

CONSTITUTION OF OMAHA BEACH RESIDENTS SOCIETY INCORPORATED

INTRODUCTION

1. NAME

- 1.1 **Name of Society:** The name of the Society is *“Omaha Beach Residents Society Incorporated”*

2. DEFINITIONS AND INTERPRETATION

- 2.1 Definitions: In these rules, unless the context otherwise requires:

“**Act**” means the Incorporated Societies Act 2022 and any regulations made under the Act or under any Act which replaces it.

“**Annual Levy**” means the annual levy payable by each Member in accordance with rule 6.3.

“**Auckland Unitary Plan**” means the Auckland Unitary Plan or any successor plan which controls use and development of the Precinct.

“**Bank**” means a bank registered under the Reserve Bank of New Zealand Act 2021.

“**Bylaws**” means the bylaws of the Society from time to time in force under rule 9.1.

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

“**Committee**” means the committee members from time to time elected to manage the affairs of the Society pursuant to the Constitution.

“**Communal Facilities**” means all land, buildings, plant, equipment, facilities and amenities including any private roads and walkways within the Precinct owned, leased, licensed or otherwise held or operated by the Society (as the Society may determine) from time to time, or any of them, as the context may require.

“**Constitution**” means this Constitution as amended or added to, including the schedule.

“**Default Interest Rate**” means four percentage points above the Society’s banker’s prime business overdraft rate applicable during the continuance of the relevant default.

“**Design Control Committee**” means the committee members from time to time appointed under rule 15.1 to consider design approval applications by Members.

“**Design Guidelines**” means the design guidelines published by the Design Control Committee in respect of the Precinct or part thereof pursuant to rule 15.4.

“**Financial Year**” means each 12 month period commencing on 1 July in a year and ending on 30 June in the following year, or such other 12 month period as the Committee may from time to time specify.

“**Interest**” and “**Matter**” have the meaning given to those terms in section 62 of the Act.

“**Invitee**” means any invitee of, or any visitor to, an Owner or Occupier or mortgagee in possession of a Property.

“Land Covenants” means in respect of any Property the restrictive covenants in favour of the Society which are registered against the Owner’s Title to that Property.

“Manager” means the manager of the Society (if any), appointed under rule 12.1. Where no manager has been appointed, any reference to the “Manager” in this Constitution shall be deemed to be, where appropriate, a reference to the chairperson of the Committee.

“Member” means each person who is from time to time a member of the Society pursuant to rules 4.1 or 4.2.

“OBC” means Omaha Beach Community Incorporated.

“Occupier” means any person occupying a Property under any lease, licence or other occupancy right and shall include all members of an Owner’s immediate family.

“Officer” means, subject to the Act, any Committee member.

“Operating Expenses” means the total sum of all rates taxes, costs and expenses of the Society paid or payable, or otherwise incurred in respect of the Communal Facilities and the operation of the Society (including, without limitation, the management expenses and management fee of the Manager and any provision for any of the foregoing with the Committee considers necessary or desirable).

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

“Owner’s Title” means the registered legal title of an Owner in respect of the Owner’s Property.

“Precinct” means the part of the land at Omaha situated east of the causeway and south of Broadlands Drive generally known as Omaha South and including in particular the residential areas, the adjoining reserves and beach areas.

“Property” means property within the Precinct:

- (a) for which a separate registered legal title has issued; and
- (b) which has been fully developed as a residential property or which is a bare section available for such development.

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

“Society” means Omaha Beach Residents Society Incorporated.

“Special Levy” means a levy imposed on Members by the Committee under rule 6.2.

“Special Resolution” means a resolution of the Society in general meeting passed by a majority of not less than 75% of such Members as, being entitled to do so, vote in person or by proxy at such meeting.

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 shall include 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) References to rules are references to rules in this Constitution;
- (h) The table of contents, the section headings and clause headings have been inserted for convenience and a quick guide to the provisions of this Constitution and shall not form part of this Constitution or affect its interpretation in any way;
- (i) 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. OBJECTS AND PURPOSES

3.1 **General:** The society is formed to promote the following objects and purposes for the benefit of Members:

- (a) The ownership or control of the Communal Facilities by the Society for the benefit of Members.
- (b) The proper operation, maintenance, repair, renovation and replacement of the Communal Facilities, the proper landscaping of any area within the Precinct and the levying of Members for the purpose of providing funds for, and meeting the costs and expenses of, such work.
- (c) The full and proper use of the Communal Facilities by Members.

- (d) The control of the design of all improvements, buildings, dwellings, landscapes and works of every kind on any Property.
 - (e) The promulgation and enforcement of bylaws and covenants benefiting Members, any parts of the Precinct and the Precinct generally.
 - (f) Taking any action which may reasonably be expected to promote the health, safety, welfare, or well-being of the Members of the Society, whether of a recreational nature or otherwise.
- 3.2 **Pecuniary gain not to be an object:** The Society does not have as an object the pecuniary gain of Members, and no Member shall be entitled to receive any dividend out of any levy, fee, donation or other income or funds of the Society except on the dissolution of the Society in accordance with rule 16.1.
- 3.3 **Members may contract with Society:** A Member may enter into any agreement or understand 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.

MEMBERSHIP

4. MEMBERSHIP

- 4.1 **Members:** Subject to these rules, at the date of adoption of this Constitution by the Society the Members of the Society are the persons whose names appear in the register of Members on that date.
- 4.2 **Owners to be Members:** Each Owner shall be a Member, and only Owners shall be Members, and for that purpose:
- (a) **Membership encumbrance:** An encumbrance is or shall be noted against each Owner's Title in favour of the Society, whereby each Owner is bound to become and remain a Member, and to perform the obligations of a Member as set out in this Constitution.
 - (b) **Deed of covenant on assignment:** Each Member shall, prior to settling the sale of a Property, 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 a Member contemporaneously with the transfer of the Property, and so long as that Member remains Owner of that Property, to remain a Member and observe and perform the obligations of a Member as set out in this Constitution (including the payment of levies to the Society). The deed of covenant will also include a provision under which the transferee of the Property consents to becoming a member of OBC as set out in clause 17 of this Constitution. The deed of covenant shall be prepared by the solicitors for the Society, and the selling Member shall pay reasonable legal fees and disbursements of the Society's solicitors.
 - (c) **Deemed resignation:** A Member shall be deemed to have resigned from the Society immediately that Member is no longer an Owner, provide that such resignation shall not relieve a person of any obligation or liability arising before that person ceased to be a Member.
 - (d) **New Owner to provide details:** 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 rule 4.3, and shall upon entry of the details in the register, become a Member.

- 4.3 **Register of Members:** The Society shall maintain a register of Members recording:
- (a) **For each Member:** the name, address, occupation, telephone number and email address (at home and at work) and similar details for a third party to be contacted in the event of absence or emergency.
 - (b) **For Occupiers:** where particulars have been given to the Society under rule 8.1, the name, address, occupation, telephone number and email address (at home and at work) and similar details for a third party to be contacted in the event of absence or emergency.
 - (c) **Membership:** the date upon which each Member became a Member (if there is no record of the date they joined, this date will be recorded as 'Unknown'), along with (if held) a copy of the Member's signed application and consent form.
 - (d) **Mortgagee:** the name, contact person, telephone number and facsimile number of any person holding a mortgagee over the Member's Property.
- 4.4 **No notice of trust:** No notice of trust express, implied or constructive shall be entered on the register of Members.
- 4.5 **Membership not assignable:** The rights, privileges and obligations of a Member are not assignable.
- 4.6 **More than one Owner:** If there is more than one Owner of a Property, such Owners shall, except where inconsistent with the context, collectively constitute one Member for the purposes of this Constitution.
- 4.7 **Former Members:** The Society shall also keep a record of the former Members of the Society. For each Member who ceased to be a Member within the previous 7 years, the Society will record:
- (a) the former Member's name, and
 - (b) the **date** the former Member ceased to be a Member.
- 4.8 **Members to update:** Every current Member shall promptly advise the Society of any change of the Member's contact details.
- 4.9 **Number of Members:** The Society shall maintain at least the minimum number of Members required by the Act.

5. USE OF COMMUNAL FACILITIES

- 5.1 **Use of Communal Facilities:** Subject to any rules or Bylaws of the Society relating to the use of the Communal Facilities, each Member, Occupier and Invitee shall be entitled to make full use of the Communal Facilities.
- 5.2 **Persons not entitled to use Communal Facilities:** Subject to the terms of any resource consent relating to the Communal Facilities or any agreement between the Society and any person in respect of the Communal Facilities, no person (other than those person set out in rule 5.1), shall be entitled to use the Communal Facilities, provided that where a Communal Facility is located on land not owned by a local authority or other person, this restriction may not apply and will be subject to the terms of any agreement with the land owner.

Constitution of Omaha Beach Residents Society Incorporated

6. LEVIES

- 6.1 **Annual Levy:** Prior to, or as soon as practicable after, the commence of each Financial Year, the Committee shall fix the amount of an annual levy to be paid by each Member in order to defray the estimated Operated Expenses of the Society in respect of that Financial Year and the Society shall give each Member written notice of the amount so fixed and the date by which the levy is payable. If a Member is the Owner of more than one Property, that Member shall pay a separate levy for each Property owned by that Member.
- 6.2 **Special Levies:** The Committee may, from time to time, fix Special Levies to be paid by Members, which may be either:
- (a) a Capital Improvements levy which the Committee considers should be set aside as a fund, or part of a fund, to allow for and meet the costs of Capital Improvements; or
 - (b) a special levy which the Committee considers is necessary for the Society to meet its obligations under this Constitution; or
 - (c) a supplementary expense levy to assist the Society in defraying the amount by which the actual Operating Expenses incurred in the immediately preceding Financial Year exceeded the aggregate amount of the Annual Levies received by the Society in respect of that Financial Year,
- any such Special Levy to be subject to the approval of Members by Special Resolution.
- 6.3 **Payment of levies:** Each Member shall, on or before the due date specified by the Society, pay the amount of each Annual Levy and each Special Levy to the Society in the manner specified by the Society for payment of such levy.
- 6.4 **Sale of Property:** Where a Member ("Vendor") sells a Property:
- (a) notwithstanding any other rule in this Constitution, the Vendor shall remain liable for all sums owed to the Society by that Vendor;
 - (b) the Vendor shall continue to be liable as a primary and principal debtor for all indebtedness of the purchaser of the Property to the Society until such time as the deed of covenant in rule 4.2(b) is received by the Society; and
 - (c) the purchaser of the Property shall be liable as a Member for all unpaid indebtedness of the Vendor to the Society in respect of the Property purchased and a statement from the Society given pursuant to rule 6.5 shall be conclusive as to the amount of such indebtedness.
- 6.5 **Society to provide statement:** The Society shall, on application by a Member, or any person authorised in writing by a Member, provide the Member or authorised person with a statement of the indebtedness of the Member to the Society calculated at the date specified in the application. The statement shall show:
- (a) the amount of the Annual Levy for the current Financial Year;
 - (b) the payments made, or due and unpaid, by the Member on account of the Annual Levy in respect of the current Financial Year;
 - (c) the payments due and unpaid by the Member in respect of any Special Levies or other indebtedness of the Member to the Society; and

- (d) any accumulated unpaid default interest.

7. OTHER OBLIGATIONS

- 7.1 **Covenants and Bylaws:** Each Member shall promptly and fully comply with these rules, with all Bylaws made by the Society from time to time, and with all covenants in favour of the Society by such Member (whether by separate deed of covenant or as Land Covenants noted against each Owner's Title). In the event of there being any conflict between the provisions of this Constitution (including any rule or Bylaw) and the provisions of any Land Covenant registered against the Owner's Title to a Property, the provisions of the Land Covenant shall prevail and be given priority over the provisions of this Constitution (including any rule or Bylaw).
- 7.2 **No alteration to Land Covenants:** The Society shall not, except by Special Resolution, agree to the alteration of the terms of the Land Covenants as first noted against each Owner's Title.
- 7.3 **Mortgagee of Property:** Before granting any mortgage over a Property, a Member shall procure the intended mortgagee to enter into a deed with the Society (at the cost of the Member) covenanting to observe and perform all the rules of this Constitution upon exercising any powers as mortgagee.

8. BREACH OF OBLIGATIONS

- 8.1 **Occupiers and Invitees:** A reference to an act or omission by any Member shall include any act or omission by any Occupier or mortgagee in possession of that Member's Property or by any Invitee of the Member or Occupier or mortgagee in possession. If so required by the Society at any time, a Member shall promptly advise the Society or details of the Occupier (if any) of the Member's Property, and if required by the Society shall procure such Occupier to enter into a deed of covenant with the Society (in a form acceptable to the society), covenanting to be bound by this Constitution. Each Member must take all reasonable steps (including enforcing the terms of any lease, licence or other occupancy right) to ensure Occupiers of that Member's Property comply with this Constitution. In any case of persistent default of this Constitution by an Occupier, the Owner shall on demand by the Society, terminate the Occupier's right to occupy the Property.
- 8.2 **Consequences:** Upon any breach of this Constitution by a Member ("Offending Member"):
- (a) Where such damage has been caused to the Communal Facilities, the Offending Member shall make good such damage.
 - (b) If such default continues for seven days after notice is given by the Society to the Offending Member to remedy the default, the Society may do anything, including paying money, necessary to remedy the default.
 - (c) All money paid and expenses incurred by the Society (including legal costs of the Society) in remedying, or attempting to remedy, any breach by an Offending Member of this Constitution, or incurred in the exercise, or attempted exercise, or enforcement or attempted enforcement of any power, right or remedy of the Society in respect of such breach, shall be a debt due from the Offending Member to the Society.
- 8.3 **Default interest:** If any money payable by a Member to the Society is in arrears and unpaid for seven 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.

THE SOCIETY

9. OBLIGATIONS OF THE SOCIETY

- 9.1 **Bylaws:** The Society, acting through the Committee, shall promulgate, amend and distribute (including by publication on the Society's website) to Members from time to time Bylaws for the use of the Communal Facilities (including any restrictions on use for security, maintenance or other reasons), Bylaws concerning the behaviour of Owners, Occupiers and Invitees, and Bylaws governing the use of Properties.
- 9.2 **Repair of Communal Facilities:** The Society shall ensure the proper operation, maintenance, repair, renovation and replacement of the Communal Facilities, and shall undertake such Capital Improvements as are necessary for this purpose.
- 9.3 **Insurance:** The Society shall effect and maintain all such insurances as it considers prudent with respect to the Communal Facilities and the Society's affairs, and shall meet all costs of such insurance (which shall include all valuations and other professional fees required or deemed desirable for the purposes of such insurances and the cost of certificates relating to such insurances).

10. LIMITATIONS OF THE SOCIETY

- 10.1 **No indebtedness:** The Society shall not borrow any money, other than short-term borrowing to cover any temporary shortfall in meeting the Society's obligations under this Constitution, except with the approval of Members by Special Resolution.
- 10.2 **No encumbrances:** The Society shall hold its interests in the Communal Facilities in its own name and shall not mortgage, charge, encumber, transfer or otherwise deal with any such interest, except with the approval of Members by Special Resolution.
- 10.3 **No investments:** The Society shall hold all funds in a Bank account maintained in accordance with rule 11.2, and shall not invest those funds other than by deposit with a Bank, except with the approval of Members by Special Resolution.
- 10.4 **No improper use:** All Communal Facilities designed for recreational purposes shall be used only for such purposes. The Society shall, where practicable, procure the noting of a restrictive covenant to that effect against the title for such facilities for the benefit of all Members.

OPERATION OF THE SOCIETY

11. COMMITTEE

- 11.1 **Powers:** The administration of the Society shall be vested in the Society in general meeting, and shall be delegated to the Committee. The Committee may exercise all the powers, authority and discretions of the Society as permitted by this Constitution and do on its behalf all such acts as they deem necessary or expedient. The powers, authority and discretions as exercised by the Committee are subject always to any limits which may from time to time be imposed by the Society. The Committee may delegate any of its powers to committees consisting of such member or members of their body as they think fit or to the Manager. Any committee so formed shall in the exercise of the powers so delegated conform to the directions of the Committee.

11.2 **Bank account:** The Society shall maintain a bank account in New Zealand with a Bank approved by the Committee, and any drawings on that account shall be made only with the authority of either the Manager and one Committee member, or of two Committee Members.

11.3 **Documents:** All deeds and other documents and instruments required execution on behalf of the Society must be signed by two Committee members.

11.4 **Composition:** The Committee shall comprise the following persons:

- (a) a chairperson;
- (b) a minimum of three and a maximum of seven general Committee members or such other number of general Committee members as may be determined from time to time by the Society in general meeting before an election of Committee members.

On the adoption of this Constitution by the Society, each person holding office as a Committee member shall be deemed to have been appointed in accordance with this Constitution.

11.5 **Appointment of members:** The Committee members shall be appointed as follows:

- (a) The chairperson shall be a general Committee member elected as chairperson by the other general Committee members in accordance with rule 11.12.
- (b) The general Committee members shall be elected by the Society at annual general meetings in accordance with rule 11.7. The Society in general meeting may also elect a Member at any other time to fill a casual vacancy or a vacancy arising from an increase in the maximum number of Committee members fixed pursuant to rule 11.4(c). To be eligible for election as a general Committee member a person must be a financial Member of the Society.

11.6 **Duration of membership:** A Committee member shall hold his or her elected position until the earliest of:

- (a) the conclusion of the second annual general meeting of the Society after he or she was first elected or last re-elected, as the case may be, but he or she shall, if standing, be eligible for re-election;
- (b) the date written resignation from his or her position is received by the Society;
- (c) the date of removal from his or her position by the Society in general meeting;
- (d) the date of cessation of his or her membership of the Society; or
- (e) he or she becomes disqualified from holding office as an officer of a society under section 47(3) of the Act.

11.7 **Election of general Committee members:** At each annual general meeting an election shall be held to fill the vacancies created by the retirement of Committee members at that meeting under rule 11.6(a) and to fill any casual vacancies. If the number of eligible candidates whose election or re-election is approved by ordinary resolution of Members exceeds the number of vacancies, the election shall be determined by ballot. No person other than a Committee member retiring by rotation shall be eligible for election as a general Committee member at any meeting of the Society unless a notice in writing of the intention to propose such person, signed by at least two financial Members, has been given to the Society, together with the written consent of such person to the nomination, not less than 21

days prior to the date of the meeting at which the candidate is proposed. The nominee's written consent must confirm that the nominee consents to be an Officer of the Society and must certify that the nominee is not disqualified from being elected or appointed or otherwise holding office as an officer of the Society, either under this Constitution or under the Act.

- 11.8 **Casual vacancies on Committee:** In the event of a casual vacancy in any position on the Committee (whether caused by death, cessation of membership of the Society, or some other means) the remaining Committee members may appoint another Member to fill the vacancy until the position is filled by the Society in general meeting.
- 11.9 **Conduct of Meetings:** The Committee may meet together, adjourn and otherwise regulate its meetings and procedures for conducting its business as it thinks fit, including by way of audio or audio visual meeting. 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 shall, upon the request of the chairperson or any three Committee members, convene a meeting of the Committee.
- 11.10 **Resolution in lieu of meeting:** 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 provided that a copy of the proposed resolution has been sent to each Committee member not less than five days prior to the date on which the numbers of votes for and against the resolution are to be counted. Any such resolution may consist of one or more documents in similar form (including letters, facsimiles, electronic mail or other similar means of communication) each signed or assented to by one or more Committee members.
- 11.11 **Chairperson:** The Committee shall, within two months after the conclusion of each annual general meeting, elect one of their number to be a chairperson, to chair committee meetings and otherwise exercise the powers of the chairperson set out in this constitution. The person so appointed shall hold office until:
- (a) a successor is elected by the Committee following the annual general meeting in the next succeeding year; or
 - (b) the person is removed as chairperson at any time by a majority vote of the Committee members; or
 - (c) the person resigns, dies or otherwise ceases to hold office as a Committee member.

Any casual vacancy in the position of chairperson shall be filled by the Committee within two months after the vacancy occurs and pending the appointment of a successor the person who has been longest on the Committee shall act as interim chairperson.

- 11.12 **Voting:** A resolution of the Committee proposed at a meeting shall be passed if approved by the affirmative vote of a majority of the Committee members present at the meeting and entitled to vote on the matter. Each Committee member present at a meeting and entitled to vote on the matter, shall be entitled to exercise one vote on the matter. The Manager shall not, by virtue of holding that office, be entitled to vote on any resolution of the Committee, provided that the Manager may vote on any resolution of the Committee if that person is also a Member. In the case of a tie in votes, the Chairperson may exercise a casting vote.
- 11.13 **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, or that they were disqualified, shall be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Committee member.

11.14 Committee minutes and records: The Committee shall cause proper minutes to be kept of the proceedings of all meetings of the Society and of the Committee. All business transacted at such meetings, as recorded in minutes signed by the chairperson of the relevant meeting or the next succeeding meeting, shall, except in the case of a manifest error, be accepted as a correct and accurate record of the business transacted at such meetings without any further proof of the facts contained in such minutes.

11.15 Contact Persons: The Committee must appoint at least 1 and up to 3 contact persons as required under section 113 of the Act. Each contact person may (but does not need to be) a Committee member and must be a person at least 18 years of age who is ordinarily resident in New Zealand. If, at any time, there is a vacancy in the role of contact person such that there are no contact persons, the Committee must fill that position within 20 Working Days after the vacancy occurs. Any change to contact persons or their contact details must be provided to the Registrar in accordance with the Act. The contact person, on adoption of this Constitution, is the Manager.

11.16 Officer Interests:

- (a) The Committee must keep an Interests register.
- (b) Each Officer who is Interested in a Matter relating to the Society must disclose details of the nature and extent of the Interest (including any monetary value of the Interest if it can be quantified) to the committee, as soon as practicable after the Officer becomes aware that they are Interested in the Matter, and the Interests register must be updated accordingly.
- (c) Unless the Act otherwise requires, all Officers must be notified of an Officer's failure to comply with section 63 or 64 of the Act, and of any transactions affected, as soon as practicable after becoming aware of the failure. A transaction entered into by the Society in which an officer of the Society is interested may be avoided by the society at any time before the expiry of 3 months after the transaction is notified under this clause.
- (d) Clause 11.16(c) is intended to prevail over sections 65(1) and 68(1) of the Act.

12. MANAGER

12.1 Duties: The Committee may by agreement appoint, remove and replace a person as Manager from time to time, to carry out such of the obligations of the Society, and exercise such of the discretions and powers of the Society, as the Committee shall see fit. This may include, without limiting the Society's obligations to perform any obligations required under the Act or this Constitution:

- (a) convening general meetings when requested to do so in accordance with this Constitution;
- (b) attending all meetings of the Committee and having full speaking rights at such meetings;
- (c) giving all notices required to be given by these rules as directed from time to time by the Society or the Committee;

- (d) keeping minutes at all general meetings and Committee meetings 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;
- (e) receiving, and issuing receipts for, all Annual Levies, Special Levies, and any other moneys paid to the Society;
- (f) operating and maintaining a current bank account in the name of the Society in accordance with rule 11.2;
- (g) paying all accounts properly incurred by or on behalf of the Society;
- (h) reporting promptly to the Society and Members who fail to pay Annual Levies or Special Levies within the prescribed period;
- (i) keeping all financial records and security documents of the Society in safe custody;
- (j) facilitating publication of the Design Guidelines on the Society's website as anticipated by clause 15.4;
- (k) compile all proper accounting records of the Society from time to time, as required by law or by the Committee, which give a true, fair and complete account of the financial affairs and transactions of the Society; and
- (l) compile the financial statements of the Society immediately following each Financial Year as required by law and generally accepted accounting practice in New Zealand, and provide for the auditing of those financial statements and the distribution of them to Members as soon as reasonably practicable after each audit is completed.

12.2 The Committee may by agreement also appoint, remove and replace an accountant or an accountancy practice to assist the role and obligations of the Committee and of the Manager, including any of those activities in clause 12.1.

13. GENERAL MEETINGS

13.1 **Annual general meetings:** In addition to any other meetings in that year, the Society shall hold an annual general meeting each year, not later than 6 months after the balance date of the society and not later than 15 months after the previous annual general meeting. The Committee shall determine the time and place of each year's annual general meeting. The following business shall be considered at the annual general meeting:

- (a) presentation of the annual report on the operations and affairs of the Society for the preceding Financial Year;
- (b) presentation of the financial statements of the Society for the preceding Financial Year;
- (c) presentation by the Committee of notice of the disclosures, or types of disclosures, made under section 63 (disclosure of interests) of the Act during the preceding Financial Year (including a brief summary of the matters, or types of matters, to which those disclosures relate); and
- (d) general business.

- 13.2 **Special general meetings:** A general meeting other than an annual general meeting may be requested by the Committee, or by written requisitions signed by not less than 25% of Members. The Committee shall, within 14 days of receiving an effective request or sufficient written requisitions, call a special general meeting to be held within a further 30 days thereafter. The Committee must also call a Special Meeting if, at any time, the circumstances specified in section 64(3) of the Act occur.
- 13.3 **Powers of the Society in 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 or discretion may have been delegated to the Committee by or pursuant to this Constitution. Notwithstanding any contrary provision of this Constitution, a resolution in writing signed by not less than 75% of the Members entitled to vote in person or by proxy at general meetings shall be as valid and effectual as if it had been passed at a general meeting of the Society duly convened and constituted.
- 13.4 **Quorum:** No business shall be transacted at any general meeting of the Society unless a quorum is present when the meeting proceeds to business. A quorum shall be not less than 20% of all Members or 20 Members (whichever is the lesser) eligible to vote at general meetings, present in person or by proxy.
- 13.5 **Notice of general meeting:** A notice of a general meeting of the Society shall be sent to every Member, together with a form of notice of appointment of proxy, not less than 10 working days before the date of such meeting. Such notice shall specify the date, time and venue of such meeting. In case of a general meeting other than an annual general meeting such notice shall specify all business and all notices of motions to be considered at such meeting. No business or notice of motion which is not specified shall be discussed or transacted at such meeting.
- 13.6 **Failure to give notice:** Where notice of a meeting has been given, the accidental omission to give notice to, or the non-receipt of notice by, any Member, shall not invalidate the holding of the meeting or the proceedings at the meeting. An irregularity in the manner of calling a general meeting of a society is waived if all the members entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such members agree to the waiver.
- 13.7 **Chairperson:** The chairperson at any general meeting shall be:
- (a) the chairperson of the Society; or
 - (b) if the chairperson will not be present at the meeting, or is not present within 15 minutes after the time appointed for the meeting, another Committee member appointed by the Committee; or
 - (c) if the chairperson is unwilling to act as chairperson for any particular item of business, the Committee members may select one of their number or an independent, suitably qualified person to act as chairperson for that item of business; or
 - (d) if for any reason no chairperson is selected by the Committee, any Member appointed by a majority of Members present in person or by proxy.
- 13.8 **Adjournment:** If a quorum is present within half an hour of the time appointed for the holding of a general meeting convened on requisition of Members, the meeting shall be dissolved. In any other case the meeting convened on requisition of Members, the meeting shall be dissolved. In any other case the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other date and at such other time and place as the Committee shall determine (such date not to be later than 14 days from the date of the

adjourned meeting). If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall constitute a quorum.

- 13.9 **Adjourned meetings:** No business other than the 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 such notice in respect of adjourned meetings.
- 13.10 **Proxies:** A Member may appoint a proxy to vote on his or her behalf at a general meeting. A proxy is entitled to attend, be heard and vote at a general meeting as if the proxy were the applicable Member. A proxy must be appointed by notice in writing signed by the applicable Member and such appointments must be for a particular general meeting only. The appointment shall require the proxy to vote in the manner specified in the appointment. No proxy is effective in relation to a general meeting unless a copy of the notice of appointment of proxy is received by the Committee before the scheduled start time of the general meeting. The appointment of a proxy confers authority on the proxy to demand or join in demanding a poll and a demand by a person as proxy for a Member has the same effect as a demand by that Member.

14. VOTING

- 14.1 **One Member one vote:** Each Member present at a general meeting of the Society (not at that time being in breach of the Constitution) shall be entitled to one vote for each Property 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 a Property, and such Owners are collectively a Member pursuant to rule 4.6, only one such Owner shall be entitled to vote on a resolution at a meeting. In the absence of agreement between such Owners as to who shall exercise this vote, the Owner appearing first on the registered title to the Property shall be entitled to exercise this vote. On the death of any Member, and pending the transfer of that Member's Property, the executor of that Member's estate shall be entitled to exercise that Member's vote.
- 14.2 **Corporation representatives:** Any corporation which is a Member may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Society, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which that person represents as that corporation could exercise if it were an individual Member. References in this Constitution to a Member being present in person shall mean and include a representative appointed pursuant to this rule, and such person may also stand for election to the Committee.
- 14.3 **No vote if fees unpaid:** Unless all Annual Levies and Special Levies presently payable by a Member to the Society have been paid in full, that Member shall not be entitled to vote at any general meeting of the Society, whether in that Member's own right or as a proxy for another person.
- 14.4 **Voting at meetings:** At any general meeting:
- (a) a resolution may be put to the vote by the chairperson or by any Member present at the meeting and entitled to vote;
 - (b) resolutions put to the vote shall be decided on voices or a show of hands, unless a poll 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 five Members present in person or by proxy;
 - (c) in the case of a resolution put to the vote of the meeting by voices or a show of hands, a declaration by the chairperson that such resolution has been carried or lost and 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 or against such resolution;
 - (d) resolutions shall be passed by a majority of votes, except where a Special Resolution is required by this Constitution; and
 - (e) in the case of a tie in votes, the chairperson may exercise a casting vote.
- 14.5 **Good faith:** 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 as fairly as reasonably practicable by the Society having regard to its objects, irrespective of whether any expenditure by the Society may benefit some Members more than others.

15. DESIGN CONTROL COMMITTEE

- 15.1 **Composition:** The Design Control Committee shall comprise the following persons:
- (a) up to two representatives of the Society appointed (and subject to removal) from time to time by the Committee one of whom (nominated by the Committee) shall be Chairperson of the Design Control Committee;
 - (b) an urban planning consultant appointed (and subject to removal) from time to time by the Committee;
 - (c) an architect appointed (and subject to removal) from time to time by the Committee; and
 - (d) if the Committee from time to time considers it desirable to do so, an additional architect appointed (and subject to removal) by the Committee.
- 15.2 **Procedures:** The Design Control Committee may meet together, adjourn and otherwise regulate its meetings and procedures for conducting its business as it thinks fit, including by way of email or other online means, audio or audio visual meeting.
- 15.3 **Formal decisions of the Design Control Committee:** A formal decision of the Design Control Committee (being the adoption or change to any Design Guidelines under clause 15.4 and approval or refusal of any design approval under clause 15.5) must only be made with the consent of a majority of the members of the Design Control Committee at the relevant time.
- 15.4 **Design guidelines:** After consultation with the Committee, the Design Control Committee shall publish from time to time Design Guidelines for the Precinct or any part thereof and may change the Design Guidelines from time to time.
- 15.5 **Design approval:** Before undertaking any building or development within the Precinct and before requesting a resource consent or other approval under the Auckland Unitary Plan or any successor plan, or a building consent, where any such consents or approvals are required, a Member must first submit the design of the proposed building or development to the Design Control Committee for its written approval, which shall not be unreasonably withheld or delayed where the design complies with, in the following order of priority:

- (a) the controls applying under the Auckland Unitary Plan;
 - (b) any bylaws made under rule 9.1; and
 - (c) the relevant Design Guidelines.
- 15.6 **Conflict:** If there is any conflict between the provisions of this Constitution and the provisions of the Land Covenants registered against each Owner's Title, the provisions of the Land Covenants shall prevail.
- 15.7 **Costs:** All costs of the design approval process (including without limitation, any disbursements or professional charges of a member of the Design Control Committee) shall be met by the Member seeking the approval, in accordance with the Design Guidelines and for that purpose such Member shall comply with the provisions of the Bylaws relating to the provision of a bond to the Society as a security for such costs, disbursements and changes.

16. GENERAL

- 16.1 **Dissolution:** If upon the winding up or dissolution of the Society there remains after the satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid to or distributed among the members of the organisation but shall be given or transferred to some other organisation or body having objects similar to the objects of the Society or to some other charitable organisation or purpose, within New Zealand.
- 16.2 **Alteration of Constitution:**
- (a) Subject to clause 16.2(b), this Constitution shall not be amended, added to or rescinded except by Special Resolution at an annual general meeting, or a general meeting convened for that purpose, and unless written notice of the proposed amendment, addition or rescission shall have been given to all Members in accordance with this Constitution.
 - (b) Minor or technical amendments to this Constitution may be made by the Committee subject to and in accordance with section 31 of the Act.
- 16.3 **Entrenched Rules:** Notwithstanding any other rule in this Constitution, this Constitution shall not be amended, added to or rescinded so as to alter, add or rescind:
- (a) rule 15.6; or
 - (b) this rule 16.3; or
 - (c) rule 16.1 (without the approval of the Inland Revenue). As a guide to interpretation of rule 16.1 and for the purposes of compliance with the Act, the selected organisation must (i) be selected by the Committee at the time and (ii) comprise a not-for-profit entity.
- 16.4 **Acceptance by Registrar:** No such amendment, addition or rescission shall be valid unless and until accepted by the Registrar.
- 16.5 **Registered office:** The registered office of the Society shall be situated at a place nominated by the Committee.
- 16.6 **Liability of Members:** No Member shall be under any liability in respect of any contact or other obligation made or incurred by the Society.

- 16.7 **Society to indemnify Members:** 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.
- 16.8 **No action in favour of Members:** 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. Nothing in this rule shall prevent an action in respect of any loss or expense arising from the wilful default of the person against whom such action is taken.
- 16.9 **Member to indemnify Society:** 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 of this Constitution by the Member.
- 16.10 **Approval:** Where in this Constitution any reference is made to the approval or consent of the Society:
- (a) such approval or consent shall be given at the sole discretion of the Society;
 - (b) no approval or consent given on any occasion by the Society shall serve as a precedent for, or be binding in any way in respect to, any future application for consent or approval; and
 - (c) such references shall mean the prior written approval or consent of the Society.

17. Omaha Beach Community Incorporated (OBC)

- 17.1 So long as the Society remains a corporate member of OBC;
- (a) Members agree to join and remain members of OBC; and
 - (b) the Society shall pay its Members' OBC annual subscription fee and recover this payment through its annual levy to Members.

18. Disputes

- 18.1 **Meanings of dispute and complaint:** In this Constitution 'dispute' and 'complaint' have the meanings given to those terms in section 38 of the Act.
- 18.2 **How complaint is made – Member or Officer:** A Member or an Officer may make a complaint by giving to the Committee (or a complaints subcommittee) a notice in writing that:
- (a) states that the Member or Officer is starting a procedure for resolving a dispute in accordance with the Society's Constitution; and
 - (b) sets out the allegation or allegations to which the dispute relates and whom the allegation is against; and
 - (c) sets out any other information reasonably required by the Society.
- 18.3 **How complaint is made – Society:** The Society may make a complaint involving an allegation or allegations against a Member or an Officer by giving to the Member or Officer a notice in writing that:

- (a) states that the Society is starting a procedure for resolving a dispute in accordance with the Society's Constitution; and
- (b) sets out the allegation to which the dispute relates.

18.4 Sufficiency of information: The information given under subclause 18.2 or 18.3 must be sufficient to ensure that a person against whom an allegation is made is fairly advised of the allegation or allegations concerning them, with sufficient details given to enable that person to prepare a response.

18.5 Person who makes complaint has right to be heard:

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

18.6 Person who is subject of complaint has right to be heard:

- (a) This clause applies if a complaint involves an allegation that a Member, an Officer, or the Society (the 'respondent'):
 - (i) has engaged in misconduct; or
 - (ii) has breached, or is likely to breach, a duty under the Society's Constitution or bylaws or the Act; or
 - (iii) has damaged the rights or interests of a Member or the rights or interests of Members generally.
- (b) The respondent has a right to be heard before the complaint is resolved or any outcome is determined.
- (c) If the respondent is the Society, an Officer may exercise the right on behalf of the Society.

- (d) Without limiting the manner in which a respondent may be given a right to be heard, a respondent must be taken to have been given the right if:
 - (i) the respondent is fairly advised of all allegations concerning the respondent, with sufficient details and time given to enable the respondent to prepare a response; and
 - (ii) the respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
 - (iii) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
 - (iv) an oral hearing (if any) is held before the decision maker; and
 - (v) the respondent's written statement or submissions (if any) are considered by the decision maker.

18.7 Investigating and determining dispute

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

18.8 Society may decide not to proceed further with complaint: Despite the 'Investigating and determining dispute' rule above, the Society may decide not to proceed further with a complaint if:

- (a) the complaint is considered to be trivial; or
- (b) the complaint does not appear to disclose or involve any allegation of the following kind:
 - (i) that a Member or an Officer has engaged in material misconduct:
 - (ii) that a Member, an Officer, or the Society has materially breached, or is likely to materially breach, a duty under the Society's Constitution or bylaws or the Act:
 - (iii) that a Member's rights or interests or Members' rights or interests generally have been materially damaged:
- (c) the complaint appears to be without foundation or there is no apparent evidence to support it; or
- (d) the person who makes the complaint has an insignificant interest in the matter; or
- (e) the conduct, incident, event, or issue giving rise to the complaint has already been investigated and dealt with under the Constitution; or
- (f) there has been an undue delay in making the complaint.

18.9 Society may refer complaint:

Constitution of Omaha Beach Residents Society Incorporated

- (a) The Society may refer a complaint to:
 - (i) a subcommittee or an external person to investigate and report; or
 - (ii) a subcommittee, an arbitral tribunal, or an external person to investigate and make a decision.
- (b) The Society may, with the consent of all parties to a complaint, refer the complaint to any type of consensual dispute resolution (for example, mediation, facilitation, or a tikanga-based practice).

18.10 Decision makers: A person may not act as a decision maker in relation to a complaint if 2 or more members of the Committee or a complaints subcommittee consider that there are reasonable grounds to believe that the person may not be:

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

18.11 General principles:

- (a) All Members (including the Committee) are obliged to cooperate to resolve disputes efficiently, fairly, and with minimum disruption to the Society's activities.
- (b) The complainant raising a dispute, and the Committee, must consider and discuss whether a dispute may best be resolved through informal discussions, mediation or arbitration.
- (c) Where mediation or arbitration is agreed on, the parties will sign a suitable mediation or arbitration agreement.
- (d) A complaint may be made in any other reasonable manner permitted by the Society's Constitution.