Bella Vista Residents' Association Incorporated
Constitution

1. Introductory rules

1.1 Name

The name of the society is BELLA VISTA RESIDENTS' ASSOCIATION INCORPORATED (in this **Constitution** referred to as the '**Society**').

1.2 Charitable status

The **Society** is not and does not intend to be registered as a charitable entity under the Charities Act 2005

1.3 Definitions

In this **Constitution**, unless the context requires otherwise, the following words and phrases have the following meanings:

'Act' means the Incorporated Societies Act 2022 or any Act which replaces it (including amendments to it from time to time), and any regulations made under the Act or under any Act which replaces it.

'Annual General Meeting' means a meeting of the **Members** of the **Society** held once per year which, among other things, will receive and consider reports on the **Society**'s activities and finances.

'Bella Vista Land' means the land currently comprised in Identifier NA 124N477.

'Chairperson' means the **Officer** responsible for chairing **General Meetings** and committee meetings, and who provides leadership for the **Society**.

'Committee' means the **Society**'s governing body.

'Constitution' means the rules in this document.

'Deputy Chairperson' means the **Officer** elected or appointed to deputise in the absence of the **Chairperson**.

'Design Control Committee' means the **Sub-Committee** appointed from time to time to manage compliance with Design Guidelines in accordance with the rules outlined in Schedule 1: Design Guidelines.

'**Design Guidelines**' provide a framework for an applicant to prepare an architectural and landscaping submission for approval of the **Design Control Committee** and that preserves the theme of the **Bella Vista Land** masterplan that is spacious and carefully designed housing set in a native planted landscape. These guidelines are set out in Schedule 1 of the Constitution.

'General Meeting' means either an **Annual General Meeting** or a **Special General Meeting** of the **Members** of the **Society**.

'Interested Member' means a **Member** who is interested in a matter for any of the reasons set out in section 62 of the **Act**.

'Interests Register' means the register of interests of **Officers**, kept under this **Constitution** and as required by section 73 of the **Act**.

'**Lot**' means all and any of the separate certificates of title held to or to be held by Owners comprised in the Bella Vista Land.

'Matter' means—

1. the **Society's** performance of its activities or exercise of its powers; or
2. an arrangement, agreement, or contract (a transaction) made or entered into, or proposed to be entered into, by the **Society**.

'Member' means a person who has consented to become a **Member** of the **Society** and has been properly admitted to the **Society** who has not ceased to be a **Member** of the **Society**.

'**Memorandum of Encumbrance'** means the memorandum of encumbrance registered against the Lots.

'Notice' to **Members** includes any notice given by email, post, or courier.

'**Offending Owner'** means any owner of a Lot, or that Owners invitees or occupiers who breach these Rules.

'Officer' means a natural person who is:

- a member of the **Committee**, or
- occupying a position in the **Society** that allows them to exercise significant influence over the management or administration of the **Society**, including any Chief Executive or Treasurer.

'**Owner**' means each person (whether individually or with others) registered as the proprietor of a Lot.

'**Private Way**' means the main private access to the Lots comprised in lot 41 on Deposited Plan 351196 to be owned and maintained by the **Society**, together with all supporting structures including without limitation any bridges.

'Register of Members' means the register of **Members** kept under this **Constitution** as required by section 79 of the **Act**.

'Secretary' means the **Officer** responsible for the matters specifically noted in this **Constitution**.

'Special General Meeting' means a meeting of the **Members,** other than an **Annual General Meeting,** called for a specific purpose or purposes.

'Working Days' mean as defined in the Legislation Act 2019. Examples of days that are not **Working Days** include, but are not limited to, the following — a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, ANZAC Day, the Sovereign's birthday, and Labour Day.

1.4 Purposes

The primary purposes of the **Society** are to:

- Provide for the maintenance, repair and replacement of the Common Facilities within the Bella Vista Land and, if approved by the **Society** in general meeting, the development of further facilities to be designed as Common Facilities;
- Appoint the Design Control Committee from time to time and provide the mechanism and structure for the promulgation and enforcement of the Design Guidelines;
- Ensure that the Private Way is maintained to Council's Standards for Engineering Design and Construction;
- Maintain the landscaping in and around the Private Way and any other Common Facility;
- Do all such things as may appear desirable to achieve the objects of the **Society**;
- Enforce compliance with the Rules of the **Society**.
- Manage the financial affairs of the **Society** on behalf of owners of the properties within the Bella Vista estate;

- Manage the estate through the constitution and bylaws that are governed by the **Committee** on behalf of the owners.

The Owners appoint the **Society** to manage their collective interests as co-owners of the Common Facilities and, as Owners of individual Lots, agree to be bound by the Constitution of the **Society** which will operate to govern the use and enjoyment of the Bella Vista Land and which will constitute a binding agreement between the Owners for the use and enjoyment of the Bella Vista Land.

The **Society** through its Constitution provides for the regulation of Owners' rights in relation to each of their co-owners in respect of the Bella Vista Land and, as such, the **Society** will, on the Owners' behalf, enforce the Constitution of the **Society**.

No Owner shall be entitled to take any action in law or otherwise in respect of any matter or thing done or omitted to be done without first, on each occasion, referring the matter or thing to the **Society** and allowing the **Society** a reasonable opportunity (having regard to the seriousness and nature of the default) to enforce the terms of the Constitution against the defaulting Owner.

The **Society** must not operate for the purpose of, or with the effect of—

- distributing, any gain, profit, surplus, dividend, or other similar financial benefit to any of its **Members** (whether in money or in kind); or
- having capital that is divided into shares or stock held by its **Members**; or
- holding, property in which its members have a disposable interest (whether directly, or in the form of shares or stock in the capital of the society or otherwise).
-

But the **Society** will not operate for the financial gain of **Members** simply if the **Society**

- engages in trade,
- pays a **Member** for matters that are incidental to the purposes of the **Society**, and the **Member** is a not-for-profit entity,
- distributes funds to a **Member** to further the purposes of the **Society**, and the **Member**—
  - is a not-for-profit entity, and
  - is affiliated or closely related to the **Society**, and
  - has the same, or substantially the same, purposes as those of the **Society**.
- reimburses a **Member** for reasonable expenses legitimately incurred on behalf of the **Society** or while pursuing the **Society**'s purposes,
- provides benefits to members of the public or of a class of the public and those persons include **Members** or their families,
- provides benefits to **Members** or their families to alleviate hardship,
- provides educational scholarships or grants to **Members** or their families,

- pays a **Member** a salary or wages or other payments for services to the **Society** on arm's length terms (terms reasonable in the circumstances if the parties were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests; or are terms less favourable to the **Member** than those terms and the payment for services, or other transaction, does not include any share of a gain, profit, or surplus, percentage of revenue, or other reward in connection with any gain, profit, surplus, or revenue of the **Society**),
- provides a **Member** with incidental benefits (for example, trophies, prizes, or discounts on products or services) in accordance with the purposes of the **Society**.
- on removal of the **Society** from the Register of Incorporated Societies having its surplus assets distributed under subpart 5 of Part 5 of the **Act** to a **Member** that is a not-for-profit entity.

1.5 Act and Regulations

Nothing in this **Constitution** authorises the **Society** to do anything which contravenes or is inconsistent with the **Act**, any regulations made under the **Act**, or any other legislation.

1.6 Restrictions on society powers

The **Society** must not be carried on for the financial gain of any of its members.

The **Society's** capacity, rights, powers, and privileges are subject to the following restrictions (if any)—

- The **Society** does not have the power to borrow money.

1.7 Registered office

The registered office of the **Society** shall be at such place in New Zealand as the **Committee** from time to time determines.

Changes to the registered office shall be notified to the Registrar of Incorporated Societies—

- at least 5 working days before the change of address for the registered office is due to take effect, and
- in a form and as required by the **Act**.

1.8 Contact person

The **Society** shall have at least 1 but no more than 3 contact person(s) whom the Registrar can contact when needed.

The **Society**'s contact person must be:

- At least 18 years of age, and
- Ordinarily resident in New Zealand.

A contact person can be appointed by the **Committee** or elected by the **Members** at a **General Meeting**.

Each contact person's name must be provided to the Registrar of Incorporated Societies, along with their contact details, including:

- a physical address, and
- an email address, and
- a mobile telephone number.

Any change in that contact person or that person's name or contact details shall be advised to the Registrar of Incorporated Societies within 20 **Working Days** of that change occurring, or the **Society** becoming aware of the change.

2. Members

2.1 Minimum number of members

The **Society** shall maintain the minimum number of **Members** required by the **Act**.

2.2 Becoming a member: consent

Each and every Owner shall be a member of the Association and for that purpose:

(a) The Memorandum of Encumbrance shall be registered against each Lot in favour of the **Society**, whereby each Owner is deemed to be a member of the **Society**, and thereby bound by the Constitution of the **Society** and will perform the obligations of a member of the **Society** as set out in this Constitution;

(b) An Owner shall resign and be deemed to have resigned from the **Society** immediately that Owner ceases to be an Owner of a Lot, provided such resignation shall not relieve a person of any obligation or liability arising before that person ceased to be an Owner; and

(c) 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 Owners.

2.3 Becoming a member: process

An applicant for membership must complete and sign the Deed of Covenant and supply any information as may be reasonably required by the **Society** and will become a **Member** on acceptance of the Deed of Covenant by the **Committee**.

The signed written consent of every **Member** to become a **Society Member** shall be retained in the **Society's** membership records.

2.4 Members' obligations and rights

Every **Member** shall provide the **Society** in writing with that **Member**'s name and contact details (namely, physical and email address and a telephone number) and promptly advise the **Society** in writing of any changes to those details.

- All **Members** shall promote the interests and purposes of the **Society** and shall do nothing to bring the **Society** into disrepute.
- A **Member** is only entitled to exercise the rights of membership (including attending and voting at **General Meetings**, accessing or using the **Society's** common facilities, equipment and other property, and participating in **Society** activities) if all subscriptions and any other fees have been paid to the **Society** by their respective due dates, but no **Member** is liable for an obligation of the **Society** by reason only of being a **Member**.
- The **Committee** may decide what access or use **Members** may have of or to any common facilities, equipment or other property owned, occupied or otherwise used by the **Society**, and to participate in **Society** activities, including any conditions of and fees for such access, use or involvement.
- Upon any breach of these obligations by an Offending Owner (or their Invitees or occupiers) if such default continues for seven (7) days after notice is given by the **Society** to the Offending Owner to remedy the default, the **Society** may do anything, including paying money, necessary to remedy the default.
- All money paid and expenses incurred by the **Society** (including any legal costs of the **Society**) in remedying, or attempting to remedy, any breach by an Offending Owner of the **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 Owner to the **Society**.
- If any money payable by an Offending Owner to the **Society** is in arrears and unpaid for seven (7) 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 rate of 5% above the **Society**'s banker's overdraft rate (or in the absence of such rate other benchmark lending

rate as nominated by the **Committee**) applicable during the continuance of the default, computed on a daily basis from the due date until the date of payment in full.

2.5 Members wishing to let their property

Members of the Society are allowed to let their property to tenants, provided that they comply with any bylaws, policies, or codes of conduct set by the **Committee.**

An Owner must advise the **Society** of details of the occupiers of the Owner's Lot. Each occupier shall be deemed to have knowledge of the **Constitution** and each Owner is responsible and shall be held liable for acquainting the occupier with the **Constitution**. In the case of occupiers of a Lot, each relevant Owner must take all reasonable steps (including enforcing the terms of any lease/licence) to ensure occupiers comply with the **Constitution**. In any case of persistent default by an occupier of the **Constitution**, the Owner shall on demand by the **Society**, terminate the occupier's right to occupy the Lot.

A copy of the **Constitution** shall be attached to every lease, licence, or other document defining occupancy rights and any such document must contain an obligation on the occupier to observe and comply with the **Constitution**.

Where damage has been caused to any part of the Common Facilities, the offending Owner shall immediately make good such damage at its own cost. Where the offending Owner is the Owner of a Lot owned by more than one Owner, all such Owners will be jointly and severally liable for such damage.

2.6 Levies and fees

The annual levy and any other fees for membership for the future financial year shall be set by the **Committee**.

Any **Member** failing to pay the annual levy, or any other fees, within 3 calendar month(s) of the date the same was due for payment shall be considered as unfinancial and shall (without being released from the obligation of payment) not be entitled to participate in any **Society** vote until all the arrears are paid. If such arrears are not paid within 3 calendar months of the due date for payment of the subscription, any other fees, or levy the **Committee** may issue legal proceedings to recover the levy amount owing, as well as associated legal costs.

2.7 Ceasing to be a member

A **Member** ceases to be a **Member**—

- by resignation from that **Member**'s class of membership by written notice signed by that **Member** to the **Committee**, or
- on termination of a **Member**'s membership following a dispute resolution process under this **Constitution**, or
- by resolution of the **Committee** where—
- The **Member** has failed to pay a subscription, levy or other amount due to the **Society** within 60 **Working Days** of the due date for payment.
- The **Member** sells their Bella Vista Property with effect from the date of transfer of ownership of their Lot
- the date of receipt of the **Member**'s notice of resignation by the **Committee** (or any subsequent date stated in the notice of resignation), or
- the date of termination of the **Member**'s membership under this **Constitution**, or
- the date of death of the **Member** (or if a body corporate from the date of its liquidation or deregistration, or if a partnership from the date of its dissolution), or
- the date specified in a resolution of the **Committee** and when a **Member**'s membership has been terminated the **Committee** shall promptly notify the former **Member** in writing.

2.8 Obligations once membership has ceased

A **Member** who has ceased to be a **Member** under this **Constitution**—

- remains liable to pay all subscriptions and other fees to the **Society**'s next balance date,
- shall cease to hold himself or herself out as a **Member** of the **Society**, and
- shall return to the **Society** all material provided to **Members** by the **Society**.
- shall cease to be entitled to any of the rights of a **Society Member**.

3. General meetings

3.1 Procedures for all general meetings

The **Committee** shall give all **Members** at least 21 **Working Days**' written **Notice** of any **General Meeting** and of the business to be conducted at that **General Meeting**.

That **Notice** will be addressed to the **Member** at the contact address notified to the **Society** and recorded in the **Society's** register of members. The **General Meeting** and its business will not be invalidated simply because one or more **Members** do not receive the **Notice** of the **General Meeting**.

Only financial **Members** may attend, speak and vote at **General Meetings**—

- in person, or
- by a signed original written proxy (an email or copy not being acceptable) in favour of some individual entitled to be present at the meeting and received by, or handed to, the **Committee** before the commencement of the **General Meeting,** or
- through the authorised representative of a body corporate as notified to the **Committee**, and
- no other proxy voting shall be permitted.

No **General Meeting** may be held unless at least 50 percent of eligible financial **Members** attend throughout the meeting and this will constitute a quorum.

If, within half an hour after the time appointed for a meeting a quorum is not present, the meeting – if convened upon request of **Members** – shall be dissolved. In any other case it shall stand adjourned to a day, time and place determined by the **Chairperson** of the **Society**, and if at such adjourned meeting a quorum is not present those **Members** present in person or by proxy shall be deemed to constitute a sufficient quorum.

A **Member** is entitled to exercise one vote on any motion at a **General Meeting** in person or by proxy, and voting at a **General Meeting** shall be by voices or by show of hands or, on demand of the chairperson or of 2 or more **Members** present, by secret ballot.

Unless otherwise required by this **Constitution**, all questions shall be decided by a simple majority of those in attendance in person or by proxy and voting at a **General Meeting** or voting by remote ballot.

Any decisions made when a quorum is not present are not valid.

The **Society** may pass a written resolution in lieu of a **General Meeting**, and a written resolution is as valid for the purposes of the **Act** and this **Constitution** as if it had been passed at a **General Meeting** if it is approved by no less than 75 percent of the eligible financial **Members** voting on the resolution. A written resolution may consist of 1 or more documents in similar form (including letters, electronic mail, or other similar means of communication) each proposed by or on behalf of 1 or more **Members**. A **Member** may give their approval to a written resolution by signing the resolution or giving approval to the resolution in any other manner permitted by the **Constitution** (for example, by electronic means).

- **General Meetings** may be held at one or more venues by **Members** present in person and/or using any real-time audio, audio and visual, or electronic communication that gives each **Member** a reasonable opportunity to participate.
- All **General Meetings** shall be chaired by the **Chairperson**. If the **Chairperson** is absent, the Deputy Chairperson shall chair that meeting.

- Any person chairing a **General Meeting** has a deliberative and, in the event of a tied vote, no casting vote.
- Any person chairing a **General Meeting** may —
  - With the consent of a simple majority of **Members** present at any **General Meeting** adjourn the **General Meeting** from time to time and from place to place but no business shall be transacted at any adjourned **General Meeting** other than the business left unfinished at the meeting from which the adjournment took place.
  - Direct that any person not entitled to be present at the **General Meeting**, or obstructing the business of the **General Meeting**, or behaving in a disorderly manner, or being abusive, or failing to abide by the directions of the chairperson be removed from the **General Meeting**, and
  - In the absence of a quorum or in the case of emergency, adjourn the **General Meeting** or declare it closed.
- The **Committee** may propose motions for the **Society** to vote on (**'Committee Motions'**), which shall be notified to **Members** with the notice of the **General Meeting.**
- Any **Member** may request that a motion be voted on (**'Member's Motion'**) at a **General Meeting**, by giving notice to the **Secretary** or **Committee** at least 7 **Working Days** before that meeting. The **Member** may also provide information in support of the motion (**'Member's Information'**). If notice of the motion is given to the **Secretary** or **Committee** before written **Notice** of the **General Meeting** is given to **Members**, notice of the motion shall be provided to **Members** with the written **Notice** of the **General Meeting**.

3.2 Minutes

The **Society** must keep minutes of all **General Meetings**.

3.3 Annual General Meetings: when they will be held

An **Annual General Meeting** shall be held once a year on a date and at a location and/or using any electronic communication determined by the **Committee** and consistent with any requirements in the **Act**, and the **Constitution** relating to the procedure to be followed at **General Meetings** shall apply.

The **Annual General Meeting** must be held no later than the earlier of the following—

- 6 months after the balance date of the **Society**
- 15 months after the previous annual meeting.

3.4 Annual General Meetings: business

The business of an **Annual General Meeting** shall be to—

- confirm the minutes of the last **Annual General Meeting** and any **Special General Meeting**(s) held since the last **Annual General Meeting**,
- adopt the annual report on the operations and affairs of the **Society**,
- adopt the **Committee's** report on the finances of the **Society**, and the annual financial statements,
- elect or re-elect the **Committee** for the ensuing financial year,
- ratify any officers appointed to the **Committee** to fill a vacancy that occurred since the last Annual General Meeting,
- consider any motions of which prior notice has been given to **Members** with notice of the **Meeting**, and
- consider any general business.

The **Committee** must, at each **Annual General Meeting**, present the following information—

- an annual report on the operation and affairs of the **Society** during the most recently completed accounting period,
- the annual financial statements for that period, and
- notice of any disclosures of conflicts of interest made by **Officers** during that period (including a summary of the matters, or types of matters, to which those disclosures relate).

3.5 Special General Meetings

Special General Meetings may be called at any time by the **Committee** by resolution.

The **Committee** must call a **Special General Meeting** if it receives a written request signed by at least 50 percent of **Members**.

Any resolution or written request must state the business that the **Special General Meeting** is to deal with.

The rules in this **Constitution** relating to the procedure to be followed at **General Meetings** shall apply to a **Special General Meeting**, and a **Special General Meeting** shall only consider and deal with the business specified in the **Committee's** resolution or the written request by **Members** for the **Meeting**.

4 Committee

4.1 Committee composition

The **Committee** will consist of at least 3 **Officers** and no more than 5 **Officers**.

A majority of the **Officers** on the **Committee** must be **Member**s of the **Society.**

4.2 Functions of the committee

From the end of each **Annual General Meeting** until the end of the next, the **Society** shall be managed by, or under the direction or supervision of, the **Committee**, in accordance with the Incorporated Societies Act 2022, any Regulations made under that **Act**, and this **Constitution**.

4.3 Powers of the committee

The **Committee** has all the powers necessary for managing — and for directing and supervising the management of — the operation and affairs of the **Society**, subject to such modifications, exceptions, or limitations as are contained in the **Act** or in this **Constitution**.

The **Committee** shall appoint one of their number as Secretary to perform the secretarial duties as detailed by the **Committee.**

The **Committee** shall appoint one of their number as Treasurer to perform the financial processing and record-keeping duties as detailed by the **Committee.**

4.4 Sub-committees

The **Committee** may appoint the Design Control sub-committee consisting of such persons (whether or not **Members** of the **Society**) and for the purposes of ensuring compliance with the **Design Guidelines** that have been adopted by the Society at its formation. Unless otherwise resolved by the **Committee**—

- the quorum of every sub-committee is half the members of the sub-committee but not less than 2,
- no sub-committee shall have power to co-opt additional members,
- a sub-committee must not commit the **Society** to any financial expenditure without express authority from the **Committee**, and
- a sub-committee must not further delegate any of its powers.
- the Design Control sub-committee will be responsible for managing the compliance with the Design Control Guidelines.

4.5 General matters: committees

The **Committee** and any sub-committee may act by resolution approved during a conference call using audio and/or audio-visual technology or through a written ballot conducted by email, electronic voting system, or post, and any such resolution shall be recorded in the minutes of the next **Committee** or sub-committee meeting.

Other than as prescribed by the **Act** or this **Constitution**, the **Committee** or any sub-committee may regulate its proceedings as it thinks fit.

5 Committee meetings

5.1 Procedure

The quorum for **Committee** meetings is at least two-thirds of the number of members of the **Committee**.

A meeting of the **Committee** may be held either—

1. by a number of the members of the **Committee** who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
2. by means of audio, or audio and visual, communication by which all members of the **Committee** participating and constituting a quorum can simultaneously hear each other throughout the meeting.

A resolution of the **Committee** is passed at any meeting of the **Committee** if a majority of the votes cast on it are in favour of the resolution. Every **Officer** on the **Committee** shall have one vote.

The members of the **Committee** shall elect one of their number as chairperson of the **Committee**. If at a meeting of the **Committee**, the chairperson is not present, the members of the **Committee** present may choose one of their number to be chairperson of the meeting. The chairperson does not have a casting vote in the event of a tied vote on any resolution of the **Committee**.

Except as otherwise provided in this **Constitution**, the **Committee** may regulate its own procedure.

5.2 Frequency

The **Committee** shall meet as required at such times and places and in such manner (including by audio, audio and visual, or electronic communication) as it may determine and otherwise where and as convened by the **Chairperson** or **Secretary**.

The **Secretary**, or other **Committee** member nominated by the **Committee**, shall give to all **Committee** members not less than 5 **Working Days'** notice of **Committee** meetings, but in cases of urgency a shorter period of notice shall suffice.

6 Officers

6.1 Qualifications of officers

Every **Officer** must be a natural person who—

- has consented in writing to be an officer of the **Society**, and
- certifies that they are not disqualified from being elected or appointed or otherwise holding office as an **Officer** of the **Society**.

Officers must not be disqualified under section 47(3) of the **Act** from being appointed or holding office as an **Officer** of the **Society**, namely—

1. a person who is under 16 years of age
2. a person who is an undischarged bankrupt
3. a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Financial Markets Conduct Act 2013, or the Takeovers Act 1993, or any other similar legislation
4. A person who is disqualified from being a member of the governing body of a charitable entity under section 16(2) of the Charities Act 2005
5. a person who has been convicted of any of the following, and has been sentenced for the offence, within the last 7 years—
    1. an offence under subpart 6 of Part 4 of the **Act**
    2. a crime involving dishonesty (within the meaning of section 2(1) of the Crimes Act 1961)
    3. an offence under section 143B of the Tax Administration Act 1994
    4. an offence, in a country other than New Zealand, that is substantially similar to an offence specified in subparagraphs (1) to (3)
    5. a money laundering offence or an offence relating to the financing of terrorism, whether in New Zealand or elsewhere
6. a person subject to:
    1. a banning order under subpart 7 of Part 4 of the **Act**,or
    2. an order under section 108 of the Credit Contracts and Consumer Finance Act 2003, or
    3. a forfeiture order under the Criminal Proceeds (Recovery) Act 2009, or
    4. a property order made under the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act.

7. a person who is subject to an order that is substantially similar to an order referred to in paragraph (6) under a law of a country, State, or territory outside New Zealand that is a country, State, or territory prescribed by the regulations (if any) of the **Act**.

Prior to election or appointment as an **Officer** a person must—

- consent in writing to be an **Officer**, and
- certify in writing that they are not disqualified from being elected or appointed as an **Officer** either by this **Constitution** or the **Act**.

Note that only a natural person may be an **Officer** and each certificate shall be retained in the **Society's** records.

6.2 Officers' duties

At all times each **Officer**:

1. shall act in good faith and in what he or she believes to be the best interests of the **Society**,
2. must exercise all powers for a proper purpose,
3. must not act, or agree to the **Society** acting, in a manner that contravenes the **Act** or this **Constitution**,
4. when exercising powers or performing duties as an **Officer**, must exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances taking into account, but without limitation:
   - the nature of the **Society**,
   - the nature of the decision, and
   - the position of the **Officer** and the nature of the responsibilities undertaken by him or her
5. must not agree to the activities of the **Society** being carried on in a manner likely to create a substantial risk of serious loss to the **Society** or to the **Society's** creditors, or cause or allow the activities of the **Society** to be carried on in a manner likely to create a substantial risk of serious loss to the **Society** or to the **Society's** creditors, and
6. must not agree to the **Society** incurring an obligation unless he or she believes at that time on reasonable grounds that the **Society** will be able to perform the obligation when it is required to do so.

6.3 Election or appointment of officers

The election of **Officers** shall be conducted as follows.

1. **Officers** shall be elected during **Annual General Meetings**. However, if a vacancy in the position of any **Officer** occurs between **Annual General**

Meetings, that vacancy shall be filled by resolution of the **Committee** (and any such appointee must, before appointment, supply a signed consent to appointment and a certificate that the nominee is not disqualified from being appointed or holding office as a **Officer** (as described in the 'Qualification of Officers' rule above). Any such appointment must be ratified at the next **Annual General Meeting**.

2. A candidate's written nomination, accompanied by the written consent of the nominee with a certificate that the nominee is not disqualified from being appointed or holding office as a **Officer** (as described in the 'Qualification of Officers' rule above) shall be received by the **Society** at least 30 **Working Days** before the date of the **Annual General Meeting**. If there are insufficient valid nominations received, further nominations may be received from the floor at the **Annual General Meeting**.
3. Votes shall be cast in such a manner as the person chairing the meeting determines. In the event of any vote being tied, the tie shall be resolved by the incoming **Committee** (excluding those in respect of whom the votes are tied).
4. Two **Members** (who are not nominees) or non-**Members** appointed by the **Chairperson** shall act as scrutineers for the counting of the votes and destruction of any voting papers.
5. The failure for any reason of any financial **Member** to receive such **Notice** of the general meeting shall not invalidate the election.
6. In addition to **Officers** elected under the foregoing provisions of this rule, the **Committee** may appoint other **Officers** for a specific purpose, or for a limited period, or generally until the next **Annual General Meeting**. Unless otherwise specified by the **Committee** any person so appointed shall have full speaking and voting rights as an **Officer** of the **Society**. Any such appointee must, before appointment, supply a signed consent to appointment and a certificate that the nominee is not disqualified from being appointed or holding office as an **Officer** (as described in the 'Qualification of Officers' rule above).

6.4 Term

The term of office for all **Officers** elected to the **Committee** shall be 1 year(s), expiring at the end of the **Annual General Meeting** in the year corresponding with the last year of each **Officer's** term of office.

No **Officer** shall serve for more than ten consecutive terms.

No **Chairperson** shall serve for more than ten consecutive years as **Chairperson**.

6.5 Removal of officers

An **Officer** shall be removed as an **Officer** by resolution of the **Committee** or the **Society** where in the opinion of the **Committee** or the **Society** —

- The **Officer** elected to the **Committee** has been absent from 5 committee meetings without leave of absence from the **Committee**.
- The **Officer** has brought the **Society** into disrepute.
- The **Officer** has failed to disclose a conflict of interest.
- The **Committee** passes a vote of no confidence in the **Officer**.

with effect from the date specified in a resolution of the **Committee** or **Society**.

6.6 Ceasing to hold office

An **Officer** ceases to hold office when they resign (by notice in writing to the **Committee**), are removed, die, or otherwise vacate office in accordance with section 50(1) of the **Act**.

Each **Officer** shall within 7 **Working Days** of submitting a resignation or ceasing to hold office, deliver to the **Committee** all books, papers and other property of the **Society** held by such former **Officer**.

6.7 Conflicts of interest

An **Officer** or member of a sub-committee who is an **Interested Member** in respect of any **Matter** being considered by 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)

1. to the **Committee** and or sub-committee, and
2. in an **Interests Register** kept by the **Committee**.

Disclosure must be made as soon as practicable after the **Officer** or member of a sub-committee becomes aware that they are interested in the **Matter**.

An **Officer** or member of a sub-committee who is an **Interested Member** regarding a **Matter**—

1. must not vote or take part in the decision of the **Committee** and/or sub-committee relating to the **Matter** unless all members of the **Committee** who are not interested in the **Matter** consent; and

2. must not sign any document relating to the entry into a transaction or the initiation of the **Matter** unless all members of the **Committee** who are not interested in the **Matter** consent; but
3. may take part in any discussion of the **Committee** and/or sub-committee relating to the **Matter** and be present at the time of the decision of the **Committee** and/or sub-committee (unless the **Committee** and/or sub-committee decides otherwise).

However, an **Officer** or member of a sub-committee who is prevented from voting on a **Matter** may still be counted for the purpose of determining whether there is a quorum at any meeting at which the **Matter** is considered.

Where 50 per cent or more of **Officers** are prevented from voting on a **Matter** because they are interested in that **Matter**, a **Special General Meeting** must be called to consider and determine the **Matter**, unless all non-interested **Officers** agree otherwise.

Where 50 per cent or more of the members of a sub-committee are prevented from voting on a **Matter** because they are interested in that **Matter**, the **Committee** shall consider and determine the **Matter**.

7 Records

7.1 Register of Members

The **Society** shall keep an up-to-date Register of Members.

For each current **Member**, the information contained in the Register of Members shall include —

- Their name, and
- The date on which they became a **Member** (if there is no record of the date they joined, this date will be recorded as ‘Unknown’), and
- Their contact details, including —
  - A physical address, and
  - An email address, and
  - A telephone number.

The register will also include each **Member's** —

- postal address, where it is different from their Bella Vista address
- occupation
- mortgagee name, contact person, telephone number and email address of any person holding a mortgage or share or other encumbrance over the Member’s property

Every current **Member** shall promptly advise the **Society** of any change of the **Member's** details.

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:

- The former **Member's** name, and
- The date the former **Member** ceased to be a **Member**.

7.2 Interests Register

The **Committee** shall at all times maintain an up-to-date register of the interests disclosed by **Officers** and by members of any sub-committee.

7.3 Access to information for members

A **Member** may at any time make a written request to the **Society** for information held by the **Society**.

The request must specify the information sought in sufficient detail to enable the information to be identified.

The **Society** must, within a reasonable time after receiving a request —

1. provide the information, or
2. agree to provide the information within a specified period, or
3. agree to provide the information within a specified period if the **Member** pays a reasonable charge to the **Society** (which must be specified and explained) to meet the cost of providing the information, or
4. refuse to provide the information, specifying the reasons for the refusal.

Without limiting the reasons for which the **Society** may refuse to provide the information, the **Society** may refuse to provide the information if —

1. withholding the information is necessary to protect the privacy of natural persons, including that of deceased natural persons, or
2. the disclosure of the information would, or would be likely to, prejudice the commercial position of the **Society** or of any of its **Members**, or
3. the disclosure of the information would, or would be likely to, prejudice the financial or commercial position of any other person, whether or not that person supplied the information to the **Society**, or
4. the information is not relevant to the operation or affairs of the society, or
5. withholding the information is necessary to maintain legal professional privilege, or

6. the disclosure of the information would, or would be likely to, breach an enactment, or
7. the burden to the **Society** in responding to the request is substantially disproportionate to any benefit that the **Member** (or any other person) will or may receive from the disclosure of the information, or
8. the request for the information is frivolous or vexatious, or
9. the request seeks information about a dispute or complaint which is or has been the subject of the procedures for resolving such matters under this **Constitution** and the **Act**.

If the **Society** requires the **Member** to pay a charge for the information, the **Member** may withdraw the request, and must be treated as having done so unless, within 10 **Working Days** after receiving notification of the charge, the **Member** informs the **Society** —

1. that the **Member** will pay the charge; or
2. that the **Member** considers the charge to be unreasonable.

Nothing in this rule limits Information Privacy Principle 6 of the Privacy Act 2020 relating to access to personal information.

8. Finances

8.1 Control and management

The funds and property of the **Society** shall be—

- controlled, invested and disposed of by the **Committee**, subject to this **Constitution**, and
- devoted solely to the promotion of the purposes of the **Society**.

The **Committee** shall maintain bank accounts in the name of the **Society**.

All money received on account of the **Society** shall be banked on the day of receipt.

All accounts paid or for payment shall be submitted to chairperson of the **Committee** for approval of payment.

The **Committee** must ensure that there are kept at all times accounting records that—

1. correctly record the transactions of the **Society**, and
2. allow the **Society** to produce financial statements that comply with the requirements of the **Act**, and

3. would enable the financial statements to be readily and properly audited (if required under any legislation or the **Society's Constitution**).

The **Committee** must establish and maintain a satisfactory system of control of the **Society's** accounting records.

The accounting records must be kept in electronic form or in a form or manner that is easily accessible and convertible into written form. And the accounting records must be kept for the current accounting period and for the last 7 completed accounting periods of the **Society**.

8.2 Balance date

The **Society**'s financial year shall commence on first of April of each year and end on March 31 (the latter date being the **Society**'s balance date).

9. Dispute resolution

9.1 Meanings of dispute and complaint

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

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

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

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

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

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

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

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

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

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

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

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

The complainant raising a dispute, and the **Committee**, must consider and discuss whether a dispute may best be resolved through informal discussions, mediation, arbitration, or a tikanga-based practice. Where mediation or arbitration is agreed on, the parties will sign a suitable mediation or arbitration agreement.

9.2 How complaint is made

1. A **Member** or an **Officer** may make a complaint by giving to the **Committee** (or a complaints subcommittee) a notice in writing that—
    1. states that the **Member** or **Officer** is starting a procedure for resolving a dispute in accordance with the **Society**'s **Constitution**; and
    2. sets out the allegation or allegations to which the dispute relates and whom the allegation is against; and
    3. sets out any other information reasonably required by the **Society**.
2. 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—
    1. states that the **Society** is starting a procedure for resolving a dispute in accordance with the **Society**'s **Constitution**; and

2. sets out the allegation to which the dispute relates.

3. The information given under subclause (1.2) or (2.2) 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.
4. A complaint may be made in any other reasonable manner permitted by the **Society**'s **Constitution**.

9.3 Person who makes complaint has right to be heard

1. A **Member** or an **Officer** who makes a complaint has a right to be heard before the complaint is resolved or any outcome is determined.
2. If the **Society** makes a complaint—
    1. the **Society** has a right to be heard before the complaint is resolved or any outcome is determined; and
    2. an **Officer** may exercise that right on behalf of the **Society**.
3. 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 —
    1. they have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
    2. an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
    3. an oral hearing (if any) is held before the decision maker; and
    4. the **Member**'s, **Officer**'s, or **Society**'s written or verbal statement or submissions (if any) are considered by the decision maker.

9.4 Investigating and determining dispute

1. 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.
2. Disputes must be dealt with under the **Constitution** in a fair, efficient, and effective manner and in accordance with the provisions of the **Act**.

9.5 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—

1. the complaint is considered to be trivial; or
2. the complaint does not appear to disclose or involve any allegation of the following kind:
    1. that a **Member** or an **Officer** has engaged in material misconduct:

2. that a **Member**, an **Officer**, or the **Society** has materially breached, or is likely to materially breach, a duty under the **Society**'s **Constitution** or bylaws or the **Act**:
3. that a **Member**'s rights or interests or **Members**' rights or interests generally have been materially damaged:

3. the complaint appears to be without foundation or there is no apparent evidence to support it; or
4. the person who makes the complaint has an insignificant interest in the matter; or
5. the conduct, incident, event, or issue giving rise to the complaint has already been investigated and dealt with under the **Constitution**; or
6. there has been an undue delay in making the complaint.

9.6 Society may refer complaint

1. The **Society** may refer a complaint to—
    1. a subcommittee or an external person to investigate and report; or
    2. a subcommittee, an arbitral tribunal, or an external person to investigate and make a decision.
2. 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).

9.7 Decision makers

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

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

8. Liquidation and removal from the register

8.1 Surplus assets

If the **Society** is liquidated or removed from the Register of Incorporated Societies, no distribution shall be made to any **Member**.

On the liquidation or removal from the Register of Incorporated Societies of the **Society**, its surplus assets — after payment of all debts, costs and liabilities — shall be vested in Red Beach Surf Club.

However, in any resolution under this rule, the **Society** may approve a different distribution to a different not-for-profit entity from that specified above, so long as the **Society** complies with this **Constitution** and the **Act** in all other respects.

9. Alterations to the constitution

9.1 Amending this constitution

All amendments must be made in accordance with this **Constitution**. Any minor or technical amendments shall be notified to **Members** as required by section 31 of the **Act**.

The **Society** may amend or replace this **Constitution** at a **General Meeting** by a resolution passed by a two-thirds of majority of those **Members** present and voting.

That amendment may be approved by a resolution passed in lieu of a meeting but only if authorised by this **Constitution**.

Any proposed resolution to amend or replace this **Constitution** shall be signed by at least 50 per cent of eligible **Members** and given in writing to the **Committee** at least 21 **Working Days** before the **General Meeting** at which the resolution is to be considered and accompanied by a written explanation of the reasons for the proposal.

At least 21 **Working Days** before the **General Meeting** at which any amendment is to be considered the **Committee** shall give to all **Members** notice of the proposed resolution, the reasons for the proposal, and any recommendations the **Committee** has.

When an amendment is approved by a **General Meeting** it shall be notified to the Registrar of Incorporated Societies in the form and manner specified in the **Act** for registration, and shall take effect from the date of registration.

10. Other

10.1 Common seal

The **Society** will have a common seal that must be kept in the custody of the Secretary**.**

The common seal may be affixed to any document:

1. by resolution of the **Committee**, and must be countersigned by 2 **Officers** or
2. by such other means as the **Committee** may resolve from time to time.

10.2 Bylaws

The **Committee** from time to time may make and amend bylaws, and policies for the conduct and control of **Society** activities and codes of conduct applicable to **Members**, but no such bylaws, policies or codes of conduct applicable to **Members** shall be inconsistent with this **Constitution**, the **Act**, regulations made under the **Act**, or any other legislation.

Current Bylaws are set out in Schedule 2 of this Constitution.

SCHEDULE 1

DESIGN GUIDELINES

INTRODUCTION

Bella Vista is bounded on the south and east by the canal and domain. It is a vital element in completing a major open space network - the Canal Walkway. The theme of the masterplan is spacious and carefully designed housing set in a native planted landscape. The southern and eastern edge is framed by covenanted bush areas.

These guidelines do not replace the District Plan provisions and satisfaction of the Design Guidelines does not replace the need for applying for Council consents.

Where these Design Guidelines may contradict of be otherwise at odds with the Council's District Plan, the more stringent of the two controls shall apply.

The guidelines provide a framework for an applicant to prepare a submission for approval of the Design Control Committee in accordance with the Constitution and for a member to ensure continued compliance with that Constitution.

The Design Control Committee may publish from time to time design guidelines in respect of residential development within the Bella Vista Land provided that such guidelines, in the reasonable opinion of the Design Control Committee:

- promote the development of the Bella Vista Land as a private high quality residential estate while protecting views from the Bella Vista Land and enhancing the value f the Lots within the Bella Vista Land;
- encourage architectural compatibility and consistency between dwellings with similar attributes;
- encourage visual integration and harmony between the Gulf Harbour and neighbouring Lots within the Bella Vista Land;
- promote individual Lot owners privacy and security.

BELLA VISTA DESIGN GUIDELINES

1. Definitions

"Design Guidelines" means the design guidelines contained herein and in any amendments subsequently approved by the Design Control Committee.

"Development" means the development comprising the Land and the construction of a dwelling on the Land.

"Existing Ground Level" means the existing level of the ground of the Land at the completion of the subdivision site works.

"Land" means all the land contained in Identifier NA124N477.

"Lots" means all the lots forming part of the Land.

"Member" means a member from time to time of the Society.

"Member's Development Plan" means the architectural plans and specifications, the colour scheme and landscape plan detailing the Member's proposed development of a Lot prepared in accordance with clause 2.

"Private Way" means the private way comprised in Lot 41 on DP 351196

"Rules" means the rules from time to time of the Society.

"Society" means the Bella Vista Resident's Association Incorporated.

2. Approvals Required

2.1 Before commencing any residential building or development or any other structure within the Bella Vista Land, or obtaining any consent from any local authority to build, a Member must first submit the design of the proposed Development Plan for its written approval, which shall not be unreasonably withheld or delayed where the design complies with the relevant district plan, the current Design Guidelines and the Bylaws.

The Member's Development Plan shall comprise:

(i) Architecturally prepared plans & elevations of the Member's Lot showing the siting with existing ground contours, boundaries, proposed floor levels, yard requirements, orientation to the north, sun and views, design character and form, materials, colour along with a landscaping plan showing design and location of driveways, paths, driveways, planting & external amenities (e.g. Pools, spa, pergolas, shade structures, raised lawns, retaining walls and fences) in relation to proposed dwelling. Ideally,

plans should be submitted electronically in a format compatible with Autocad or Rhino software however paper plans are acceptable provided these are printed at no less than 1:50 scale

(ii) Full landscape plans and details provided for covenanted bush area, riparian margin, streetscape, walkway and bridges.

(iii) All costs of the design approval process (including without limitation any disbursement or professional charges of a member of the Design Control Committee) shall be met by the Member seeking the approval.

2.2 The Design Control Committee retains the right to refuse to approve any plans which in its reasonable opinion do not comply with the then current Design Guidelines. The Design Control Committee and the member shall comply with the current Design Review process published by Society.

2.3 The Member seeking approval in accordance with this rule will pay a review fee of $500 as well as a refundable construction bond of not more than $4,500 to be deposited with the Society prior to commencing any constriction work on that Member's Lot to cover rectification of non-compliant works carried out by or on behalf of the Member, any damage to any services, private roading, kerbing or any other facility or structure not owned by the Member and to ensure that the Member complies with the Design Control Committee approval. The bond shall not be used to cover the Members annual levies or fees.

2.4 The Design Control Committee will require an administration fee of $1,500 to cover professional architectural and landscaping review services for the Member's application, the issuing of design approval letter to be submitted to Council, review of completed construction and landscaping and the issuing of final approval letter. Should professional review costs exceed the $1,500 fee, all such additional costs shall be to the Member's account.

3. Prohibited Materials & Methods

3.1 No Member shall, without the prior written consent of the Design Control Committee construct any structure on any Lot comprising in all or in part any of the following materials:

(i) Uncoated fibre cement materials;

(ii) PVC or plastic wall claddings;

(iii) Imitation woodgrain materials finished with stone chips;

(iv) Pressed metal roofing;

(v) Unfinished in-situ and/or precast concrete and concrete block;

(vi) Manufactured replica brick/stone cladding;

(vii) Aluminium composite panels;

(viii) Exposed plywood or ply products;

(ix) Sheet metal wall claddings;

(x) Untreated, unpainted framing timbers;

(xi) Any mirror (reflective) glass;

(xii) Second hand materials.

3.2 No Member shall, without the prior written consent of the Design Control Committee construct or permit any of the following structures on the Lot:

(i) Any water storage tank unless it is fully enclosed within or under a structure approved by the Design Control Committee;

(ii) Any basement unless the exterior walls of such basement are sheathed in cladding similar to and consistent with the dwelling constructed on the Lot;

(iii) Any dwelling (with or without protruding decking) constructed as a pole house with unenclosed framing under the structure.

(iv) Any exposed foundations or unpainted retaining walls;

(v) Any Add-on conservatory type structures;

(vi) Any Window / planter boxes;

(vii) Any Retractable roller awnings;

3.3 The following items on a Lot must not be visible from any road or access lot:

(i) Roof mounted solar panels;

(ii) Unscreened rubbish and laundry drying areas;

(iii) Exposed air conditioning units;

(iv) Exposed gas or electric hot water units;

(v) Sanitary plumbing exterior surfaces mounted;

(vi) Satellite dishes;

(vii) Waste disposal bins (including garbage, recycle, food and green waste bins);

(viii) Compost bins or incinerators;

(ix) Rainwater harvesting tanks.

3.4 No Member shall, without the prior written consent of the Design Control Committee construct or permit any caravan, boat, motorhome, hut or shed structures of any kind other than temporary workers' sheds during the construction of the dwelling on the Lot. Approval to park a single caravan, boat or motorhome will not be unreasonably withheld provided such items shall be:

a). fully contained within the boundaries of the Member's Lot

b). parked on a suitable impervious hardstand

c). screened from sight from any road or access lot by approved plantings

4. Rules for Bulk and Location

Note: Items: (below) b, c, d, e are in accordance with underlying Operative District Plan Gulf Harbour Module Special 18 (Gulf Harbour) Zone District Plan 2000.

Items: a, f, g, h are specific to Bella Vista

(a) Density

No more than one single dwelling may be erected on any Lot

(b) Further Subdivision

No Lot may be further subdivided (as that term is defined in the Resource Management Act 1991)

(c) Maximum Building Height

No structure may be erected on any Lot to a height exceeding 9m provided that no structure may be erected on any of Lots 14 to 25 (both inclusive) to a height exceeding 8m. For the purposes of this clause the height shall be calculated in accordance with the method described in the Proposed District Plan 2000.

(d) Height in Relation to Boundary

No Lot may have any structure erected on it which breaches a height to boundary restriction of 3m + 45 deg (as prescribed in the Proposed District Plan 2000) provided that the height to boundary control for the rear boundaries for Lots 1-9 (inclusive) and Lots 35-40 (inclusive) will be determined in relation to the location of any Palisade wall (as described below).

(e) Height Control from Palisade Walls

(i) For Lots 1· 3 3m+45 deg applies where the rear boundary and Palisade wall are in same location when the height to boundary control of 3m+45deg is to be taken from the top centre of Palisade Wall.

Note: For lots 1-3 no decks shall be allowed to cantilever over the Palisade Yard and Wall.

(ii) For Lots 4 - 9 and Lots 35 - 40 (See Figure 1) The 45 deg Height Control Line shall be applied from a point taken 5m into the Nonbuilding Zone measured horizontally at right angles (90 deg) from the top centre of the Palisade Wall.(Note underlying side yard controls still apply.)

(f) Bulk in Relation to Boundary

Any part of any proposed structure that is greater than 3.5m in height above the ground level of the site boundary adjacent to the building, must be confined within the arms of a single 150 degree angle formed by 2 lines intersecting at a common point on the site boundary, such that each line forms an angle of 15 degrees with that boundary (as prescribed in the Proposed District Plan 2000).

(g) Site Coverage

The site coverage of any Lot may not exceed 35% of net site area (as prescribed in the Proposed District Plan 2000).

(h) Yards

All yards are to be a minimum width of 3m from all boundaries except where a Palisade Walls exist whereupon Palisade Wall Yard shall apply (see below).

(i) Palisade Wall Yards:

For Lots 1 to 9 and Lots 35 to 40 A minimum of a 1.5m yard is required measured from the top centre of the relevant Palisade Wall into the Lot.

Lots 4-9 (both inclusive) and Lots 35-40 (both inclusive) may cantilever a deck a over the Palisade Yard as described below.

(ii) Cantilevered Decks:

For Lots 4 to 9 and 35 to 40

A deck structure (not enclosed at its sides) may cantilever (max of 3m) from the dwelling on a Lot over the 1.5m Palisade Wall Yard and over the Palisade Wall (provided that it may not contact with Palisade Wall or the ground over the full 3m cantilever).

These cantilevered deck structures are required to comply with all other bulk and location controls.

Note: As the height of a Palisade Wall varies so do specific engineering design of building foundations.

Proposed building foundations that are sited above a 45 deg line placed at the base of Palisade Wall require specific engineering design.

Drainage services that are in close proximity to a Palisade Wall and proposed building foundations will require specific foundation design.

(i) Excavation within yards (except Amenity Planting Strip/Yard)

(ii) Fill in relation to boundary yards (except Amenity Planting Strip/Yard).

5. Architectural Design Guidelines

5.1 Bella Vista Philosophy

(i) The Design Control Committee expects unique elegant designs that visually integrate and follow the natural land contours taking advantage of views and sun.

(ii) Each Lot is to be designed to an individual theme expressed in consistent theme detailing, balanced proportions and scale, colour and materials of its chosen architectural style.

(iii) "Production housing" and associated detailing will be deemed inappropriate.

5.2 Colour

(i) All exterior colours are to be derived from the Resene 'Whites & Neutrals" 2004 or equivalent.

(ii) All roofing colour is to have a reflectance of below RV 70%.

(iii) Natural stone facings to building bases, retaining walls, fences, chimneys are to be integrated and visually broken with landscape planting. (See item 6 Landscape Guidelines)

5.3 Building Form and Layout

(i) The dominant roof is to be pitched between 22.5 and 35 degrees with a minimum of 450 mm eaves overhang from the surface of the exterior cladding where appropriate.

Only 20% of the roof area may be flat.

Acceptable roof materials are slate aged clay tiles, timber or bitumen shingles.

(ii) Exterior walls are to be strong in appearance i.e. a good depth reveals of 100-200mm should be evident in exterior plaster finishes, stone, brick or windows facings of a width of 100-150mm for exterior weatherboards.

(iii) Living areas overlooking neighbours' living spaces with the potential of reducing privacy and sunlight are to be avoided. This is to be achieved by appropriate design and location of balconies / windows. Screens and/or landscaping can be used to mitigate losses in privacy.

5.4 Carparking

(i) Carparking on the Private Way is discouraged therefore adequate carparking is to be provided on the Lot.

(ii) Concealment of vehicles is encouraged on the Lot including without limitation any trucks, motorhomes, boats etc.

(iii) A minimum of 2 covered, concealed carparks and one visitor carpark are to be provided on each Lot.

(iv) Reverse manoeuvring onto the road is discouraged for safety reasons and the design of the driveway (and associated areas) should aim to avoid this.

(v) No car parking shall be permitted in the Planting Amenity Yard except in designated parking spaces.

(vi) Parking of motorhomes, caravans, boats or other form of trailer in the designated parking spaces shall not be permitted.

(vii) Long term or sustained use of designated parking spaces by members shall not be permitted

6. Landscape Guidelines - Residential

6.1 Footpaths

An exposed aggregate concrete pedestrian footpath shall be installed along side of the Private Way. When a driveway to service a Lot is installed the footpath shall be cleanly cut with a masonry saw and the area for the driveway carefully removed. If the edge of the footpath is damaged during construction of the driveway the Member shall repair the footpath by removing the damaged concrete back to the first contraction joint and replace the entire section to a standard consistent with the existing footpath.

6.2 Vehicle Crossings/Driveways

Each Lot shall be entitled to construct one access driveway through the common amenity planting strip located to the southernmost corner of each Lot abutting the road. The driveway shall be constructed using exposed aggregate concrete to match the footpath for the first 1.5metres.

The remainder of the driveway shall be selected by the Member. The Member shall reinstate the amenity planting strip in accordance with the Bella Vista planting plans. Alternative driveway solutions will be considered by the Design Control Committee.

6.3 Services

All services boxes e.g. power & telecom shall be located in the amenity planting strip, 1 metre from the back of the planting. Where services are installed the Member shall reinstate the amenity planting yard in accordance with the Bella Vista planting plans. All services boxes or plinths shall be painted in Resene 'Scrub' 12 B 27.

6.4 Letter boxes

The Member shall construct a letter box beside the driveway of the Lot at the edge of the amenity planting yards. The letter box shall be faced with material and finishes consistent with each dwelling themed architectural style and detailing with a bollard light which shines down wards onto the driveway.

6.5 Streetscape Lighting

Lighting will be low level rural lighting consisting of uplighting of the entrance feature wall, roadway markers and pedestrian bollard lighting along the footpaths. These will be maintained by the Society at the cost of its Members.

6.6 Retaining Walls

All retaining walls shall be constructed to be detailed consistently with the themed detailing of each Lot.

The objective is to reduce the visuals impact of any retaining walls, hence all walls should be kept as low as possible, preferably stepping them, with appropriate screen planting in front of them. The planting shall be in accordance with Bella Vista schedule of plants for retaining walls.

6.7 Amenity Planting Strip/Yard

Each Lot that abuts an access road or the Private Way will have 1.5m wide yard area marked on the plan adjacent to the access way and/or Private Way and known as "Amenity Planting Yard" which will be installed and maintained by the Society at the cost of the Members provided that lots 23, 24, 27 and 28 shall have an Amenity Yard of 2 metres wide.

No Member shall:

(i) Build or place anything, including without limitation structures, fences, paths and driveways within the Amenity Planting Yard.

(ii) Plant any additional plants in the Amenity Planting Yard unless those plants are to replace vegetation removed for the reasons outlined in these guidelines.

(iii) Cut, prune, spray, damage, remove or trim any vegetation from the Amenity Planting Yard.

(iv) Drive or ride any vehicles over the Amenity Planting Yard other than over a properly constructed vehicle crossing permitted in accordance with these Design Guidelines.

(v) Do anything to the Amenity Planting Yard that is inconsistent with the purpose and intent of that area.

6.8 Hard Landscape

Hard landscape such as paving, walls and fencing shall use quality materials appropriate to the rural/coastal character of the Development and avoid distinctly urban materials and finishes. All hard landscape work should be to a high standard and installed by competent tradesmen.

6.9 Fencing

No fencing is allowed within the Amenity Planting Yard. Open plan landscaping is encouraged so that there is a visual sharing of all yards as a communal amenity and

resource. Fencing and screening shall be limited to immediately around individual dwellings to give additional privacy and shelter.

Preferred fencing materials include; timber, unpainted or painted in colours appropriate to the landscape; Brush or similar. Metal fences should be only used where appropriate such as pool fencing. Materials and (dark) colours of fences are to be complementary in appearance to the architectural theme detailing of the dwelling.

No fence shall be constructed along the front or rear boundaries of any Lot parallel (or approximately parallel) to any access way (including the Private Way) to the intent that the front boundary of the Lot shall not be fenced unless such fence is limited to a length (including any gates) equal to one-half the length of the front Yard boundary and situated not more than two metres in front of and behind (as the case may be) the relevant face of the dwelling constructed the Lot. Any fence so constructed must be screened with planting approved by the Design Control Committee.

The preferred maximum height of any fencing is 1.250m (i.e. comply with pool fencing requirements) Animal enclosures requiring alternative heights will be considered by the Design Control Committee as discretionary Any fence of a height exceeding 1.250 (but not in any case to exceed a height of 1.8m) shall comprise a light-weight construction with powder coated (dark colours) 10mm diameter, vertical bars at 100 mm centers supported on a similarly scaled support post and horizontal rails.

6.10 Walls including retaining walls

Landscape feature walls/retaining walls shall be detailed consistently with the themed detailing of each Lot. Walls that are hidden by planting may be concrete rendered plaster and painted to match. Walls shall not extend with any yard of a Lot for more than 50% of such boundary to ensure that the boundary doesn't look like it is fenced (refer clause 5h. fig. 3).

6.11 Planting

All tree planting that is carried out by a Member shall use species of an appropriate scale, form and colour. The aim is to maintain an overall vegetated character that reinforces the identity of the Development using species that are appropriate for the Whangaparaoa environmental conditions. To ensure tree planting does not shade dwellings or block views, no tree or other vegetation shall be allowed to exceed a maximum height of 4m without the written consent of the Design Control Committee.

6.12 Prohibited plants

No member shall plant or permit on any Lot:

(i) Pinus species;

(ii) Plants in the ARC "noxious plants" list.

(m) Planting to yards

(i) The Amenity Planting Yard is to be maintained by the Society. Therefore no additional/ or removal/or modification of planting and ground levels will be allowed within any Amenity Planting Yard.

(ii) 3m yards; planting height to boundary control is 1.5m + 45 degrees.

6.13 Planting Guidelines

Members shall use the vegetation set out in the Planting Guidelines that support the Design Covenants section of the Landscaping page of the Society's website.

7. Landscape Guidelines - Masterplan

(7.1 Covenanted Native Bush Area

Lots 3-9 and 40-35 consist of two zones - a development yard and an area designated as planted native bush shown marked as areas "B" - "0" - "R" and "S" on Deposited Plan 351196. Whilst these bush areas remain in the titles of the individual Lots the maintenance of these areas is the responsibility of the Society, such work to be completed at the cost of the members.

(b) Whilst Lots 3-9 and 40-35 contain the Bush Areas referred to in paragraph (7.1) above:

(i) the relevant Lot owner shall allow the Society (or its contractors) reasonable access upon reasonable notice for the purpose of monitoring those areas;

(ii) no structure (including without limitation any fence) shall be erected or maintained within any Bush Area without the prior written consent of the Design Control Committee; and

(iii) no vehicle of any description (other than wheelchairs or any other similar vehicle designed to assist mobility-impaired persons) shall be allowed to pass over or remain within any Bush Area.

SCHEDULE 2

Society Bylaws

1. USE

1.1 Each member shall make no improper, offensive or unlawful use of any Common Facilities, and shall use the Common Facilities only for the purposes for which they were designed.

1.2 No Member shall fetter, obstruct or impede the use of any Common Facilities by any other member.

1.3 No Member shall place anything in or on the Common Facilities.

1.4 No Member shall do any act which may prejudice or add to the premium payable in respect of any insurance of the Common Facilities.

2. PROHIBITED ACTS

2.1 No Member shall drop any litter in or on the Common Facilities.

2.2 No Member shall do any act which detracts from the attractiveness or state of repair of the Common Facilities. Any Member who discovers any damage to the Common Facilities shall immediately report such damage to the Board.

2.3 No Member shall obstruct or interfere with or disturb or trespass upon the rights of any other member or occupier of any Lot in the quiet and uninterrupted occupation and enjoyment of the premises so occupied by him or her.

2.4 No Member shall do or permit to be done anything whereby any obstruction, restriction or hindrance may be caused to the roads, driveways and pathways or other parts of the Development or to persons lawfully using the same.

3. CODE OF CONDUCT

3.1 No Member shall use or permit any Lot to be used for any purpose which is illegal or may be injurious to the reputation of the Development.

4. CONDUCT AND NOISE

4.1 No Member shall engage in, or allow any person to engage in, any criminal activity within the Development.

4.2 No Member shall make or permit any improper or unreasonable noise within the Development, nor act in any fashion so as to annoy, disturb or irritate any other Member

4.3 No Member shall dispose of any rubbish except into bins or receptacles for removal on usual days by the local authority or by independent contractors.

5. MEMBERS' RESIDENCES

5.1 Each Member shall have the duty to keep each property which they own within the Development and all improvements to those

5.2 properties 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 the Development.

5.3 Each Member shall at all time comply with the requirements of all statutes, regulations and local authorities, and shall duly and

5.4 punctually pay all rates, taxes, charges and other outgoings payable in respect of that Member's Lot.

5.5 Each Member shall properly secure that Member's Lot when it is not occupied.

5.6 No Member shall allow any animal, bird or pet (collectively "pet") to cause a nuisance to any other Member.