard to clause 4.1, the Controlling Member shall:
- (a) be entitled to have (and will ensure that) a senior member of its management team is present at all Committee meetings and all general Society meetings;
 - (b) have the right to add matters to the agenda and speak to them at both forums;
 - (c) be promptly provided with full copies of Committee and Society agendas and meeting minutes;
 - (d) offer information and advice as it considers relevant or required;
 - (e) consult with the Committee on development-related issues as these arise from time to time; and
 - (f) discuss with the Committee operational concerns such as keeping the roads clean, tidiness, safety and ensuring construction noise levels and hours of work are within the boundaries set by the Relevant Authority.
- 4.3 Notwithstanding clause 4.2, the Controlling Member is not obliged by this clause to agree to do or not to do any matter or thing where it considers that such action or inaction may impinge on its development activities or have any other negative effect and further the Controlling Member may veto any resolution passed by the Society, but the Controlling Member shall not use its veto to:

- (a) prevent the Society from making legitimate complaints to the Controlling Member (as the developer of Hobsonville Point) where those complaints relate to operational matters such as cleanliness, tidiness, safety, noise and hours of work at Hobsonville Point; and/or
 - (b) prevent the Society from making legitimate complaints about material deviations from the Master Plan for Hobsonville Point where those have a materially negative impact on any Member's use, enjoyment or value of their Properties at Hobsonville Point.
- 4.4 Where the Society and Controlling Member disagree on any development-related issue or operational matter, the Controlling Member shall ensure that the Society's views are thoroughly considered and taken into account by the Controlling Member before making a final decision and shall ensure the Committee is kept appropriately informed.
- 4.5 Upon Hobsonville Point being fully completed (which shall be determined by the Controlling Member acting reasonably) the Controlling Member shall be deemed to have resigned as Controlling Member and thereafter there shall be no controlling member for this Society and this clause 4 shall have no further effect and the balance of references in this constitution to "Controlling Member" shall be ignored.

5 **Membership of Society**

- 5.1 **Owners to be Members:** Each Owner shall be a Member and only Owners can be Members, and for that purpose:
- (a) Encumbrances shall be noted against each Title in favour of the Society whereby each Owner encumbers his, her, or their title with covenants requiring them to become and remain a Member and to perform the obligations of a Member as set out in this Constitution. Each Member shall prior to transferring a Title procure the transferee to enter into, execute (electronically or otherwise) and deliver (electronically or otherwise) to the Society a Deed of Covenant in favour of the Society, wherein the transferee covenants to become contemporaneously with the transfer of the Title and remain a Member, and to observe and perform the obligations of a Member as set out in this Constitution. The Members and the Society agree to the Deed of Covenant being signed by one or both of them electronically, acknowledge that their electronic signatures shall be binding and valid and confirm that an electronic copy of the Deed of Covenant shall be deemed an original. The Deed of Covenant shall be in the form attached and prepared by the Secretary, and the transferring Member shall pay the reasonable legal fees and disbursements of the Society's solicitors (if any) in such matter.
 - (b) The transferring Member shall, at least five Working Days prior to settlement of such Title transfer, request from the Secretary a Deed of Covenant and certificate of indebtedness and the transferring Member shall pay such amount as required by such certificate including the Secretary's reasonable fee for providing such certificate.
 - (c) A Member shall be deemed to have resigned from the Society immediately upon that Member ceasing to be an Owner, provided that such resignation shall not relieve a person of any obligation or liability arising before that person ceased to be a Member.

- (d) Each Owner shall immediately upon becoming an Owner, (and thereafter as any details change), provide the Society with the details necessary for maintenance of the register of Members pursuant to clause 5.2, and shall upon entry of the details into the register, become a Member.

5.2 **Register of Members:** The Society shall maintain a register of Members recording:

- (a) For each Member: name, address, occupation, telephone numbers, email address and emergency contact details (and every Member shall advise the Society of any change in any of those details),
- (b) Membership: the date upon which each Member became a Member,
- (c) Voting: where there is more than one Owner registered on a Title, which of such Owners is entitled to vote in accordance with clause 11.1,
- (d) For each Member that is a corporation: name, contact person, telephone number and email address of the contact person who is the corporation's authorised representative (and every such corporation shall advise the Society of any change in any of those details), and that person shall be deemed to be the organisation's proxy for the purposes of clause 11 unless a different proxy is lodged for any Meeting pursuant to clause 11.3,

5.3 **Privacy:** Pursuant to the Privacy Act 1993, Members may request details of their information that is collected and held by the Society and may request that such information be updated or corrected. The Society shall utilise the information it collects on Members and Occupiers solely for the administration and enforcement of the rights and obligations of the Society and its Members pursuant to this Constitution and the Society Rules and for no other purposes. For the avoidance of doubt, the Society is permitted to share Member information with the Secretary. The Society shall use all reasonable endeavours to ensure the information kept on Members and Occupiers is securely stored.

To ensure personal and contact details are kept private, no Member shall be permitted to inspect the Membership Register. Where a Member wishes to communicate to all other Members, the Committee shall determine whether the requested communication is for necessary and proper Society Purposes, and if approved as such by the Committee, the Committee shall instruct the Secretary to make such communication (by such means as determined by the Secretary) to the Members on behalf of the requesting Member.

5.4 **Not Assignable:** The rights, privileges and obligations of a Member are not assignable.

5.5 **More than one Owner:** If there is more than one Owner registered on a Title, such Owners shall collectively constitute one Member.

5.6 **Owners of more than one Property:** Where an Owner or Owners are registered on the Title of more than one Property, such Owner or Owners shall be recognised and treated as a Member in respect of each such Property.

5.7 **Information for Members:** On reasonable notice and at reasonable times the Society shall:

- (a) Make available on its website (or otherwise make available for inspection) by Members copies of this Constitution and of any Society Rules,
- (b) Permit Members to inspect the interests register referred to in clause 9.11, and

- (c) Provide Members with access via its website (or otherwise make available for inspection) to the Financial Reports presented to the last Annual General Meeting and the minutes of previous Annual General Meetings.

6 **Obligations of Members**

6.1 **Covenants and Society Rules:** Each Member agrees to promptly and duly comply with this Constitution and any Society Rules made by the Society from time to time.

6.2 **Fees and Levies**

- (a) New Dwelling Levy – Each Member shall pay a \$300 New Dwelling Levy to the Society for every newly built Property purchased by the Member. This Levy is payable immediately upon the purchase of the Property, provided the levy has not already been paid in respect to that Property by a previous owner.
- (b) Member Levy – The Member Shall pay the annual levy established under clause (d)6.2(d) for the current year for that Property, with such amount for the first year apportioned from the date the Member becomes the Owner of a Property. Thereafter, each Member shall pay the levy established under clause 6.2(d) and any Special Levies for each year or part thereof they remain members.
- (c) Prior to or as soon as practicable following a resolution, by the Society or the Committee, passed in accordance with this Constitution and after the commencement of each Expense Year, the Society shall by written notice advise each Member of their share of Operating Expenses and Long Term Maintenance Fund contribution (if any) for that Expense Year ("Society's Estimate"), plus any such contingency sum as the Society may, in its sole discretion, fix.
- (d) Each Member shall pay, as an annual levy, an equal share of the Operating Expenses, Long Term Maintenance Fund (if any) and any contingency sum.
- (e) The levies shall be set annually or at such other intervals as the Committee may determine from time to time based on a budget provided by the Secretary for such purpose.
- (f) Each Member shall pay in each Expense Year their share applicable to that Expense Year by one payment due on or before the due date set by the Society at the AGM. Payment shall be made by each Member in the manner set by the Society from time to time.

6.3 **Special Levies:**

- 6.3.1 The Society may from time to time at a general meeting fix an additional levy payable by each Member at such times as are set by the Society, to be paid by each Member in addition to the Society's Estimate for that Member if necessary or expedient to meet material unforeseen maintenance or infrastructure repairs or other urgent and non-anticipated costs of any nature.
- 6.3.2 Nothing in this clause 6 prevents the Committee or the Society in accordance with this Constitution fixing additional levies or fees for additional services, activities or schemes as so resolved from time to time.

Breach of Obligations

- 6.4 **Occupiers and Invitees:** A reference to a Breach, act or omission by any Member shall include any Breach, act or omission by any mortgagee in possession of that Member's Property or the Occupier of a Property, the Invitees of such Occupier and the Invitees of such Member or the staff of a Member or Occupier, and the Member shall be responsible to the Society in respect of any such Breach, act or omission.
- 6.5 **Consequences:** Upon any Breach by a Member ("Offending Member"):
- (a) Where a Breach has occurred, the Offending Member shall make good that Breach.
 - (b) Where damage has been caused to the Common Areas, Facilities or Services, the Offending Member shall make good such damage.
 - (c) If such default continues for five Working Days after notice is given by the Society to the Offending Member to remedy the Breach or damage or reoccurs after such notice, the Society may:
 - (i) do anything, including paying money, necessary to remedy the Breach or damage; and/or
 - (ii) suspend access to Facilities, services or infrastructure to the Offending Member; and/or
 - (iii) impose a daily fine on the Offending Member as set by the Committee from time to time acting reasonably and having regard to the nature of the Breach.
 - (d) All money paid, fines imposed and expenses incurred by the Society (including any legal costs of the Society) in remedying, or attempting to remedy, any Breach or damage, or incurred in the exercise, or attempted exercise, or enforcement or attempted enforcement of any power, right or remedy of the Society in respect of such Breach, shall be a debt due from the Offending Member to the Society.
 - (e) If any money payable by an Offending Member to the Society is in arrears and unpaid for five Working Days (whether or not formal demand for payment has been made and without any formal demand being necessary) such money shall be payable on demand and shall bear interest at the Default Interest Rate, computed on a daily basis from the due date until the date of payment in full.

6.6 **Agreement to Mortgage:**

- 6.6.1 The Members each charge their Properties with the payment obligations recorded in clause 6.2, 6.3, 6.5(d) and/or 6.5(e) of this Constitution and shall forthwith on demand in writing by the Society execute in favour of Society a memorandum of mortgage (on the form reasonably required by the Society) to secure those payment obligations;
- 6.6.2 The Members each authorise the Society to lodge and maintain a caveat against the title to their Properties for the protection of that charge, obligation to execute the memorandum of mortgage and the payment obligations;

6.6.3 The Members agree this Constitution in itself constitutes an equitable mortgage and is capable of supporting a caveatable interest, following a demand made pursuant to clause 6.5(d) and/or 6.5(e) of this Constitution.

6.7 Sale of a Property

- (a) Where a Member ("the Seller") sells a Property:
 - (i) Notwithstanding any other clause in this Constitution, the Seller shall remain liable for sums owed to the Society by that Seller.
 - (ii) The Seller shall continue to be liable as a primary and principal debtor for all indebtedness of the purchaser of the Property to the Society until such time as a Deed of Covenant specified in clause 5.1(a) is received by the Society properly executed and all costs and fees due to the Society are paid.
 - (iii) The buyer of the Property shall be liable as a Member for any indebtedness of the Seller to the Society in respect of the Property purchased and a certificate issued by the Society showing the indebtedness of the Seller to the Society shall be conclusive as to the sum of this indebtedness.
- (b) The Society shall on application by a Member, or any person authorised in writing by such Member, provide the Member or authorised person with a statement of the indebtedness of the Member to the Society calculated to the date specified in the application. The statement shall show:
 - (i) the Society's estimate of levies for the current Expense Year during which the property is being sold;
 - (ii) the period covered by those levies;
 - (iii) the manner of payment of the levies;
 - (iv) the date/s upon which payments of levies are due;
 - (v) whether a levy, or part of a levy, due is unpaid and, if so, the amount of the unpaid levy; and
 - (vi) whether fines or legal action has been implemented in relation to any unpaid levy;
 - (vii) whether any levies or fees due to the Society for Services, activities or schemes are unpaid and, if so, the amount of unpaid charges;
 - (viii) whether any debt is due or fines imposed or legal action has been implemented in relation to a unremedied Breach by the seller; and
 - (ix) whether fines and/or Default Interest have been applied and remain unpaid and the rate at which fines and/or Default Interest continues to accrue on any money owing to the Society by the Seller.

6.8 Tenants, Occupiers and Invitees

- (a) Members are responsible for ensuring their Occupiers and Invitees comply at all times with the Constitution and the Society Rules. Breaches by Occupiers or Invitees are deemed to be Breaches made by the relevant Member. Breaches by Occupiers or Invitees are the Members liability and responsibility and the Society shall enforce any necessary remedial action against the Member and the Member is obligated to make good that Breach.
- (b) Members shall ensure a copy of this Constitution and the Society Rules is included in and attached to every tenancy agreement, lease, licence or other document defining occupancy rights and provisions must be included in every tenancy agreement, lease, licence or other document requiring the Occupiers and Invitees to comply with this Constitution and the Society Rules.
- (c) Each Member must take all reasonable steps including (but not limited to) enforcing the terms of any lease or tenancy agreement or other document defining occupancy rights to ensure Occupiers and Invitees comply with this Constitution and the Society Rules.
- (d) Subject to compliance with clause 6.8(a)-(c), the Society may grant Occupiers the right to use and enjoy the Common Areas, Facilities and Services in the stead of the Member.

7 Obligations of the Society

- 7.1 **Society Rules:** The Society shall promulgate, amend, actively enforce and distribute to Members from time to time rules and regulations in respect of the use and maintenance of the Common Areas, Facilities and Services (including any restrictions on use for security, maintenance or other reasons). The first such Society Rules shall be those rules attached as Schedule 1 to this Constitution.
- 7.2 **Maintenance & Repair:** The Society shall ensure the proper operation, maintenance and repair of the Common Areas (where this is a Society responsibility), Facilities and Services as may from time to time be necessary for:
 - (a) the reasonable use and enjoyment of the Common Areas, Facilities and Services by the Owners, Occupiers and Invitees; and
 - (b) to keep Hobsonville Point (including, but not limited to the Common Areas (where this is a Society responsibility), Facilities and Services) to a high standard of repair, maintenance and appearance.
- 7.3 **Long Term Maintenance Plan:** When determined by the Society to be necessary and practically feasible, the Society may establish and regularly maintain and update a Long Term Maintenance Plan which must cover a period of at least 10 years from the date of the plan or the last review. Its purposes shall be those set out in s.116(3) of the Unit Titles Act 2010 and it shall be operated generally pursuant to s.115 – s.120 of the Unit Titles Act 2010 (with such changes are necessary, required or implied by this Constitution). The Society may maintain an operating account for the purpose of collecting contributions and meeting the expenses of the Society's Long Term Maintenance Plan (if any).
- 7.4 **Insurance:** The Society shall effect and maintain any insurance as it considers prudent with respect to the Facilities, Services and the Society's affairs, and shall meet any costs of such insurance (which shall include any valuations and other professional fees required or

deemed desirable for the purposes of such insurance and the cost of certificates relating to such insurances) but excluding those improvements or affairs insured under the Bodies Corporate policies.

7.5 **Property Standards:** The Society shall promulgate, amend, actively enforce and distribute to Members from time to time the requirements for presentation of Properties within Hobsonville Point which shall include (but is not limited to) compliance with the Design Guidelines.

7.6 **Compliance:** The Society shall comply with:

- (a) the conditions of any Consents issued by any Relevant Authority;
- (b) any other proper requirements of the Relevant Authority; and
- (c) all statutes, regulations, ordinances and bylaws,

in respect of or affecting the Common Areas, Facilities, activities of the Society, operation of the Society and administration of the Society including those relating to public access.

For the avoidance of doubt, the Society's obligations extend only to Common Areas, Facilities and activities over which it has ownership, operational control or maintenance and management obligations and does not extend to assets vested in a Relevant Authority unless specifically agreed.

7.7 **Security:** The Society may install and maintain such security camera and monitoring equipment in the Common Areas and Facilities as the Society considers useful, beneficial and necessary from time to time for the purposes of securing and safeguarding the users and improvements therein.

7.8 **Services:** The Society may install and maintain useful, feasible and beneficial infrastructure and equipment in the Common Areas and Facilities (or elsewhere at Hobsonville Point) for the provision of services and utilities to Members and Occupiers from time to time. The Society shall determine (from time to time) the terms and conditions upon which Members and Occupiers may access and/or receive the benefit of such Services and that may include (but is not limited to) offering such Services on a "user-pays" basis.

7.9 **Financial Reports**

- (a) Financial statements and reports shall be prepared and distributed in accordance with best practice accounting principles so as to give Members a transparent and clear overview of the financial affairs of the Society and future expenditure commitments.
- (b) The Society shall ensure that financial statements of the Society are provided to Members on request and shall endeavour to make this available on the Society's website (for authenticated Members).
- (c) The Society shall have its financial statements audited or otherwise financially reviewed (as determined by the Society from time to time) annually unless this requirement is waived by Special Resolution.

8 **Limitations of the Society**

- 8.1 **No Indebtedness:** The Society shall not borrow any money except by Special Resolution.
- 8.2 **No Investments:** The Society shall hold all funds with a Bank and shall not invest those funds other than by deposit with such Bank, except by Special Resolution. All moneys paid to the Society by the Members shall only be applied for one or more of the activities referred to in clause 8.4.
- 8.3 **No Improper Use:** The Common Areas, Facilities and Services shall be used only for their proper purposes and the Members shall have the right to use the Common Areas, Facilities and Services only in accordance with the Society Rules and any other agreements or terms required by the Society from time to time.
- 8.4 **No Activities Except Permitted Activities:** The Society shall only be permitted to carry on one or more of the following activities and only in pursuit of its purposes as set out in clause 3:
- (a) Owning, leasing, licensing, maintaining, administering, renovating, improving, replacing and/or operating the Common Areas (where this is a Society responsibility), Facilities and Services;
 - (b) Issuing licences and access rights to Members to use the Common Areas, Facilities and Services and administering and enforcing those licences and access rights in accordance with the Society Rules (and any other agreements or terms imposed from time to time);
 - (c) Managing, administering and enforcing the Constitution and the Society Rules, including ensuring compliance with the Land Covenants and Consents in respect of any Common Areas, Facilities and Services, by all relevant parties and doing all things reasonably necessary to remedy/rectify Breaches;
 - (d) Employing and/or contracting with and/or delegating to such persons and professionals and such other actions and omissions as is proper and necessary to ensure lawful and correct performance of the Society's purposes (as set out in clause 3), duties and obligations (as set out in this Constitution including but not limited to clause 7);
 - (e) Any incidental activities that the Committee considers are beneficial for Members.
- 8.5 For the avoidance of doubt, it is recorded that:
- (a) the maintenance and upkeep of Common Areas owned and/or managed by other societies, the Relevant Authority or other third parties remain the responsibility of that other society, Relevant Authority or third party and not the Society;
 - (b) the building and services maintenance and upkeep for each Laneway Society remains the responsibility of that Laneway Society and not the Society;
 - (c) the building and landscaping maintenance and upkeep for each Property remains the responsibility of each Property Owner and not the Society;
 - (d) Property security, personal property security and personal security remain the responsibility of each Owner, Member, Occupier and Invitee; and

- (e) the building and service maintenance, upkeep and management for businesses and commercial, industrial and retail space remains the responsibility of owners and occupiers thereof and/or the Business Association (as the case may be).

OPERATION OF THE SOCIETY

9 Committee

- 9.1 **Duties and Powers:** The administration and management of the Society shall be vested in the Society in general meeting and, subject to any resolution of a General Meeting, shall be delegated to the Committee from the end of each Annual General Meeting until the end of the next Annual General Meeting. The Committee shall perform the Committee Duties and may exercise any powers, authority and discretions of the Society as permitted by this Constitution and do on its behalf all such acts as it deems necessary or expedient. The powers, authority and discretions as exercised by the Committee are subject always to any limitation which may from time to time be imposed by the Society.
- 9.2 **Delegation of Powers: to Subcommittee or Operations Manager:** The Committee may delegate (without relieving responsibility) by written notice any of the Committee Duties, powers or obligations to a subcommittee or committees consisting of such Member or Members of their body as they think fit or to an Operations Manager. Any subcommittees so formed or Operations Manager so appointed shall in the exercise of the powers so delegated conform to the directions of the Committee.
- 9.3 Any appointment of an Operations Manager shall be at the remuneration and on such terms and conditions as the Committee may agree with the Operations Manager from time to time.
- 9.4 The duties and responsibilities of the Operations Manager shall be determined, reviewed and updated by the Committee annually.
- 9.5 **Bank Accounts:** The Society shall establish bank accounts (the number and nature of which shall be determined by the Committee from time to time) with a Bank and may do so by delegating such matter to the Secretary. All payments from that account shall be approved by the Committee and shall be made:
 - (a) under the signature (electronic or otherwise) of two Committee Members; or
 - (b) by the Secretary with the Committee's prior approval; or
 - (c) by the Secretary within the then delegation range authorised by the Committee for permitted operational expenditure.
- 9.6 **Documents:** All documents and written announcements requiring execution on behalf of the Society must be signed in accordance with clause 9.17 of this Constitution.
- 9.7 **Composition of Committee:** The Committee shall include the following persons:
 - (a) A chairperson;
 - (b) A deputy chairperson; and
 - (c) A minimum of three general Committee Members and a maximum of seven as determined by the Committee prior to calling for nominations from time to time.

9.8 **Eligibility for Appointment to the Committee:** No person may stand for office on the Committee, and any person who is on the Committee shall cease to be a Committee member, if that person:

- (a) Is or becomes an undischarged bankrupt, or
- (b) Is prohibited from being an officer of an incorporated society under the Act, or
- (c) Is prohibited from being a director or taking part in the management of an incorporated or unincorporated body under the Companies Act 1993, the Securities Act 1978, the Securities Markets Act 1988, or the Takeovers Act 1993,
- (d) Is subject to a property order made under the Protection of Personal and Property Rights Act 1988, or
- (e) Is suffering from a mental disorder within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or
- (f) Is convicted of any offence for which a convicted person may be imprisoned, or
- (g) Is not or ceases to be a Member or the contact person under clause 5.2(d) of a Member that is a corporation.

9.9 **Election and Appointment to the Committee:** The Committee Members shall be appointed or elected as follows:

- (a) The Society shall actively encourage nominations for Committee Membership from differing geographic locations and housing typologies across Hobsonville Point to help ensure the perspectives and interests of various Members are represented on the Committee.
- (b) Written nominations for nominees which are agreed to by both the nominee and nominator (agreement may be communicated electronically or otherwise) (which may include representatives of corporations pursuant to clause 11.3), for consenting nominees shall be received by the Secretary not less than 10 Working Days before the date of the AGM.

For the avoidance of doubt, there shall be no nominations from the floor at the AGM unless there are insufficient valid nominations (in which case, see clause 9.9(d))

- (c) Not less than five Working Days before the date of the AGM the Secretary shall email or post to all Members a voting paper listing all nominees with no more than 500 words of information about each nominee as may be supplied to the Secretary by or on behalf of each nominee in support of their nomination.
- (d) If there are insufficient valid nominations having regard to the composition of the Committee required under clause 9.7:
 - (i) further nominations may be received by the floor at the AGM; and then
 - (ii) if insufficient valid nominations are still not received, the Chairperson may co-opt consenting Members; and then

- (iii) if insufficient valid nominations are still not received due to Members declinations, all previous Committee members shall be deemed validly nominated.
- (e) If the number of nominations is no greater than the number of committee positions available, no vote need be held and those nominees shall be appointed to the Committee, and if there are more valid nominations than is required having regard to the composition of the Committee required under clause 9.7 an election shall be held and the required number of nominees winning the most votes will be deemed elected.
- (f) Votes shall be cast in such manner as the chairperson of the AGM shall determine.
- (g) The Secretary and at least 1 other Member (who is not a nominee) designated by the chairperson of the AGM shall act as scrutineers for the counting of votes and retention of any voting papers.
- (h) In the event of any vote being tied the tie shall be resolved by the incoming Committee.
- (i) The Committee may co-opt any person to the Committee for a specific purpose, or for a limited period, or generally until the next Annual General Meeting.

9.10 Chairperson Appointment and Duties

- (a) From its membership, the Committee from time to time shall appoint, remove and replace a chairperson and deputy chairperson for such term as it sees fit. The chairperson shall chair Committee meetings, and in the chairperson's absence the deputy chairperson shall deputise for and otherwise exercise the powers of the chairperson set out in this Constitution.
- (b) The Committee and/or the chairperson may delegate duties of the chairperson to the deputy chairperson from time to time. References in this Constitution to the "chairperson" shall include the deputy chairperson where duties of the chairperson have been so delegated to the deputy chairperson.
- (c) In the case of a tie in votes by the Committee the chairperson may exercise a casting vote.
- (d) The chairperson shall undertake the duties recorded elsewhere in this Constitution and shall also be responsible for delegation of the Committee Duties to the Secretary, Committee Members or sub-committees or the Facilities Manager (if any) as deemed appropriate from time to time.

9.11 Financial interests of Committee members:

- (a) A Committee member shall be considered to have a financial interest (not being an interest only by virtue of being an Owner of Property within Hobsonville Point) in a matter if he or she:
 - (i) May derive a financial benefit from the matter, or
 - (ii) Is the spouse, partner, child, or parent of a person who may derive a financial benefit from the matter, or

- (iii) May have a financial interest in an entity to which the matter relates; or
 - (iv) Is a partner, director, officer, board member, or trustee of a person who may have a financial interest in an entity to which the matter relates, but excluding the following interests:
 - (v) Remote or insignificant interests of a nature that could not reasonably be regarded as likely to influence the Committee member when carrying out his or her responsibilities, and
 - (vi) An interest that the Committee member has in common with other Members as a result of membership of the Society.
- (b) Where any such financial interest in a matter has been disclosed:
- (i) That Committee member must not vote in any decision on the matter, but that person can be present at the time of the decision and can contribute to the discussion leading to the decision, but
 - (ii) The Committee may, where it considers it appropriate, exclude that person from any further discussion or involvement with the matter, but
 - (iii) The person who is prevented from voting on a matter because he or she has a financial interest in it may continue to be counted as part of the quorum of the Committee, and
 - (iv) Where 50 per cent or more of those forming the Committee's quorum are prevented from voting on the matter because they have disclosed a financial interest, then the remaining Committee members must call a Special General Meeting to determine the matter.

9.12 **Duties of Secretary:** The Committee shall appoint, remove and replace a Secretary from time to time to carry out such of the Committee Duties as the Committee shall see fit, the first Secretary being Crockers Property Management Limited. The Secretary shall be a qualified administrator and shall not be a Member of the Society. Such appointment shall be for the term, at the remuneration and on such terms and conditions as the Committee may agree with the Secretary from time to time.

9.13 Committee Members

- (a) A Committee member shall (subject in the case of co-opted Committee members to the earlier expiration of any term established under clause 9.9(i)) hold his or her position for two years at which time they must stand down but may choose to seek re-election.
- (b) The Committee takes office at the conclusion of the AGM.
- (c) To ensure rotation of Committee members as well as to give continuity of the Committee, half the elected Committee members terms shall end at the AGM each year (with those positions to be replaced by way of an election), with the other half remaining on the committee for a further year.
 - (i) The current Committee can extend the term of a sitting Committee member for one year for the purposes of 9.9(d)(iii).
- (d) A Committee member cannot be a paid employee or paid contractor of the Society.
- (e) A Committee member will cease to be a member of the Committee:

- (i) Following the receipt by the Committee of the Committee member's written and signed resignation letter;
 - (ii) From the date of removal by the Society in a General Meeting;
 - (iii) The date of the Committee member's cessation of membership of the Society;
 - (iv) After the absence from two Committee meetings without apology;
 - (v) If they become a paid employee or contractor of HPRS.
- (f) Once a Committee member has served two successive terms (four years) they must stand down for a minimum of one year before being eligible for nomination for election to another term.

9.14 **Indemnity for Committee:**

- (i) No Committee member shall be liable for the acts or defaults of any other Committee member or any consequential loss caused by such acts or defaults, unless caused by their own wilful default or by their own wilful acquiescence.
- (ii) The Committee and each Committee member shall be indemnified by the Society for all liabilities and costs incurred by them in the proper performance of their functions and duties, other than as a result of their own wilful default or by their own wilful acquiescence.

9.15 **Conduct of Meetings:** The Committee may meet together, adjourn or otherwise regulate its meeting and procedures for conducting its business as it thinks fit. A majority of the members of the Committee from time to time shall form a quorum for a Committee meeting. No business of the Committee shall be conducted at any time when less than a quorum is present at the same time and place. The Committee may meet at any time and the Secretary shall upon the request of the chairperson or not less than 50% of Committee members, convene a meeting of the Committee.

9.16 **Resolutions outside meetings:** Notwithstanding any contrary provision in this Constitution a resolution in writing signed by such of the Committee members as would constitute a quorum at a Committee meeting shall be as valid and effectual as if it had been passed at a meeting of the Committee duly convened and constituted. In addition, the Committee and any subcommittee may act by resolution approved in the course of a telephone or electronic conference call or through a written ballot conducted by email or mail.

9.17 **Seal:** The Committee shall obtain a common seal for the use of the Society and shall provide for its safe custody. The common seal shall not be used except by resolution of the Committee. Every instrument to which the common seal is affixed shall be signed by two members of the Committee or by the Secretary (after receiving appropriate delegation to do so), and it shall bind the Society to that instrument, agreement or deed. Notwithstanding the foregoing, while there is a Controlling Member, the Controlling Member's signature (with or without the common seal) shall bind the Society to the instrument, agreement or deed in question.

9.18 **Voting:** Resolutions of the Committee shall be passed by majority. Each Committee member shall be entitled to exercise one vote provided that the Secretary shall not be entitled to vote (the Secretary not being an elected Committee member).

- 9.19 **Validity of Committee's Actions:** All acts properly done by any meeting of the Committee or by any person acting as a Committee member notwithstanding that it may afterwards be discovered that there was some defect in the appointment or continuance in office of any such Committee member, shall be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Committee member.
- 9.20 **Committee Minutes and Records:** The Committee shall ensure that minutes are kept of the proceedings of any meetings and decisions of the Committee. The minutes of such meetings shall be accepted by the Committee as a correct and accurate record of the business transacted at such meeting without any further proof of the facts contained in such minutes. A secure electronic copy of the minutes will be held by the Committee for future reference for a minimum of 5 years.
- 9.21 **Member Access to Society Records:** A Member is entitled to access Society records as permitted under clause 5.7 and is entitled to access information the Society holds about that Member (but not about other Members) and is only entitled to other information as expressly permitted by resolution of the Committee from time to time (subject always to clause 5.3), but not otherwise.
- 9.22 **Member use of Society Property:** The Committee may decide what access or use Members may have to premises, facilities, equipment or other property owned, occupied or otherwise used by the Society, including any conditions of and fees for such access or use.
- 9.23 **Complaints against Committee Members:** Following any legitimate complaint about a Committee member ("legitimacy" being determined by the Committee) that person may be removed from the Committee by a resolution of the Committee or of a General Meeting (in either case, passed by a two-thirds majority of those present and voting, and after following the similar processes to those prescribed in clause 13.5(b)).
- 9.24 **Committee members' records:** Each Committee member shall within 10 Working Days of submitting a resignation or ceasing to hold office deliver to the Secretary all books, papers and other property of the Society possessed by such former Committee member.
- 9.25 **Registrar's contact person:** The Committee shall at its first meeting after each Annual General Meeting appoint one of their members to be the person whom the Registrar of Incorporated Societies can contact when needed, and that person must be at least 18 years of age and must at all times be resident in New Zealand, and that appointment and any change in that person's name or contact details shall be advised to the Registrar of Incorporated Societies within 20 working days after the appointment or any change has occurred or after the Society became aware of the change.

10 General Meetings

- 10.1 **Annual General Meeting:** In addition to any other meetings in that year the Society shall hold an AGM each year. Not more than 15 months shall elapse between the date of one AGM and that of the next. The Committee will determine the time and place of each year's AGM. The agenda and business of the AGM shall include:
- Minutes of the previous General Meeting(s),
 - Annual Report of the Committee,

- (c) Financial Reports for the most recent financial year,
 - (d) A summary of the nature and extent of any disclosures made by Committee members of financial interest in matters being considered by or affecting the Society, recorded since the previous Annual General Meeting (see clause 9.11),
 - (e) Election of the Committee in accordance with clause 9.9,
 - (f) Motions of which notice has been given, and
 - (g) General business.
- 10.2 **Special General Meetings:** A general meeting other than an AGM may be requested by the Committee or by written requisitions signed by not less than 10% of Members or by the Controlling Member. The secretary shall call a Special General Meeting within 10 Working Days of receiving an effective request. A Special General Meeting shall only consider and deal with the business specified in the Committee's request or the written requisition calling the Meeting.
- 10.3 **Notices of Motion by Members:** A Member wishing to give notice of any motion for consideration at the Annual General Meeting shall forward written notice of the same to the Secretary not less than 5 Working Days before the date of the Meeting. The Committee may consider all such notices of motion and may notify Members of its recommendations in respect of such notices of motion either before or at the Meeting.
- 10.4 **Powers of the Society General Meeting:** The Society in general meeting may, by resolution, exercise all powers, authorities and discretions of the Society notwithstanding that any such power, authority and discretion may have been delegated to the Committee and/or its officers by or pursuant to this Constitution.
- Notwithstanding any contrary provision in this Constitution a general resolution approved by Postal Vote by more 40% or more of Members entitled to vote, shall be as valid and effectual as if it had been passed at a general meeting of the Society duly convened and constituted.
- 10.5 **Notices for General Meetings:**
- (a) A notice of intention to hold an AGM of the Society shall be sent to every Member not less than 6 weeks before the date of such meeting. Such notice shall specify the date, time, venue and agenda for such meeting and shall invite Members to propose matters for discussion at the AGM and the timeframe for making such proposals. The Committee shall determine whether such proposals are necessary and proper for the Society's Purposes and as such should be added to the agenda.
 - (b) A notice of an AGM of the Society shall be sent to every Member not less than 2 weeks before the date of such meeting. Such notice shall specify the date, time, venue and agenda for such meeting. No substantive motions may be received from the floor. No business or notice of motion which is not specified shall be discussed or transacted at such meeting.
 - (c) In the case of a Special General Meeting such notice shall be given at least 1 week before the date of such meeting and shall specify all business and all notices of motions to be considered at such meeting. No substantive motions may be received

from the floor. No business or notice of motion which is not specified shall be discussed or transacted at such meeting.

- 10.6 **Failure to Give Notice:** The accidental omission to give notice or the non-receipt of such notice by any Member shall not invalidate the proceedings at any such meeting save that omission (howsoever arising) to give notice to the Controlling Member shall invalidate all proceedings and resolutions.
- 10.7 **The Chairperson:** The chairperson at any general meeting shall be:
 - (a) the chairperson of the Committee; or
 - (b) the deputy chairperson of the Committee; or
 - (c) a member of the Committee chosen by the Committee if the chairperson and deputy chairperson are unavailable or unwilling to take the chair; or
 - (d) some independent person appointed by resolution of the Committee.
- 10.8 **Adjournment:** If a quorum is not present within half an hour from the time appointed for the holding of a general meeting:
 - (a) in the case of a general meeting convened on requisition of Members, the meeting shall be abandoned; and
 - (b) in the case of any other general meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Committee shall determine (such date not to be later than 10 Working Days from the date of the adjourned meeting) and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall constitute a quorum.
- 10.9 **Quorum:** No business shall be transacted at any general meeting of the Society unless the quorum is "present" when a meeting proceeds to business. "Present" shall include present by any technological means which provides a Member with a reasonable opportunity to participate. Quorums shall be 10% of the members eligible to vote at general meetings, present in person or present by technology or by proxy or by online voting and the Controlling Member (if any).
- 10.10 **Adjourned Meetings:** No business other than that business which might have been transacted at the meeting from which the adjournment took place shall be transacted at any adjourned meeting. Members shall not be entitled to receive any notice in respect of adjourned meetings.

11 **Voting**

- 11.1 **One Member - One Vote:** At a general meeting of the Society each Member (not at that time being in Breach) shall be entitled to one vote for each Title of which that Member is a registered proprietor, which may be exercised either in person or by proxy. Where there is more than one Owner in respect of any Title and such Owners are collectively a Member pursuant to clause 5.6, only one such Owner shall be entitled to vote. In the absence of agreement between such Owners as to who shall exercise this vote, the Owner appearing first on the Title shall be entitled to exercise that vote. On the death of any Member and

pending the transfer of that Member's Title, the executor or trustee of that Member's estate shall be entitled to exercise that Member's vote.

- 11.2 **Controlling Member's Vote:** The Controlling Member (if there is one) shall be entitled to exercise a number of votes equal to one more than the number of Member's voting (by any means) at any Annual General Meeting or Special General Meeting or by Postal Vote.
 - 11.3 **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 (proxy) at any meeting of the Society, and the person so authorised shall be entitled to exercise the same powers of the corporation which that person represents as that corporation could exercise if it were an individual Member. References in this Constitution to a Member being present in person shall mean and include a representative appointed pursuant to clause 5.2(d) or this clause, and such person may also stand for election to the Committee.
 - 11.4 **Not Vote If Fees Unpaid or in Breach:** Unless all annual levies and other amounts (for example and without limitation: levies, fees, amounts payable for Services, costs for remedying Breaches or enforcement costs and Default Interest) that are from time to time payable by the Member to the Society have been paid in full and any Breaches have been remedied to the satisfaction of the Society the Member shall not be entitled to vote at any general meeting of the Society, whether in the Member's own right in person or by proxy for another person.
 - 11.5 **Voting at Meetings:** At any general meeting:
 - (a) A motion may be put to the vote by the chairperson.
 - (b) Resolutions put to the vote shall be decided on voices or a show of hands and shall include Postal Votes unless a poll (being one vote per Member eligible and present and counted and including Postal Votes) is demanded on or before declaration of the result of the voices or show of hands by:
 - (i) the chairperson of the meeting; or
 - (ii) at least 50% of the Members present in person or by proxy.
 - (c) A declaration by the chairperson that such motion has been carried or lost or an entry to that effect in the Society's minute book, shall be conclusive evidence of that fact without further proof of the number or proportion of votes recorded in favour of or against such resolution.
 - (d) A motion may be put to the vote prior to the meeting by Postal Vote, with Postal Votes cast being included in the count of votes on the motion at a general meeting or adjourned general meeting at which the motion is to be voted on (but Members' votes shall not be counted twice).
- Every Postal Vote must be in the form prescribed by the Secretary from time to time.
- (e) 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 will be counted in respect of that affected motion.

- (f) Resolutions shall be passed by a majority of votes except where Special Resolution is required by this Constitution.
 - (g) In the case of a tie in votes the chairperson may exercise a casting vote.
 - (h) A resolution passed by the required majority at any General Meeting binds all Members and, for the avoidance of doubt, it is binding irrespective of whether they were present at the General Meeting when the resolution was adopted, whether or not they voted or whether or not they voted against it.

11.6 **Good Faith Members:** Members shall in exercising any vote at any general meeting, or as a Committee Member, exercise such vote in good faith with a view to ensuring that all Members are treated equally by the Society and that each Member shall bear and pay that Members Proportion of all Operating Expenses and of all costs and expenses to be met by levies made by the Society under clauses 6.2 and 6.3 irrespective of whether any expenditure by the Society benefits all Members.

11.7 **Instruments Appointing Proxies:** The instrument appointing a proxy shall be in writing under the hand of the appointor or the appointor's attorney duly authorised in writing or, if the appointor is a corporation or body corporate either under seal or under the hand of an officer or attorney duly authorised. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A Member shall be entitled to instruct his or her proxy in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may vote as he or she thinks fit.

11.8 **Form of Proxy:** The instrument appointing a proxy may be in one of the following forms or in a common or usual form:

I of being a Member of Hobsonville Point Residents
Society Incorporated hereby appoint of failing him or
her of as my proxy to vote for me on my behalf at the
(annual) general meeting of Hobsonville Point Residents Society Incorporated to be held on
the day of and at any adjournment thereof.

My proxy is hereby authorised to use their discretion in determining my proxy votes.

Member

Signed this day of 20 .

OR

I of being a Member of Hobsonville Point Residents Society Incorporated hereby appoint of failing him or her of as my proxy to vote for me on my behalf at the (annual) general meeting of Hobsonville Point Residents Society Incorporated to be held on the day of and at any adjournment thereof.

My proxy is hereby authorised to vote in favour of/against the following resolutions:

[list]

And may use their discretion in the event resolutions are modified after the date of this proxy appointment.

Member

Signed this day of 20 .

- 11.9 **Notice of Proxy:** The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a solicitor-certified copy of that power or authority shall be deposited at the Society's registered office or at such other place within New Zealand as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named on the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll and in default the instrument of proxy shall not be treated as valid.
- 11.10 **Validity of Proxy:** A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed if no intimation in writing of such death, unsoundness of mind or revocation as aforesaid has been received by the Secretary at the registered office by the commencement of the meeting or adjourned meeting as which the instrument is issued.
- 11.11 **Objection to Proxy:** No objection shall be raised to the qualifications of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not disallowed at that meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairperson of the meeting whose decision shall be final and conclusive.
- 11.12 **Mentally Incapable Members:** A Member whose health practitioner has issued a certificate of mental incapacity pursuant to the Protection of Personal and Property Rights Act 1988 may vote only by such person as properly has the management of his or her estate or affairs and any such person may vote by attorney or by proxy.

12 Notices

- 12.1 **Notices to Members:** A notice required or authorised to be served, delivered, given or sent to any Member will be deemed to have been sufficiently served, delivered or sent if:
- (a) Delivered personally to the Member;
 - (b) Delivered to the address of the Member appearing in the Register of Members; or
 - (c) Transmitted to the Member's email address appearing in the Register of Members.
- 12.2 **Notice to the Society:** A notice required or authorised to be served, delivered, given or sent to the Society will be deemed to have been served, delivered, given or sent if:
- (a) Delivered personally to the Secretary;
 - (b) Delivered to the registered office; or
 - (c) Transmitted to the email address for the Secretary.
- 12.3 **Deemed receipt:** A notice sent pursuant to this clause shall be deemed to have been received by the addressee 10 days after posting or 48 hours after transmission (as the case may be).
- 12.4 **Notice to Controlling Member:** A notice required or authorised to be served, delivered, given or sent to the Controlling Member will be deemed to have been sufficiently served, delivered or sent if:
- (a) Delivered personally to the Controlling Member;
 - (b) Delivered to the registered office of the Controlling Member; or
- It is transmitted to the email address provided by the Controlling Member to the Secretary for the purposes of this clause.

GENERAL

13 General

- 13.1 **Dissolution:** The Society may be wound up in accordance with the Act. If permitted by the Act, upon winding up of the Society ownership of the Facilities and Common Areas and any other assets of the Society shall vest in the Members equally. If not permitted by the Act, the Committee shall nominate such other incorporated society or not-for-profit entity that consents to the Common Areas, Facilities and Services vesting in it or them.
- 13.2 **Alteration of Constitution**
- (a) This Constitution shall not be amended, added to or rescinded except by Special Resolution and unless written notice of the proposed amendment, addition or rescission shall have first been given to all Members in accordance with this Constitution.
 - (b) No clause, including this one, shall be amended, added to or rescinded except by Special Resolution.

13.3 **Liability of Member**

- (a) No Member shall be under any liability in respect of any contract or other obligation made or incurred by the Society.
- (b) The Society shall indemnify each Member against any liability properly incurred by such Member in respect of the affairs of the Society to the extent of property owned by the Society.
- (c) No action in law or otherwise shall lie in favour of any Member against any other Member or the committee or any Committee member in respect of any act or omission pursuant to this Constitution.
- (d) Nothing in this clause shall prevent an action in respect of any loss or expense arising from the wilful default of any person against whom such action is taken.

13.4 **Indemnity:** Each Member shall indemnify and keep indemnified the Society from and against any action, claim, demand, loss, damage, cost, expense and liability which the Society may suffer or incur or for which the Society may become liable in respect of or arising from any Breach by the Member.

13.5 **Dispute Resolution**

- (a) **Definition of Dispute or Difference:** A dispute or difference may arise in any of the following situations:
 - (i) In the event of a grievance arising, a Member raising a grievance must be able to provide evidence (oral or otherwise) satisfactory to the Committee of a significant negative effect on that Member, or on other Members in similar circumstances, or on all Members, or
 - (ii) In the event of a complaint arising, namely an allegation that the conduct or behaviour of any Member(s) has/have fallen short of expected standards of conduct for Society Members, and the complaint may allege a breach or failure to observe a specific Society rule, by-law or policy, and/or other misconduct likely to cause distress, embarrassment or concern to other Members or members of the public or tend to damage the reputation of the Society,

BUT the Society is not concerned with Members' conduct outside of or away from Society activities, unless there is some identifiable connection with the Society, its purposes, and/or the reputation of the Society may be affected.

- (b) **Requirements of Natural Justice:** In the event that any dispute or difference arises in any way arising out of or in connection with the Constitution, the Society Rules, the alleged misconduct of Members, the alleged misconduct of Committee members, complaints, or grievances brought by Members:
 - (i) The Member or Members or the Society involved or implicated in the dispute or difference must be advised of all details of the dispute or difference,
 - (ii) The Member or Members or the Society which is the subject of the dispute or difference must be given an adequate time to prepare for discussions, mediation or arbitration,
 - (iii) All those who or which are involved in the dispute or difference must be given an adequate opportunity to be heard during discussions, mediation or arbitration, and if the dispute or difference proceeds to arbitration to be heard either in writing or at an oral hearing if the arbitrator considers that an oral hearing is required, and
 - (iv) In any arbitration any written statements or submissions shall be considered by the arbitrator.
- (c) **Good Faith Discussions:** Initially, the parties shall enter into discussions in good faith with a view to resolving the dispute or difference amicably as soon as practicable, and
 - (i) Independent experts or witnesses may be called to assist in these discussions where the parties agree that will assist (costs to be shared equally), and
 - (ii) Either party may terminate these discussions at any time.
- (d) **Notice of Mediation:** If any dispute or difference arises in any way out of or in connection with this Constitution, the Society Rules, the alleged misconduct of Members, the alleged misconduct of Committee members, or grievances brought by Members and such dispute has not been resolved within 15 Working Days of the commencement of discussions pursuant to clause 13.5(c), either party may give written notice of its intention to refer such dispute or difference to mediation.
- (e) **Agreement to Mediate:** If a request to mediate is made then the parties shall endeavour to agree on a mediator and shall submit the matter in dispute to the mediator. The mediator shall discuss the matter with the parties (separately or jointly in the discretion of the mediator) and endeavour to resolve it by their agreement. All discussions in the mediation shall be without prejudice and shall not be referred to in any later proceedings. The parties shall bear their own costs in the mediation and shall each pay half of the costs of the mediator.
- (f) **Design Guidelines Disputes:** Any dispute relating to the Design Guidelines shall require the appointment of an independent urban design professional familiar with the Design Guidelines to be in attendance and to provide advice on the dispute at the outset, make submissions on the dispute when he/she considers this necessary during discussions or mediation and provide further advice at the request of either party or the mediator thereafter.

The costs of the urban design professional shall be shared equally between the parties unless otherwise determined by the mediator. The urban design professional shall be

agreed upon by the parties and in the absence of agreement shall be appointed by the New Zealand Planning Institute.

13.6 **Arbitration:** If:

- (a) **No Resolution by Discussions:** If the dispute has not been resolved by the discussions of the parties pursuant to clause 13.5(c): or
- (b) **No Mediation Notice:** the parties have agreed upon mediation but have been unable within 10 Working Days of such agreement to agree upon a mediator; or
- (c) **No Agreement:** no agreement has been reached in mediation within one month of the service of the notice of mediation, or within such further time as the parties may agree; then the matter in dispute may be referred to arbitration upon the service of a notice of intention to commence arbitration which shall be governed by the Arbitration Act 1996 except to the extent modified by this agreement.
- (d) **Arbitrator:** The arbitration shall be by a single arbitrator. If the parties cannot agree upon an arbitrator within 10 Working Days of service of the notice of intention to commence arbitration either party may request the President of the Arbitrators and Mediators Institute of New Zealand Inc. to appoint a sole arbitrator. Either party may request the appointment of an assessor to sit with the arbitrator but any such assessor shall have an advisory role only and shall not have the authority to make a binding decision. If the parties cannot agree upon an assessor in a reasonable time then the arbitrator may appoint an assessor. Each party shall meet its own costs in preparing and attending for arbitration. The costs of the arbitrator shall be shared equally between the parties unless otherwise determined by the arbitrator.

SCHEDULE 1

SOCIETY RULES AS AT October 2015

*These are the **Society Rules** of the **Society** as at October 2015. The **Society** may change these **Society Rules** and will distribute any such revisions to **Members** from time to time. Please contact the Secretary to request a copy of the current **Society Rules**.*

It is noted that these Rules apply to Members, any Occupiers of Members' Properties and their Invitees.

1 Conduct and Noise

- 1.1 No Member shall use or permit to be used a Developed Property in manner that breaches local body regulations.
- 1.2 No Member shall make or permit any noise within Hobsonville Point which exceeds the noise control levels set by the local authority or such levels as may be set by the Committee from time to time, nor any other medium (i.e. lighting) that causes annoyance and/or nuisance to neighbours.
- 1.3 Members must take reasonable steps to ensure that external alarms do not cause a nuisance to neighbours, such as monitoring by a professional company or a neighbour.
- 1.4 No Member shall use or discharge any projectile fireworks of any kind on a developed Property or do anything which may create a fire hazard or contravene fire regulations.
- 1.5 No Member shall dispose of any rubbish except via the service provided by the local authority or by independent contractors. For the avoidance of doubt Members are permitted to take their rubbish off site for disposal, for example at a local recycling centre or landfill.

2 Members' residences

- 2.1 Each Member shall have the duty to keep their Property/ies and all improvements to those properties (including all fences) in a well maintained and attractive condition and shall not permit the accumulation thereon of unsightly rubbish or materials or in any other way permit the appearance of a Property to detract from the general standards established for Hobsonville Point.
- 2.2 Without limiting the generality of the foregoing, Members shall arrange for regular cutting of grass areas, and pruning of trees, removal of weeds and rubbish and the repair and maintenance of all buildings, driveways, footpaths and landscaping features upon the Member's Property.
- 2.3 No Member shall use or permit to be used a Developed Property for any purpose other than for a purpose permitted under current local body planning requirements.
- 2.4 No Member shall erect any notice or sign on a Developed other than as permitted under current local body planning requirements and the relevant Design Guidelines applicable to that Property.
- 2.5 No Member shall be entitled to undertake any house alterations or landscaping (including fencing) of their Developed Property otherwise than in accordance with the then current

design guidelines applicable to that Property and as prescribed by current local body regulations.

2.6 Members shall ensure that unless specifically approved by the Residents Society Committee:

- No changes are made to the exterior appearance of the property including building materials, paint colours, garage doors, fences, etc. For the avoidance of doubt, it is noted that landscaping in the rear yard in conjunction with local council regulations and the design guideline are permitted; and
- Additional pavers, concrete, decking or similar materials are not laid in the front yard.
- That existing landscaped planting zones remain planted and are not removed.
- Permanent or temporary structures including sheds, tents or caravans are not constructed or placed in the front yard; and
- Air-conditioning, heat pump units or gas bottles are not visible from a street or pathway, unless adequately screened; and
- Aerials and satellite dishes are installed to minimise visibility from the street as much as practicable; and
- Temporary window coverings may only be installed on windows and doors for a period of up to 6 weeks from the date of occupation; and
- Rubbish and recycling bins are stored in the appropriate places out of view from the street or in designated rubbish bin storage; and
- All permanent and temporary washing lines as much as practicable are not visible from a street, right of way or pathway.

3 **Vehicles**

3.1 Members shall

- Not store or park on the front yard vehicles, equipment (including boats and trailers), machinery or rubbish; and
- Not leave any immobile or broken down vehicles on any roads, reserves, front yards, Laneways or driveways; and
- Ensure all vehicles are parked either in the garage/carport, on the privately owned driveway (not being a Laneway) without protruding onto the footpath, or in designated parking bays.

SCHEDULE 2

COMMITTEE DUTIES

- (a) Overseeing operation of the Society;
- (b) Ensuring the Society Rules are followed;
- (c) Maintaining a general understanding of the Hobsonville Point site status;
- (d) Liaising with the Controlling Member;
- (e) Ensuring equal treatment of Members, Occupiers and Invitees in enforcement undertakings;
- (f) Organising community events and activities;
- (g) Implementing activities anticipated by the annual budget;
- (h) Liaising with societies, stakeholders and interest groups whose purposes impact on Hobsonville Point;
- (i) Implementing all compliance programmes/activities/policies as required by clause 7.6.;
- (j) Communicating with Members;
- (k) Maintaining the register of Members;
- (l) Preparing all documentation requested by Members selling a Property and obtain Deeds of Covenant from new Owners;
- (m) Convening general and committee meetings and arranging agenda items;
- (n) Preparing the annual report;
- (o) For each AGM, presenting the annual report, financial statements, disclosure of interests and minutes from the last AGM together with any other information required by the Act;
- (p) Acting as spokesperson for the Society;
- (q) Receiving and replying to correspondence;
- (r) Keeping minutes at all general meetings and Committee meetings, making these available to Members on request (and/or via any website) and entering into the minute book:
 - (i) The time, date and venue of such meeting; and
 - (ii) All business considered and resolutions passed at such meeting;
- (s) Holding in safe custody the common seal of the Society;

- (t) Operating and maintaining current bank accounts in the name of the Society;
- (u) Arranging all insurances for the Society;
- (v) Paying accounts properly incurred by or on behalf of the Society;
- (w) Recording any Member who fails to pay annual levies or additional fees within the prescribed period and managing any other debtors of the Society;
- (x) Keeping all financial and other records and any security documents in safe custody;
- (y) Compiling proper accounting records from time to time as required by the Act which give a true, fair and complete account of the financial affairs and transactions of the Society;
- (z) Compiling the financial statements immediately following each financial year as required by the Act and if required providing for the auditing of those records and the distribution of the audited financial statements to Members;
- (aa) Maintaining the Register of Disclosures for all Committee Members as required by clause 9.11, and actively requesting disclosure of all actual or potential conflicts of interest from Committee Members;
- (bb) Advising the Registrar of any changes in the Society's contact person under clause 9.25 and of any changes to the Constitution; and
- (cc) General administrative duties.

SCHEDULE 3

DEED OF COVENANT

Dated

2015

Parties

[Registered Proprietor]

Registered Proprietor

Hobsonville Point Residents Society Incorporated

Society

Deed of Covenant

*In respect of Lot [Lot Number] DP [DP Number] (Certificate of Title
[CT Number])*

Glaister Ennor
Barristers | Solicitors | Notary Public

Deed Dated

Parties

- 1 [Purchaser's Name] ("Purchaser")
- 2 **Hobsonville Point Residents Society Incorporated** ("Society")

Background

- A The Purchaser is to become the registered proprietor of the property at Hobsonville Point described as being Lot [Lot Number] DP [DP Number] containing more or less [Size]m² in Certificate of Title [CT Number] (North Auckland Registry) ("Property").
- B The Encumbrance registered against the title to the Property in favour of Hobsonville Point Residents Society Incorporated ("Society") provided, inter alia, that:
- (a) A covenant that each registered proprietor covenants to become and remain a member and perform the obligations of a member as set out in the constitution of the Society. Each member shall, prior to settling of the sale of a property at Hobsonville Point, procure the Purchaser to enter into, execute and deliver to the Society a Deed of Covenant in favour of the Society wherein the Purchaser covenants 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 the constitution of the Society. The Deed of Covenant shall be prepared by the solicitors for the Society and the selling member shall pay the reasonable legal fees and disbursements of the Society's solicitors.
 - (b) A member shall be deemed to have resigned from the Society immediately that member is no longer an registered proprietor of property at Hobsonville Point, provided that such resignation shall not relieve a person of any obligation or liability arising before that person ceased to be a member.
 - (c) Each Purchaser shall immediately upon becoming a registered proprietor of property at Hobsonville Point (and thereafter if any details change) provide the Society with the details necessary for maintenance of the register of members and shall upon entry of the details into the register, become a member.
- C. The Encumbrance registered against the title to the Property provides inter alia that the Purchaser as the Encumbrancer covenants for itself and its successors in title with the Society as the Encumbrancee during the term of the Encumbrance that upon becoming the registered proprietor of the Property to join as a member of the Society and remain a member while owning the Property and fulfil and continue to fulfil the obligations of the member as set out in the constitution of the Society, including, if required by the Society, ensuring that: any transferee of the Property executes a Deed of Covenant in favour of the Society agreeing to be bound by the constitution as a member of the Society.

The Purchaser Agrees:

- 1 The Purchaser hereby agrees to be a member of the Society and acknowledges and confirms the provisions of the Constitution and the Encumbrance and agrees to be bound by and comply with the same. Without limitation, the Purchaser shall upon selling the Property procure the transferee, as a precondition of sale, to enter into a similar deed of covenant with the Society as set out herein.

SIGNED by
Registered Proprietor

[Registered Proprietor's Name]

in the presence of:

Witness Signature

Witness Name

Occupation

Address

Information for Register of Member of Hobsonville Point Residents Society Incorporated

1 Member's Details:

Name:

Address:

Occupation:

Telephone/Fax No's:

Residential:

Work:

Email:

Date of membership:

Party authorised to exercise member's vote:

Mortgage:

Contact Person:

Telephone/Fax No's:

2 Emergency Contact of Member:

Name:

Address:

Occupation:

Telephone/Fax No's:

Residential:

Work:

Email:

3 Occupier's Details:

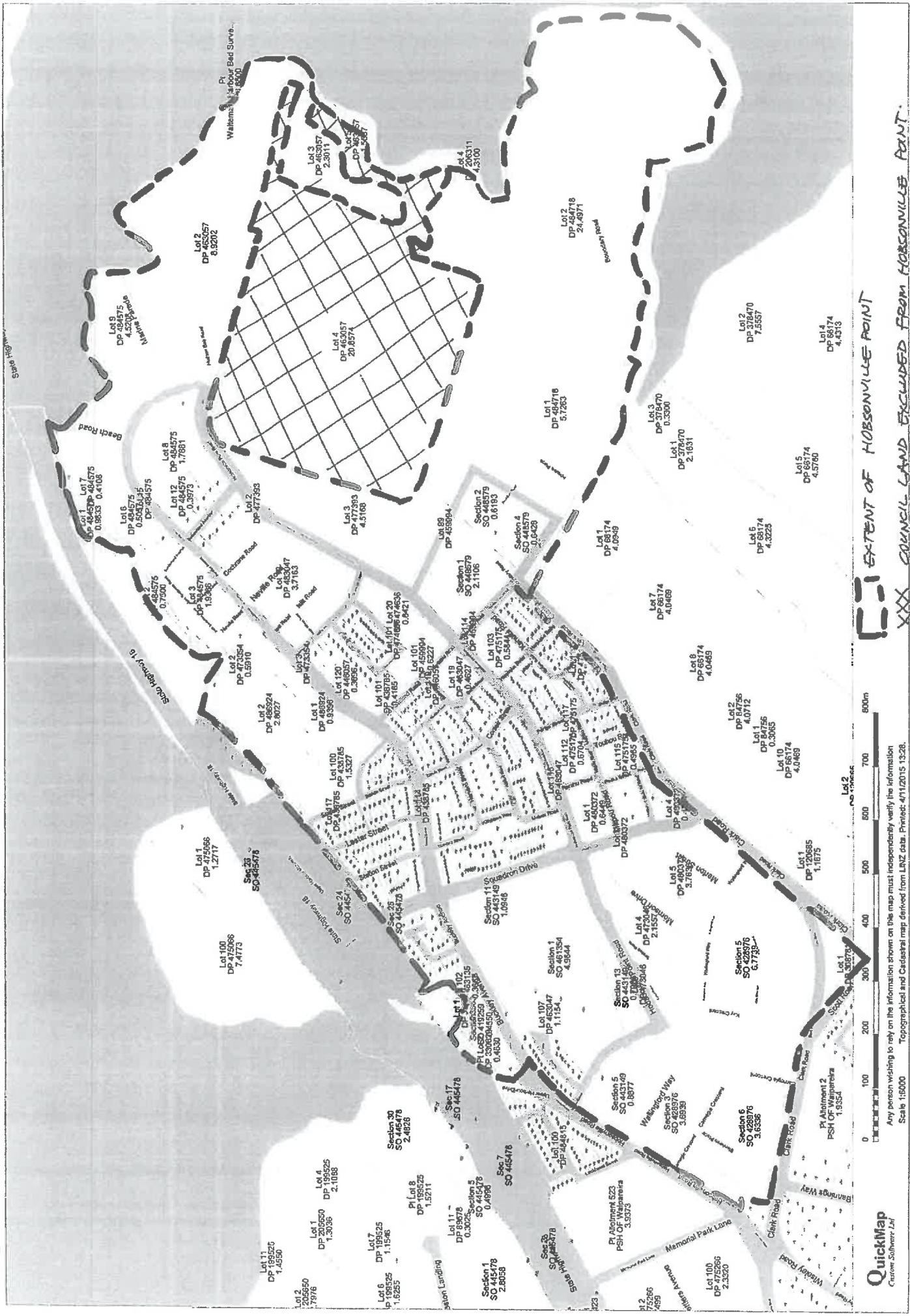
Name:

Address:

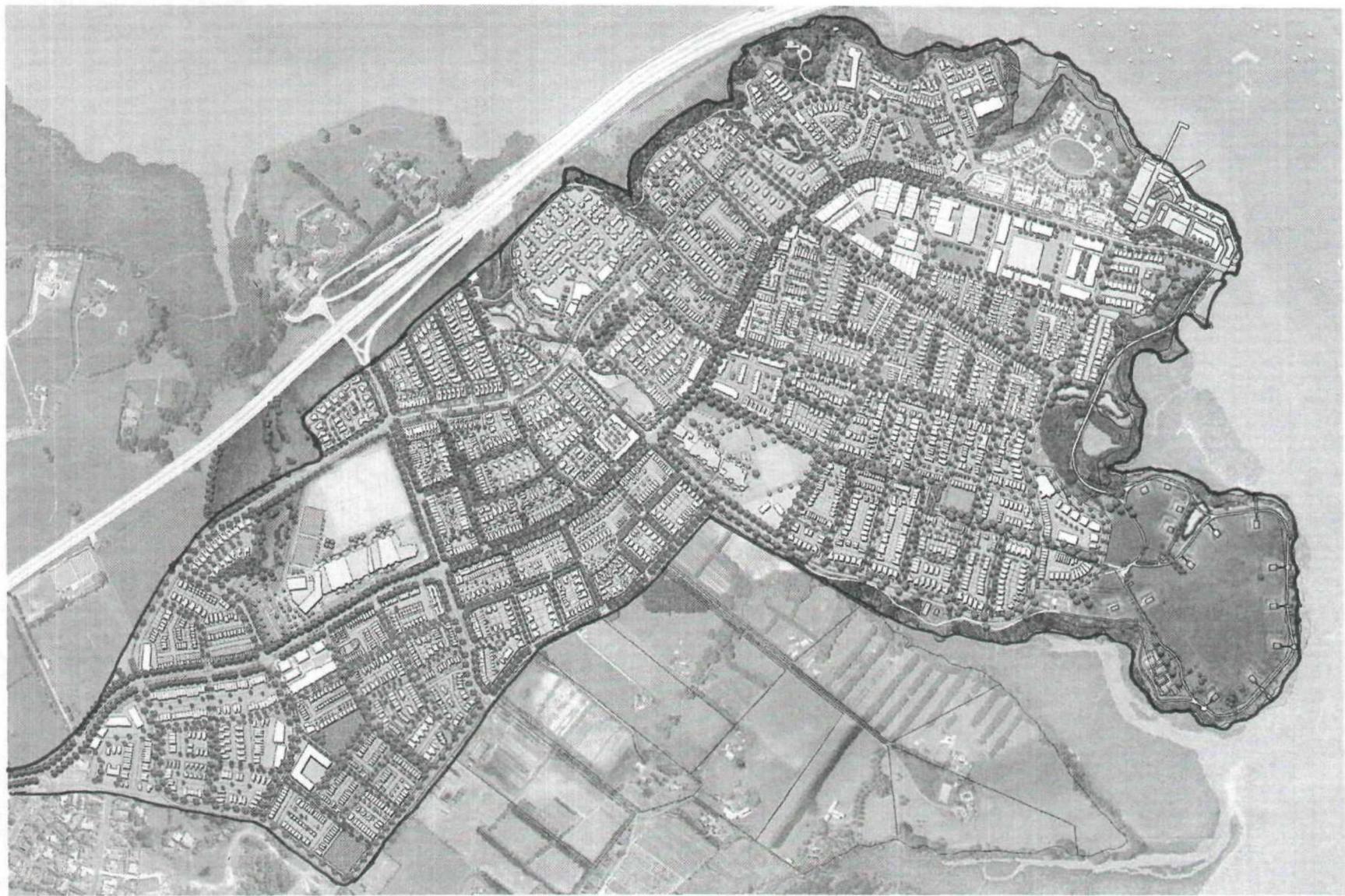
Occupation:

SCHEDULE 4

MAP OF HOBSONVILLE POINT



HOBSONVILLE POINT ILLUSTRATIVE CONCEPT PLAN



March 2017 DRAFT
SCALE 1:2500 @ A0, 1:5000 @ A2

Note: Plan is indicative/illustrative only and is subject to change



HOBSONVILLEPOINT
Moments away, a world apart.