

2017

The Rules of Ohau Sands  
Residents Association  
Incorporated

MAHONY BURROWES HORNER  

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LAWYERS

Vincero Holdings Limited



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## **Parties**

### **1 Formation**

#### **Name**

- 1.1 The name of the Society will be Ohau Sands Residents Association Incorporated. (Society).

#### **Registered office**

- 1.2 The registered office of the Society will be at such place as the committee from time to time determines.

#### **Objects**

- 1.3 The Objects of the Society are:
- 1.3.1 To provide for the maintenance, repair and replacement, operation and management ,and use of the Ohau Sands Communal Land and if approved by the Society in general meeting the development of further facilities to be designed as common facilities within the Ohau Sands Communal Land.
  - 1.3.2 To provide for the maintenance, management and operation of the Muhunua Forest as more specifically set out in these Rules.
  - 1.3.3 To do all such things as may appear desirable to achieve the objects of the Society.
  - 1.3.4 To enforce compliance with the requirements of the Resource Consent.
  - 1.3.5 To enforce compliance with the Rules (which include the Bylaws) of the Society.
  - 1.3.6 To manage the finalisation of and compliance with the Muhunua Forest Park Management Plan.

### **2 Compliance**

- 2.1 The Owners appoint the Society to manage their collective interests as co-owners of the Ohau Sands Communal Land, and the Muhunua Forest. As Owners of individual Lots, they agree to be bound by the Rules of the Society which will operate to govern the use and enjoyment of the Ohau Sands Communal Land and which will constitute a binding agreement between the Owners for the use and enjoyment of the Ohau Sands Communal Land.
- 2.2 The Society through its Rules provides for the regulation of the Owners rights in relation to each of their respective undivided 1/15<sup>th</sup> shares in the Ohau Sands Communal Land and as such the Society will on the Owners behalf enforce the Rules of the Society.

- 2.3 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 in respect of or in connection with the Ohau Sands Communal Land 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 Rules against the defaulting Owner.

#### **Muhunua Forest**

- 2.4 The Society will be responsible for managing the cultivation, growth, development and harvesting of the Muhunua Forest including in accordance with the Muhunua Forest Park Management Plan. Without limiting these obligations they shall include managing on behalf of the Owners, compliance with all relevant Authorities requirements in respect of the Muhunua Forest Park Management Plan.
- 2.5 The Owners shall share equally and in accordance with their undivided 1/15<sup>th</sup> shares in the Ohau Sands Communal Land all net profits and/or losses in respect of the Muhunua Forest.

#### **Powers of the Society**

- 2.6 In addition to its statutory powers, the Society:
- 2.6.1 May use its funds to pay the costs and expenses of furthering or carrying out its objects, and for that purpose may employ such people as necessary;
  - 2.6.2 May purchase, lease, hire or otherwise acquire, may exchange, and may sell, lease or otherwise dispose of its Property Assets, rights or privileges to further or carry out its Objects as necessary;
  - 2.6.3 May negotiate any agreements and contracts to achieve the Society's Objects;
  - 2.6.4 Will have the power to borrow or raise money by mortgage and other means with or without security. However, this borrowing power will only be exercised by a resolution at a general meeting of which 10 clear days prior written notice has been given to all members;
  - 2.6.5 Will have the power to do all lawful acts and things incidental or conducive to the attainment of the Society's objects;
  - 2.6.6 Will have the power to enforce the Rules and any Bylaws.
- 2.7 Despite any other provision, the Society will only use its money to further purposes recognised by law. No money of the Society is to be applied for the sole personal or individual benefit of any member.



### **3 Membership**

#### **Initial Members**

- 3.1 The Initial Members of the Society are those Persons who have subscribed to these Rules and whose signatures are attached to these Rules in the application for registration in schedule 1.
- 3.2 The Initial Members shall elect the first Board and exercise all rights of members and Directors as set out in these Rules. The Initial Members shall otherwise however have no obligations whether for payment of levies or otherwise except as provided in the Act.
- 3.3 At such time there are ten Owners, or all ten Lots comprised in the Ohau Sands Land have been sold and settled, such Owners will elect a new Board.

#### **Resignation**

- 3.4 Each Initial Member (excluding the Controlling Member) shall be deemed to have resigned without any act required on the Initial Members part, at such time as there are 15 Owners provided however this shall not apply to any Initial Member who acquires or retains ownership of any of the Lots when they are first sold to the intent that any such Initial Member would in that circumstance retain his or her or its status as a member.

### **4 Membership**

#### **Owners to be members**

- 4.1 Each and every Owner shall be a member of the Society and save in the case of Initial Members only, (subject to the proviso in Rule 3.4) Owners shall be members of the Society, and for that purpose:
  - 4.1.1 The Consent Notice shall be registered against each Lot whereby each Owner is deemed to be a member of the Society, and thereby bound by the Rules of the Society and will perform the obligations of a member of the Society as set out in the Rules.
  - 4.1.2 An Owner shall resign and be deemed to have resigned from the Society immediately upon that Owner ceasing 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.
  - 4.1.3 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.

#### **Register of Owners**

- 4.2 The Society shall maintain a register of Owners recording:
  - 4.2.1 **For each Owner:** name, address, occupation, telephone number and email address;

- 4.2.2 **For each occupier:** name, address, occupation, telephone number and email address;
- 4.2.3 **Membership:** the date upon which each Owner became an Owner;
- 4.2.4 **Mortgagee:** the name, contact Person, telephone number and email address of any person or entity holding a mortgage or charge or other encumbrance over any Owner's Lot.

#### **No notice of Trust**

- 4.3 No notice of any trust express, implied or constructive will be entered on the register of Owners.

#### **Not assignable**

- 4.4 The rights privileges and obligations of an Owner are not assignable to the intent that these are personal to the Owner.

#### **Obligations of membership**

- 4.5 Members must treat all information relating to commercial arrangements entered into by the Society as strictly confidential and must not disclose any information regarding the Society to any third party without the prior written approval of the Society.

### **5 Developer a Controlling Member**

- 5.1 Until the time later specified in this Rule, the Developer will be the Controlling Member of the Society. Unless the context otherwise requires, no reference to an Owner shall be taken as including a reference to the Controlling Member.
- 5.2 Upon completion of the development of the Ohau Sands Land and settlement of the sale of all Lots comprising the Ohau Sands Land, the Developer will be deemed to have resigned as Controlling Member and thereafter there will be no Controlling Member of the Society. The Developer will be entitled however to resign at an earlier date as Controlling Member of the Society should it be elected to do so.

### **6 Use of Ohau Sands Communal Land**

- 6.1 Subject to any Rules of the Society relating to the use of the Ohau Sands Communal Land, each Owner and their Invitees shall be entitled to make full use of their individual Lot and the Ohau Sands Communal Land to the intent that no Person other than those Persons shall be entitled to have access to and use of the Ohau Sands Communal Land.

### **7 Subscriptions and financial year**

#### **Levies**

- 7.1 Prior to or as soon as practicable after the commencement of each Expense Year the Society shall, by written notice, advise each Owner of the Society's estimate



(**Society's Estimate**) of each Owner's Proportion of Operating Expenses for that Expense Year, plus such contingency sum as the Society shall, in its sole discretion, fix.

#### **Payment of Levies**

- 7.2 Subject to Rule 7.4.3, each Owner (and where there are more than one Owner for each Lot each Owner of a Lot shall be jointly and severally liable) shall pay the Society's Estimate applicable to that Expense Year in advance at such times and for such periods as designated by the Society from time to time. Payment shall be made by the Owner in the manner set by the Society. Notwithstanding any provision within this Rule 7, an Owner may pay the Owner's proportion in full on or before the due date for payment notified by the Society.

#### **Statement of Operating Expenses**

- 7.3 As soon as practicable after the end of each Expense Year the Society shall provide to each Owner an itemised statement of the actual Operating Expenses for the previous Expense Year. If the Owner's Proportion of actual Operating Expenses for the previous Expense Year is greater than the total of the monthly payments by the Owner pursuant to Rule 7.2 or 7.4.3, as appropriate, the Owner shall forthwith pay to the Society the difference. If the Owner's Proportion of actual Operating Expenses for the previous Expense Year is less than the total of the payments made by the Owner pursuant to Rule 7.2 or 7.4.3, as appropriate, the Society shall credit the difference to the Society's Estimate for the then current Expense Year.

#### **Failure of Society to advise Society's Estimate**

- 7.4 If the Society has failed to advise an Owner of the Society's Estimate for an Expense Year before the date of the first payment is due under Rule 7.2, the Owner shall on that date and every other date on which a payment is due under Rule 7.2 pay such sum of the Society's Estimate applicable to the previous Expense Year for that Owner. On the Society's Estimate for the Expense Year being advised to an Owner:

7.4.1 Rule 7.2 shall apply after that;

7.4.2 If the aggregate of an Owner's payments made under this Rule during the Expense Year for the periods before the Society's Estimate for an Expense Year is advised to the Owner exceeds the aggregate of payments which should have been made under Rule 7.2, the Society shall credit the difference to the Owners account;

7.4.3 If the aggregate of an Owner's payments under this Rule during the Expense Year for the periods before the Society's Estimate for an Expense Year is advised to the Owner is less than the aggregate of payments which should have been made under Rule 7.2, the Owner shall immediately pay the Society the difference.

#### **Special Contribution**

- 7.5 The members through general meeting may from time to time fix an additional levy to be paid by each Owner together with the quarterly instalments of the Society's Estimate for that Owner, to be set aside as a sinking fund to allow for and meet the

costs of Capital Improvements, Forestry Costs, emergency repairs or the enforcement of the Objects of the Society provided that the proportion that any levy payable by an Owner under this Rule bears to the total levies payable by all the Owners shall be equal to that Owner's Proportion.

#### **Society to provide Statement**

- 7.6 The Society shall, on application by an Owner, or any Person authorised in writing by such Owner, provide the Owner or authorised Person with a statement of the indebtedness of the Owner to the Society calculated to the date specified in the application. The statement shall show:
- 7.6.1 The Society's estimate of such Owner's Proportion of the Operating Expenses for the current Expense Year;
  - 7.6.2 Payments made by the Owner on account of Operating Expenses in the current Expense Year;
  - 7.6.3 Payments due from the Owner on account of Operating Expenses in the current Expense Year and from previous Expense Years and not paid by the Owner; and
  - 7.6.4 Any accumulated unpaid default interest.

#### **Annual Financial Accounts**

- 7.7 Every year a set of annual financial statements will be prepared by or at the instigation of the Secretary showing all the receipts and expenditure of the Society since the preceding annual financial statements and will include a general statement of the funds, effects, liabilities, assets and all mortgages, charges and securities of any description affecting any property of the Society.
- 7.8 The annual financial statements will be audited prior to the Annual General Meeting in each year.
- 7.9 The annual financial statements will be submitted to and approved by the members at the Annual General Meeting of the Society.
- 7.10 The Secretary will send the annual financial statements and a certificate in the required form signed by the Secretary certifying that the annual financial statements have been approved, to the Registrar of Incorporated Societies.

#### **Financial year**

- 7.11 The financial year of the Society will be from 1 July to 30 June or as may otherwise be determined by the Board.

### **8 Staged Development**

- 8.1 It is recorded that the Ohau Sands Land is being developed in stages, with new Owners becoming members of the Society as each stage is completed and individual Lots are sold.



- 8.2 Where new Owners become members of the Society during an Expense Year, the Society may fix a levy for each new Lot on a proportionate basis, having regard to the then expired period of the Expense Year.

## **9 Sale of a Lot**

- 9.1 Where an Owner (Vendor) sells a Lot:
- 9.1.1 Despite any other Rule of the Society, the Vendor will remain liable for any amounts owed to the Society by the Vendor;
  - 9.1.2 The Vendor will also continue to be liable as a primary and principal debtor to the Society for all indebtedness of the purchaser or transferee of the Lot until such time as the purchaser or transferee has provided the Society with those details required in clause 4.2 of these Rules.

## **10 Covenants and Bylaws**

- 10.1 Each Owner agrees to promptly and fully comply with each and every Rule and Bylaw made by the Society from time to time, including the Initial Bylaws, and any further covenants given in favour of the Society by such Owner.
- 10.2 Each Owner acknowledges that they will take all reasonable care in using the Ohau Sands Communal Land and hereby confirm that all rights are exercised at an Owner's own risk, or at the risk of the Owner's Invitee(s) (as the case may be) and the Owner will not hold the Society or any other Owner, or their respective successors in title liable in any way for any loss, damage or injury sustained by that Owner or Invitee(s).

## **11 Breach of obligations**

### **Occupiers and Invitee(s)**

- 11.1 A reference to an act or omission by any Owner shall include any act or omission by any mortgagee in possession of that Owner's Lot or the occupiers of such Owner's Lot, the Invitees of such occupier and the Invitees of such Owner or the mortgagee in possession of that Lot.
- 11.2 An Owner must advise the Society of details of the occupiers of the Owner's Lot. Each Invitee(s) shall be deemed to have knowledge of the Rules and each Owner is responsible and shall be held liable for acquainting the Invitee(s) with the Rules. 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 these Rules. In any case of persistent default by an occupier of these Rules, the Owner shall on demand by the Society terminate the occupier's right to occupy the Lot.
- 11.3 A copy of these Rules 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 Rules.

## **Consequences**

- 11.4 Upon any breach of these Rules by an Owner (or their Invitee(s)) (**Offending Owner**):
- 11.4.1 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;
  - 11.4.2 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 these Rules, 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;
  - 11.4.3 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 2% above the Society's banker's commercial overdraft rate applicable during the continuance of the default, computed on a daily basis from the due date for payment until the date of payment in full.
- 11.5 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 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.
- 11.6 Each Owner indemnifies the other Owners and the Society in respect of any loss, damage or injury caused by that Owner or that Owners Invitees, arising in any way or in connection with any act or omission of that Owner or that Owners Invitees as the case may be.

## **12 Obligations of the Association**

### **Bylaws**

- 12.1 The Society may promulgate, amend and distribute to the Owners from time to time Bylaws for the use of the Ohau Sands Communal Land by Owners and their Invitee(s) (including any restrictions on use for security, maintenance or other reasons) and Bylaws concerning the behaviour of the Owners and Invitee(s). The Society has promulgated the Initial Bylaws which shall apply in respect of the use of the Ohau Sands Communal Land.
- 12.2 In connection with its powers under Rule 12.1 the Society may designate from time to time certain specified areas within the Ohau Sands Communal Land for a particular purpose or use and provide for this through the provisions of the Bylaws.



### **Repair of Common Facilities**

- 12.3 The Society shall ensure the proper operation, maintenance, repair, renovation and replacement of the fixtures, fittings and services infrastructure comprised in the Ohau Sands Communal Land and the Property Assets, and shall undertake such Capital Improvements as are necessary for this purpose.
- 12.4 The Society shall ensure that it obtains, keeps current and complies with all licences, permits and consents as required by any relevant Authority.

### **Insurance**

- 12.5 The Society may effect and maintain insurances if it considers it prudent to do so with respect to the Ohau Sands Communal Land, the Muhunoa Forest, the Property Assets, and the Society's affairs, and shall meet all costs of such insurance (which shall include all valuations and other professional fees required or deemed desirable for the purpose of such insurances and the cost of certificates relating to such insurances).

### **Compliance with resource consents**

- 12.6 The Society shall comply with any requirements of any regional, local or territorial Authority generally in respect of the Ohau Sands Land and in particular shall, if required by the Controlling Member or any Authority, fulfil any ongoing conditions of the Resource Consent.

## **13 Administration and Secretary**

### **Administration**

- 13.1 The administration of the Society shall be vested in the Society in general meeting, and shall be delegated to the Board and the Secretary, or to an appropriate property management company duly appointed by the Board as provided in these Rules.

### **Execution of documents**

- 13.2 All documents and written announcements requiring execution or signing on behalf of the Society must be signed by the Chairperson or the Secretary.

### **Common Seal**

- 13.3 The Board shall provide a common seal for the Secretary and may from time to time replace it with a new one.
- 13.4 The Secretary shall have custody of the common seal, which shall only be used by the authority of the Board and in accordance with Rule 17.7.

### **Duties of Secretary**

- 13.5 The duties of the Secretary shall include:
- 13.5.1 Convening the Annual General Meetings and other general meetings of the Society when required to do so in accordance with these Rules and likewise convening meetings of the Board;

- 13.5.2 Giving all such notices as the Society in general meeting or the Board may instruct, or which the Society may be required to give to Owners in the manner provided in these Rules;
- 13.5.3 Keeping minutes of all meetings of the Society and of the Board and entering the same in the minute book kept for that purpose;
- 13.5.4 Performing or supervising the performance of the clerical work for, and the maintenance of proper records of the Society;
- 13.5.5 Maintaining a membership register for the Society;
- 13.5.6 Giving all such notices, certificates or information to the Registrar as may be required by the Act or by the Registrar pursuant to the Act;
- 13.5.7 Issuing and receiving correspondence on behalf of the Society;
- 13.5.8 Receiving all fees, subscriptions, levies and other moneys paid to the Society and issuing receipts;
- 13.5.9 Opening and operating a current bank account in the name of the Society. Dual signing authority on such bank account shall be held by three officers of the Society including the Secretary and the Chairperson;
- 13.5.10 Making such deposits and investments in the name of the Society as the Board may determine from time to time;
- 13.5.11 Paying all accounts and making all advances passed for payment by the Board;
- 13.5.12 Keeping all financial records of the Society and ensuring their safekeeping together with any security documents;
- 13.5.13 Reporting to the Board any Owner who shall fail to pay fees, subscriptions or other moneys properly payable by that Owner to the Society within the prescribed period.

## **14 Board of Directors**

- 14.1 The Board shall consist of a maximum of seven and a minimum of four Directors.
- 14.2 A Director need not be an Owner (but if not, such Director must be nominated by an Owner).

## **15 Appointment/retirement of Directors**

- 15.1 Subject to clause 15.4, a Director shall hold elected position until the earlier of:
  - 15.1.1 The next Annual General Meeting following election (when the Director shall be eligible for re-election);



15.1.2 The date written resignation from that position is received by the Society;

15.1.3 The date of removal from such position by the Board in general meeting.

#### **Appointment of new Directors**

15.2 Directors will be elected or re-elected at general meetings of the Society on a majority vote by the Owners at a general meeting in the manner prescribed by these Rules.

#### **Casual vacancies on Board**

15.3 In the event of any casual vacancy on the Board (whether caused by the death, resignation or ineligibility of a Director or by some other circumstance), the Chairperson shall call for written nominations and, if necessary, conduct a written ballot to fill such casual vacancy at the earliest reasonable opportunity. For the avoidance of doubt, the appointment of any Director as Chairperson shall not create a casual vacancy on the Board.

#### **Alternate Directors**

15.4 Each Director shall have power from time to time by written notice to appoint any Person to act as an alternate Director in place of such Director whenever that Director is unable to attend to his or her duties as a Director. Any such alternate Director may be removed or suspended from office by notice in writing to the Society from the Director by whom such alternate Director was appointed or by the resolution of the Board.

15.5 Each alternate Director shall be entitled to:

15.5.1 Receive notice of meetings of the Board and to attend and vote at such meetings if the Director by whom such alternate Director was appointed is not present; and

15.5.2 To exercise all the powers (except the power to appoint an Alternate Director) and perform all the duties of a Director insofar as that Director by whom he or she was appointed has not exercised or performed them.

15.6 Each alternate Director shall, whilst acting as a Director, be responsible to the Society for his or her own acts and defaults and shall not be deemed to be the agent of the Director by whom he or she was appointed.

#### **Reimbursement for expenses only**

15.7 Directors shall not be entitled to any remuneration for their services as such, but Directors and their alternates shall, if approved by the Board, be entitled to reimbursement for reasonable out-of-pocket expenses incurred in connection with the business of the Society (other than in attending meetings).

### **16 Powers of the Board**

16.1 The affairs of the Society shall be managed by the Board, which may exercise all the powers of the Society and do on its behalf all such acts as it may deem necessary or expedient to achieve the Objects of the Society and as are not by

these Rules required to be exercised or done by the Owners in general meeting. The Board may exercise such authority powers and discretions as may by these Rules be vested in the Board, but subject always to any limits which may from time to time be imposed by the Owners in general meeting on the exercise by the Board of any such powers.

16.2 To achieve the Objects of the Society the Board may (without limitation to the generality of clause 16.1):

16.2.1 Manage the Ohau Sands Communal Land, the Property Assets and the Muhunoa Forest, provided the requirements of any Authority are met;

16.2.2 Contract with, employ or otherwise procure the services of any Person, Persons, firm, company or other organisation for the purpose of achieving the Objects of the Society;

16.2.3 Enforce compliance with the Rules including, but not limited to, adjudicating on and seeking the enforcement of the building and use restrictions imposed by separate restrictive covenant registered against the titles for the Lots;

16.2.4 Levy any additional fees and any Special Contribution on the Owners required in order to exercise its power under these Rules;

16.2.5 Raise money from reputable established lending institutions in order to carry out the Objects of the Society;

16.2.6 Appoint a Secretary in order to perform such administrative functions as the Board deems appropriate for such periods of time and for such terms and conditions (including remuneration) as the Board shall deem appropriate;

16.2.7 Grant or enter into or employ any Person or entity a contract for the purposes of erecting, operating or maintaining replacing and renewing in, on, under, through or about the Ohau Sands Communal Land:

16.2.7.1 Roads, streets, footpaths, street lights, driveways, parking areas, paths, fences, gardens, sporting facilities, sheds or other structures or facilities associated with designated communal meeting and/or eating areas;

16.2.7.2 Lines, cables, wires, conduits, pipelines or other devices for the creation of services;

16.2.7.3 Sewers, water systems, treatment plants, stormwater drainage systems, sprinkler systems, pipelines, sewage and stormwater treatment and disposal plants;

16.2.7.4 All or any obligations imposed by any Authority under any resource consent granted by the Authority, including the Resource Consent;

16.2.7.5 Any similar improvements or facilities.



Nothing set out above, however, shall be construed to permit the use or occupancy of any improvements or other facility in any way that would violate the Rules or conflict with the requirements of any Authority.

## **17 Proceedings of the Board**

### **Conduct of Meetings**

- 17.1 The Board may meet together, adjourn and otherwise regulate its meetings and procedures for conducting its business as it thinks fit. A majority of the Directors from time to time shall form a quorum for a meeting where the number of Directors is not less than five. Where there are less than five Board members then the quorum for a meeting shall be three. No business of the Board shall be conducted at any time when less than a quorum is present at the same time and place. The Board may meet at any time and the Secretary shall, upon the request of the Chairperson or any three members, convene a meeting of the Board.

### **Chairperson**

- 17.2 The Board from time to time shall appoint, remove and replace a Chairperson for such term as it sees fit from one of their number to chair the Board meetings and otherwise exercise the powers of the Chairperson set out in these Rules. Provided that for the first four years from the date of incorporation of the Society the Chairperson shall be appointed by the Controlling Member.

### **Chairperson's Vote**

- 17.3 The Chairperson has one vote as a Director but may not exercise a casting vote.

### **Voting**

- 17.4 Resolutions of the Board shall be passed by a majority. Each Director shall be entitled to exercise one vote. Despite any contrary provision in these Rules, a resolution in writing signed by such of the Directors as would constitute a quorum at a meeting and signed also by the Controlling Member shall be valid and effectual as if it had been passed at a meeting of the Board duly convened and constituted.

### **Validity of Board's actions**

- 17.5 All acts properly done by any meeting of the Board or by a Person acting as a member, notwithstanding that it may afterwards be discovered that there was some defect in the appointment or continuance in office of any such Director, or that they were disqualified, shall be as valid as if every such Person had been duly appointed or had duly continued in office and was qualified to be a Director.

### **Board minutes and records**

- 17.6 The Board shall cause proper minutes to be kept of the proceedings of all meetings of the Society and of the Board. All business transacted at each such meeting and the minutes of such meeting signed by the Chairperson shall be accepted as a correct and accurate record of the business transacted at such meetings without any further proof of the facts contained in such minutes.

**Seal**

- 17.7 The Board shall obtain a common seal for the use of the Society and shall provide for its safe custody. The common seal shall not be used except by resolution of the Board. Every instrument to which the common seal is affixed shall be witnessed by any two members of the Board.

**18 Meetings****Annual General Meeting**

- 18.1 The Society must convene an Annual General Meeting of its members and in addition to any other meetings, in each calendar year provided however there must not be more than 15 months between Annual General Meetings. The Board must set the date, place and time of the meeting. The notice convening the Annual General Meeting must state that the meeting is the Annual General Meeting. The ordinary business of the Annual General Meeting is as follows:

18.1.1 To confirm the minutes of the last Annual General Meeting;

18.1.2 To receive from the Board financial report, balance sheet and auditors report during the last Expense Year;

18.1.3 To elect the Directors of the Board.

- 18.2 The Annual General Meeting may also transact any special business of which notice is given in accordance with these Rules.

**Other general meetings**

- 18.3 Any general meeting of the Society except the Annual General Meeting is a separate general meeting. The Board may convene a separate general meeting whenever it thinks fit. Reference in these Rules to general meetings includes both Annual General Meetings and separate general meetings.

**Special general meeting at request of members**

- 18.4 The Board must also convene a separate general meeting if not less than 25% of the total number of members request the Secretary in writing to do so. The request must state the purpose of the meeting and must be signed by the members making the request.

**Notice of meetings**

- 18.5 At least 14 days before the date fixed for a general meeting of the Society, the Secretary must send each member of the Society a notice by email or by post specifying the place, date and time of the meeting and the nature of the business to be transacted and any notices of motion to be considered at such meeting. The notice must be sent to the addresses noted in the register of members.
- 18.6 The accidental omission to give notice to or the non-receipt of any notice by any Owner or other Person entitled to such notice shall not invalidate the proceedings of any general meeting to which such notice relates.



### **Limitation on business to be transacted**

- 18.7 No business may be transacted at a general meeting of the Society except the business specified in the notice of meeting. A member who wants an item of business to be transacted at a general meeting may give notice of the business in writing to the Secretary. The Secretary must include the business in the next notice of a general meeting.

### **Powers of Society in general meeting**

- 18.8 The Society in general meeting may by resolution of not less than 75% of the Owners and the Controlling Member if there is one) present and voting at such meeting, exercise all the powers, authorities and discretions of the Society despite any such power, authority or discretion may have been vested in the Board by or pursuant to these Rules.

### **Quorum**

- 18.9 An item of business or notice of motion may not be transacted or discussed at a general meeting unless a quorum of members entitled to vote is present in person or by proxy while the item is being transacted. The quorum is nine members. If a quorum is not present at the time for commencement of a meeting and is still not present half an hour later, the following Rules apply:
- 18.9.1 If the meeting was convened at the written request of members, the meeting is automatically dissolved;
- 18.9.2 In any other case, the meeting is automatically adjourned to the same time and day in the next week. It is to be held in the same place unless the Chairperson specifies another place at the time of the adjournment or by a written notice given to members at least 24 hours before the date of the adjourned meeting.
- 18.10 If a quorum is not present at the time of the commencement of an adjourned meeting, and is still not present half an hour later, the quorum becomes six members. If that quorum is not present, the meeting is automatically dissolved.

### **Chairperson at meetings**

- 18.11 The Chairperson must preside as Chairperson at each general meeting of the Society. If the Chairperson is absent, then those Directors who are present and provided there are not less than two such Directors may elect one of those Directors to chair the meeting. If those Directors are unable for any reason to elect then those Owners entitled to vote and present at that meeting may elect any Person entitled to be present as Chairperson of that meeting.

### **Adjournment of meetings**

- 18.12 The Chairperson of a general meeting at which a quorum is present may adjourn the meeting with its consent. If a meeting is adjourned for 14 days or more, notice of the adjourned meeting must be given as in the case of the original meeting.

### **Limitation on business**

- 18.13 No business may be transacted at an adjourned meeting except the business left unfinished at the original meeting.

### **No vote if Subscriptions/Fees not paid**

- 18.14 Unless all annual subscriptions and additional fees and levies presently payable by an Owner to the Society have been paid in full, such Owner shall not be entitled to vote at any general meeting of the Society, whether in his or her own right or as proxy for another Owner.

### **Proxy**

- 18.15 A member may appoint another member as his, her or its proxy at a meeting by giving the Secretary a notice in the form set out in SCHEDULE 2 no later than 24 hours before the time of the meeting.

## **19 Votes of members**

### **One vote per Owner**

- 19.1 Subject to Rule 19.2 each Owner shall be entitled to one vote, which may be exercised either in person or by proxy. An Owner may vote by fax, telephone or email, by addressing such correspondence to the Secretary prior to the general meeting. The Secretary shall advise the Chairperson of the vote prior to the meeting.
- 19.2 Where there is more than one Owner in respect of any Lot, only one such Owner shall be entitled to vote. In the absence of agreement between such Owners as to who shall exercise this vote, the Owner appearing first on the certificate of title to the Owner's Lot shall be entitled to exercise that vote. On the death of any Owner, and pending the transfer of that Owner's Lot, the executor of that Owner's estate shall be entitled to exercise that Owner's vote.

### **Controlling Member**

- 19.3 Until such time as there are fifteen Owners or until four years have lapsed from the date of incorporation of the Society (whichever is the later), the Controlling Member shall be entitled to exercise a number of votes equal to one more than the number of votes cast by the other members eligible to vote at a general meeting.

## **20 Liability of members**

- 20.1 Except as otherwise provided by the Act, no Owner or Initial Member shall be under any liability in respect of any contract or other obligation made or incurred by the Society.

## **21 Developer's rights**

- 21.1 No rights arising out of these Rules, whether express or implied, shall entitle the Society or any Owner thereof to prevent or in any way restrict the Developer from completing the development of the Ohau Sands Land or any adjacent land owned or subsequently acquired by the Developer in such manner as the Developer deems necessary and in furtherance of the Objects.



## 22 Miscellaneous

### Alteration of Rules

- 22.1 The Rules of the Society may be altered, added to or rescinded at any Annual General Meeting or other general meeting of the Society convened for that purpose. The notice given to members will contain a copy of or state briefly the nature of the resolution to be moved at the general meeting. A copy of the motion, resolution or business will be lodged with the Secretary at least 14 days prior to the meeting. The resolution will be effective if passed by not less than 75% of the members present and there being not less than 12 members at the meeting subject to clause 22.2.
- 22.2 No Rule including this Rule may be added to amended or rescinded except by resolution and written consent of the Controlling Member (if there is one).
- 22.3 The Society will register any alteration or addition to the Rules as required by the Incorporated Societies Act 1908 or any Act passed in substitution for it.

### Winding up

- 22.4 The Society may be dissolved and its affairs wound up in accordance with s24 of the Act provided an alternate body acceptable to the Horowhenua District Council is established to operate and manage the Ohau Sands Communal Land, the Muhunoa Forest and the Property Assets and that the Property Assets are transferred to such body. The notice for that general meeting must specify winding up the Society as the business, or part of the business, of the meeting.
- 22.5 If the Society is wound up, the surplus assets after payment of all debts, costs and liabilities will be disposed of in accordance with the terms of a resolution passed at a special general meeting called for that purpose. The proceeds of the sale of any surplus assets, or funds, shall be distributed amongst the Owners in the Owners' proportional share.

### Notices

- 22.6 A notice or other document may be served on a member of the Society either personally or by sending it by post to the member at the address shown on the register of members. A notice or other document sent by post is to be treated as having been given to the Person at the time the letter would have been delivered in the ordinary course of the post.

## 23 Definitions and interpretation

### Definitions

- 23.1 In these Rules the following definitions will apply:

**Act** means the Incorporated Societies Act 1908.

**Annual General Meeting** means the annual general meeting of the Society, convened and conducted in accordance with these rules.

**Authority** means any local or regional authority having jurisdiction over the Ohau Sands Land.

**Board** means the board of directors for the time being elected to manage the affairs of the Society pursuant to these rules.

**Bylaws** means any bylaws made by the Society from time to time pursuant to these Rules and includes the initial bylaws.

**Capital Improvements** means all costs incurred in repairing, maintaining and the replacement or renewal of, or any additions made to the fixtures, fittings and service infrastructure comprised in the Ohau Sands Communal Land and the property assets.

**Chairperson** means the chairperson of the Society appointed in accordance with these rules.

**Consent Notice** means the consent notices registered or to be registered against the Lots pursuant to the Resource Consent.

**Controlling Member** means Vincero Holdings Limited or its assignee or nominee.

**Developer** means Vincero Holdings Limited.

**Director** means a director of the board appointed in accordance with these rules.

**Expense Year** means each 12 month period commencing on 1 July and ending on 30 June, or such other 12 month period as the Board may from time to time set and includes the broken period commencing on the date of incorporation of the Society and ending on 30 June next following.

**Forestry Costs** means all costs and expenses incurred in connection with the management operation harvesting, replanting and marketing of the Muhunua Forest and compliance with the Muhunua Forest Park Management Plan, carbon tax, and all other costs associated with the same.

**Initial Bylaws** means the bylaws set out in schedule 3.

**Initial Members** means those members listed and signed in schedule 1.

**Invitees** means any invitee, visitor or occupier of any lot authorised or approved by an Owner.

**Lot** means all and any of the separate lots being lots 1-15 on DP 474223 inclusive comprised in the Ohau Sands Land and owned by the respective Owners.

**Muhunua Forest** means the existing radiata pine (and any future) forest situated on the Ohau Sands Communal Land.

**Muhunua Forest Park Management Plan** means the Muhunua Forest Park Management Plan which sets out the framework for the management of the Muhunua Forest required pursuant to the resource consent and approved by the Horowhenua District Council and any other relevant Authority including any updates, revisions or variations so approved to that plan.



**Objects** means the objects of the Society set out in Rule 1.3.

**Ohau Sands Land** means the land currently comprised in unique identifier WN 19A/62 and any titles that may issue upon further subdivision of the Ohau Sands Land.

**Ohau Sands Communal Land** means that part of the Ohau Sands Land comprising [Lot 17 on Deposited Plan 474223] which land is owned by the Owners in their respective undivided 1/15<sup>th</sup> shares described in the relevant computer freehold register pertaining to each particular Owners Lot. This land includes for clarity the tractor shed and the bush toilet infrastructure, all services infrastructure, all forestry existing or future and all other fixtures and fittings as at the date of these Rules which would reasonably be regarded as fixtures running with the land.

**Operating Expenses** means the total sum of all expenses incurred by the Society on behalf of the Owners collectively and properly assessed or assessable paid or payable in respect of the Ohau Sands Communal Land, the Property Assets, the Muhunua Forest and the operation of the Society on behalf of the Owners.

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

**Owner's Proportion** means the Owner's share of the Operating Expenses being a 1/15<sup>th</sup> share based on each Owner's undivided 1/15<sup>th</sup> share in the Ohau Sands Communal Land.

**Person** means an individual, company, incorporated society, incorporated charitable trust, city, district or regional council or other corporate body.

**Property Assets** means those assets owned purchased or acquired by the Society from time to time

**Registered Office** means the registered office of the Society for the time being, as determined in accordance with these Rules

**Registrar** means the person holding the office from time to time of the Registrar of Incorporated Societies in terms of the Act

**Resource Consent** means the resource consent issued by the Horowhenua District Council in respect of the Ohau Sand Land and the Ohau Sands Communal Land under No SUB2729/2008

**Rules** means these rules including the initial bylaws and any subsequent bylaws made from time to time by resolution of the Society

**Secretary** means the secretary of the Society, appointed in accordance with these Rules

**Society** means the Ohau Sands Residents Association Incorporated

**Special Contribution** means a levy imposed on all the Owners for the purposes of meeting the costs incurred in exercising the Objects of the Society where the same has been made as provided by Rule 7.5

**Working Day** means a day on which registered banks are open for customary retail banking business in Wellington New Zealand, but does not include Saturday and Sunday.

### Interpretation

- 23.2 In the interpretation of this document, the following provisions apply unless the context otherwise requires:
- 23.2.1 Headings are inserted for convenience only and do not affect the interpretation of this document.
  - 23.2.2 If the day on which any act, matter or thing is to be done under this document is not a Working Day, the act, matter or thing must be done on the next Working Day.
  - 23.2.3 A reference in this document to dollars or \$ means New Zealand dollars and all amounts payable under this document are payable in New Zealand dollars.
  - 23.2.4 A reference in this document to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
  - 23.2.5 A reference in this document to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
  - 23.2.6 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document.
  - 23.2.7 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
  - 23.2.8 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
  - 23.2.9 A word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders.
  - 23.2.10 A reference to the word 'include' or 'including' is to be construed without limitation.
  - 23.2.11 A reference to this document includes the agreement recorded in this document.
  - 23.2.12 Any schedules and attachments form part of this document