

CONSTITUTION

OF

[MATAKANA ISLAND FOREST PARK ASSOCIATION INCORPORATED]

PART I: INTERPRETATION

1. Definitions and Construction

In this Constitution, the terms set out in Schedule 1 Part A will have the meanings ascribed to them in that Schedule and the rules of construction set out in Schedule 1 Part B will apply.

PART II: STRUCTURAL

2. Name of Society

The name of the Society is [Matakana Island Forest Park Association Incorporated].

3. Purposes of Society

The Purposes of the Society are set out in Schedule 2.

4. Powers of Society

Subject to this Constitution, the society has all powers necessary for, or ancillary or incidental to, fulfilling the Purposes including, without limiting or affecting the generality of the foregoing, the rights, powers and privileges of a natural person.

5. Amendment of Constitution

5.1 Subject to Clause 5.2, this Constitution may be amended by Special Resolution of the Members.

5.2 However:

5.2.1 Any amendment or addition to or alteration to Clause 3 or the Purposes in Schedule 2 shall have no effect unless and until the Local Authority gives its written consent to the amendment, addition or alteration and provided no amendment, addition or alteration shall be approved if the effect of the amendment, addition or alteration is to permit the Society to carry on activities other than substantially or primarily for the Purposes.

5.2.2 The provisions and effect of Clause 8 (limitation on distributions to Members) shall not be removed from this document and shall be included or implied into any document replacing this Constitution.

5.2.3 Clause 5.2 must not be altered or revoked.

5.3 The Board shall procure that any alteration to this Constitution is delivered to the Registrar of Incorporated Societies for registration in accordance with Section 21 of the Act.

PART III: MEMBERSHIP OF THE SOCIETY AND MEMBERSHIP RIGHTS

6. Admission to Membership

6.1 The first Members of the Society will be those persons having an interest in maintaining, advancing and upholding the Purposes. These persons will be deemed to have resigned at

the later of the deposit of a plan of subdivision creating the Lots or the sale of five (5) of Lots to parties other than the original subdivider.

6.2 Further members will be only those persons who are to become registered proprietors of a Lot. No other persons shall be entitled to be Members of the Society.

6.3 The Board is to establish, and use its best endeavours to maintain, a register which records each member's Membership of the Society.

6.4 A person will cease to be a Member and the Board will remove a Member's name from the Members' Register if he or she ceases to be the registered proprietor of a Lot provided that the Board will admit to the membership the person or persons who become registered as the proprietors of that Lot.

6.5 Entry into the Members' Register of Membership or Cessation of Membership pursuant to clause 6.4 by a Board Member or any other person authorised by the Board is to be conclusive evidence of that matter, with effect from the entry date.

7. **Rights of Members**

7.1 Each Member has the right:

7.1.1 to receive notice of, and attend, any meeting of the Members; and

7.2.1 to receive a copy of each Annual Report.

7.2 Subject to Clause 7.3, each Member is entitled to one vote (corresponding to being the registered proprietor of a Lot) at a meeting of Members, (so that, by way of illustration, if a Member is the registered proprietor of two Lots, then he or she shall have two votes).

7.3 If more than one person is named as the registered proprietor of a Lot, only the person first named shall have the right to vote but if such person is not present the persons next named in order shall if present have the right to vote.

8. **Meetings of Members**

8.1 The Society shall hold an annual meeting not later than fifteen months after the previous annual meeting.

8.2 The first annual meeting shall be held within 18 months of the date the Society is incorporated.

8.3 Each annual meeting shall be held at such time and place as the Board appoints.

8.4 All meetings other than annual meetings shall be called special meetings.

8.5 A special meeting:

8.5.1 may be called by the Board at any time; and

8.5.2 shall be called by the Board on the written request of no less than 5 Members.

8.6 Written notice of the time and place of a meeting of Members must be sent to every Member and to every Board Member of the Society not less than 10 working days before the meeting.

8.7 The notice must state:

8.7.1 the nature of the business to be transacted at the meeting in sufficient detail to enable a Member to form a reasoned judgment in relation to it; and

8.7.2 the text of any Special Resolution to be submitted to the chair of the meeting.

- 8.8 If the Board Members have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of Members, that Board Member must chair the meeting.
- 8.9 No business may be transacted at a meeting of Members if a quorum is not present.
- 8.10 A quorum for a meeting of Members is present 10 Members are present in person or by representative.
- 8.11 Unless a poll is demanded, voting at a meeting shall be by whichever of the following methods is determined by the chairperson:
- 8.11.1 voting by voice; or
 - 8.11.2 voting by show of hands.
- 8.12 Unless otherwise specified in this Constitution any power reserved to Members may be exercised and any approval of Members may be given by Ordinary Resolution.
- 8.13 A declaration by the chairperson that a resolution is carried by the requisite majority is conclusive evidence of that fact.
- 8.14 The Board must ensure that minutes are kept of all proceedings at meetings of Members. Minutes which have been signed correct by the chairperson are prima facie evidence of the proceedings.

9. **Limitations on distributions to Members**

- 9.1 Notwithstanding any provisions of this Constitution to the contrary:

- 9.1.1 The Society may not make any distribution to, or make property of the society available for use by any Member or person that is an associated person of a member if such distribution or availability for use, would, or would be likely to, prevent any amount derived by the Society categorised as exempt income under the Income Tax Act 2004 from being so categorised; and
- 9.1.2 The Society may not use any of the Society's property or make any of the Society's property available for use to any Member or person that is an associated person of a member for the private pecuniary profit of that Member or associated person.
- 9.1.3 The Society may (to the extent permitted from time to time by law so as to retain the tax exempt status of the Society for fiscal purposes) engage the services of any Member of the Society or any person that is an associated person of the Member, and in return for such services pay to such Member or associated person a proper salary or wage commensurate with the class of work undertaken by that Member or associated person and having regard to all other relevant factors in determining the wage or salary payable to that Member or associated person provided that:
- 9.1.3.1 any moneys, benefits, remuneration or advantage (whether or not convertible into money) or any income of any kind, received, gained, achieved or derived, is reasonable and relative to that which would be paid or received in an arms length transaction; and
 - 9.1.3.2 no Member or person that is associated with a member shall derive any income, benefit or advantage from the Society where they can materially influence the payment of the income, benefit or advantage, except where that income, benefit or advantage is derived from:

9.1.3.2 (a) professional services to the Society rendered in the course of business charged at no greater than current market rates; or

9.1.3.2 (b) interest on money lent at no greater rate than current market rates.

PART IV: BOARD MEMBERS

10. Appointment and Removal of Board Members

10.1 The number of Board Members must not at any time be more than 5 and must be at least 3.

10.2 A Board Member may be appointed by Ordinary Resolution. Two or more persons may be appointed as Board Members by one resolution. All Board Members shall be subject to removal from office as Board Member by Ordinary Resolution.

10.3 A Board Member shall cease to hold office as a Board Member if the Board Member:

10.3.1 becomes bankrupt or makes an arrangement to compromise with the Board Member's creditors generally;

10.3.2 resigns from office by notice in writing to the Society; or

10.3.3 is removed from office pursuant to this Constitution.

11. Powers of Board Members

11.1 The business and affairs of the Society shall be managed by, or under the direction or supervision of, the Board.

11.2 The Board may exercise all the powers of the Society which are not required by this constitution to be exercised by the Members.

12. Meeting of the Board

12.1 A meeting of the Board may be held either:

12.1.1 by a number of the Board Members who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

12.1.2 by means of audio and visual, communication by which all the Board Members participating and constituting a quorum can simultaneously hear each other throughout the meetings.

12.2 A Board Member or, if requested by a Board Member to do so, an employee of the Society approved by the Board for this purpose, may convene a meeting of the Board. Notice of a meeting of the Board must be given to every Board Member who is in New Zealand.

12.3 A quorum for a meeting of the Board may be fixed by all of the Board Members, and unless so fixed, is a majority of the Board Members.

12.4 The Board Members may elect one of their number as chairperson of the Board and determine the period for which the chairperson is to hold office. If no chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the Board Members present may choose one of their number to be chairperson of the meeting.

12.5 Every Board Member has one vote. In the case of an equality of votes, the chairperson will have a casting vote. A resolution of

the Board is passed if it is agreed to by all Board Members present without dissent or a majority of the votes cast on it are in favour of it. A Board Member present at the meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless that Board Member expressly dissents or expressly abstains from voting on, or votes against, the resolution.

- 12.6 A resolution in writing, signed or assented to by a majority of Board Members entitled to receive notice of a meeting of the Board is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form, each signed or assented to by one or more Board Members. A copy of any such resolution must be sent, within seven days of its being passed, to any Board Members who did not sign or assent to the resolution and entered in or kept with the records of Board proceedings.
- 12.7 The Board must ensure that minutes are kept of all proceedings at meetings of the Board.

PART V: MISCELLANEOUS

13. Liquidation

- 13.1 Upon the liquidation of the Society the surplus assets of the Society (if any) must be distributed among the Members in proportion to their voting rights set out in Clauses 7.2 and 7.3.
- 13.2 With the approval of the Members by Ordinary Resolution, the liquidator may vest the whole or any part of any surplus assets of the Society in trustees upon trust for the benefit of Members. The liquidator may determine the terms of the trust.

14. Method of contracting

- 14.1 A deed which is to be entered into by the Society may be signed on behalf of the Society, by”
- 14.1.1 two or more Board Members; or
- 14.1.2 any Board Member, or any other person authorised by the Board, whose signature must be witnessed
- And the common seal of the Society must be affixed.
- 14.2 An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Society, may be signed on behalf of the Society by a person acting under the express or implied authority of the Society.
- 14.3 Any other obligation or contract may be entered into on behalf of the Society in writing or orally by a person acting under the express or implied authority of the Society.

SCHEDULE 1

Definitions and Construction (clause 1)

SCHEDULE 1 PART A:

Definitions

Act means the Incorporated Societies Act 1908;

Annual Report means the report to be provided to Members each Year under Clause 7.2.1;

Board means Board Members who number not fewer than the required quorum acting together as the board of the Society;

Board Member means each person appointed as a Board Member of the Society;

Constitution means this Constitution, as altered from time to time;

Land means and includes Lots [] (inclusive) on Deposited Plan [insert];

Local Authority means the Western Bay of Plenty District Council or the local authority for the time being having jurisdiction over the Land;

Lot means a Lot that is enumerated in the definition of Land;

Management Plan means the management plan for Matakana Island Forest Park which forms part of the Resource Consent;

Member means each person who is a Member in accordance with Clause 6;

Membership means the membership of Members;

Members' Register means the register of Members maintained by the Society pursuant to Clause 6;

Ordinary Resolution means a resolution passed by more than 50 per cent of the votes of Members entitled to vote and voting on the issue;

Resource Consent means the resource consent given by the Local Authority for the land use and the subdivision of the Land into Lots and includes each and every condition of the resource consent;

Society means Matakana Island Forest Park Association Incorporated;

Special Resolution means a resolution passed by 75 per cent or more of the votes of Members entitled to vote and voting on an issue;

Year means the period of 12 months ending on the expiration of 31 March in each year or such other period as the Members may determine by Ordinary Resolution at an Annual Meeting of Members.

SCHEDULE 1 PART B:

Construction

Any references to:

- (a) the headings, appear as a matter of convenience and are not to affect the construction of this Constitution;
- (b) this Constitution or the Constitution include the Schedules to the Constitution;
- (c) clauses, Parts or paragraphs, in the absence of an express indication to the contrary, are references to clauses, Parts and paragraphs of this Constitution;
- (d) any statute, statutory regulations or other statutory instrument include the statute, statutory regulations or instrument as from time to time amended or re-enacted or substituted;
- (e) the singular includes the plural and vice versa and one gender includes the other genders;
- (f) the words "written" and "writing: include facsimile communications and any other means of communication resulting in permanent visible reproduction;
- (g) the word "person" includes any association of persons whether corporate or unincorporated, and any state or government or department or agency thereof, whether or not having separate legal personality; and

words or expressions defined in the Act (apart from the word "Member", which for the purposes of this Constitution, means and

includes Members and Members as the context requires) have the same meaning where they are used in this Constitution.

SCHEDULE 2

Purposes (clause 3)

The objects referred to in Clause 3 are as follows:

The Society has been established substantially or primarily for the purpose of supervising and controlling the management and development of the Matakana Island Forest Park in accordance with the Management Plan, the Resource Consent and other Local Authority requirements;

For that purpose the Members require and direct the Society to control and manage the development of the Property, to formulate, produce and amend plans and to produce budgets for that purpose.

The Society is authorised to impose rules that Members must comply with provided that such rules will not be inconsistent with the Management Plan and the Resource Consent and will first be approved by the Local Authority. The Society may impose and enforce sanctions and penalties for breach of rules by Members and others.

The Society may not carry on any activity other than those intended to further the advancement of the Purposes, provided that:

- 1.1 The Society may carry out all incidental activities which will further the advancement of the Purposes, including (but not limited to):
 - 1.1.1 Considering and determining applications made by Members; and

- 1.1.2 maintaining and enhancing values associated with Coastal, Forestry, and Wetland Management.

- 1.2 Which activities are undertaken by the Society at any one time in furtherance of the Purposes shall be at the Society's complete and uncontrolled discretion.

- 1.3 For the avoidance of doubt, the Society shall not engage in political activity of any kind.

- 1.4 The Society shall ensure that the integrity of the Management Plan is maintained, and for that purpose no further subdivision of the land shall be permitted.