

# **Constitution of the Kūaotunu Residents' and Ratepayers' Association Incorporated**

## **1. Name**

The Name of the Society is the Kūaotunu Residents' and Ratepayers' Association Incorporated.

## **2. Definitions and Interpretation**

In this document:

- Kūaotunu means the area bounded by the summit of Kūaotunu Hill; the summit of the Black Jack Hill; the intersection of State Highway 25 and Matarangi Road; and the west end of Ring's Beach.
- Association means the Kūaotunu Residents' and Ratepayers' Association Incorporated.
- AGM means Annual General Meeting.
- SGM means Special General Meeting.
- Written means communication by post, electronic means (including email and website posting), advertisement in local papers, or a combination of these methods.
- 'Act' means the Incorporated Societies Act 2022 or any Act that replaces it including amendments and any regulations made under the Act or under any Act that replaces it.
- Other Definitions and Interpretations shall be as setout in the Act.

## **3. Objectives**

- 3.1 To conserve, safeguard, promote and advance the interests of the residents and ratepayers in and around Kūaotunu.
- 3.2 To make representations by way of deputations or otherwise bring to the notice of national or regional government or any other constituted authority such matters as in the opinion of the Association require attention.
- 3.3 To use the funds of the Association as the Association considers necessary and proper in payment of the costs and expenses of furthering the objectives of the Association.
- 3.4 To become a member of or cooperate with any other Association whether incorporated or not whose objectives are in whole or in part similar to those of this Association.

## **4. Membership**

- 4.1 Membership is open to any resident or ratepayer within the Kūaotunu area as defined in Clause 2. A member is deemed to have given signed consent to become a member on payment of the prescribed subscription fee and completion of a membership form.

- 4.2 The Treasurer shall ensure that an accurate register of members of the Association and their contact numbers, address, email address, date became member and date ceased to be a member (if applicable) is maintained.
- 4.3 Membership shall cease on tendering a resignation. Renewal of membership can be approved at a general meeting of the Association.
- 4.4 Any member shall cease to be a member when deemed by the Committee to have failed to comply with the Constitution of the Association; or to have failed within 3 months of the due date to have paid the Annual Subscription.
- 4.5 If any member is deemed by the Committee to have obstructed or attempted to obstruct the Association in the promotion of its objectives or is deemed to have acted in a way inimical to the Objectives of the Association, or likely to bring the Association into disrepute, such member may be requested to resign that membership by notice in writing. If such a member fails to resign within 14 working days of that request, membership will be deemed to have ceased. If a member feels that they have been unduly treated then the provisions of clause 12, Disputes, shall be followed.
- 4.6 Any member may resign from membership by giving written notice to the Secretary of the Association. The resignation shall take effect from the end of the current financial year. Such resignation shall not release the resigning member from any prior liability to the Association.

## 5. General Meetings

- 5.1 At least 28 working days' public notice of an ordinary or Annual General Meeting (AGM) shall be given stating the purpose(s) of the meeting.
- 5.2 At all General meetings of the Association a quorum shall consist of one third of the membership.
- 5.3 At all General Meetings the Chairperson or in that person's absence a member authorised by the Committee shall take the Chair.
- 5.4 For each matter to be voted on, each member present shall be entitled to one vote cast by voice, show of hand, ballot or otherwise as the Chairperson shall decide.
- 5.5 A member unable to attend a meeting may submit a written vote to the Chairperson at least 2 working days before the meeting or appoint a proxy as their representative. The proxy form specific to that meeting must be received in writing prior to the commencement of the meeting. This form shall be available from the Secretary at least fourteen (14) working days prior to the meeting.
- 5.6 Except where clause 7 (Altering the Constitution) or clause 11 (Winding Up) apply, all resolutions shall be passed by a simple majority of votes.
- 5.7 In the event of an equality of votes the Chairperson shall have an additional casting vote. Such a casting vote should normally favour the status quo.
- 5.8 An AGM shall be held, at a time and place determined by the Committee, within six (6) months of the end of the financial year and no more than 15 months after the previous AGM.
- 5.8.1 The purpose of the AGM shall be to:
- Receive a written Annual Report for the year;
  - Receive a written Annual Financial report signed by the Treasurer.
  - Report all disclosed Conflicts of Interest

- Elect a Committee as prescribed in clause 6;
  - Fix the Annual Subscription for the ensuing year;
  - Decide on any Resolution brought before the meeting; and
  - Conduct any other relevant business of the Association.
- 5.8.2 The public notice of an AGM shall include a call for written nominations for the Committee from Association members within the timeframe specified on the notice of meeting. Nominations will also be accepted from the floor at that meeting.
- 5.8.3 Those so nominated must give their approval in writing, or (if nominated from the floor at the AGM) verbally, to the nomination.
- 5.8.4 Details of nominees for whom written nominations or nominations from the floor have been received, shall include brief personal details from each candidate, purpose of the nomination and proposed contribution to the objectives of the Association. Written nominations shall be provided to all members at least ten (10) working days prior to the AGM.
- 5.8.5 Members who wish to do so may vote in advance on the election of the Committee and any resolution published in the public notice of the meeting. The Advance Voting form specific to that meeting must be received in writing prior to the commencement of the meeting. This form shall be available from the Secretary at least fourteen (14) working days prior to the meeting.
- 5.9 A Special General Meeting (SGM) may be called as deemed necessary by resolution of the Committee, or on receipt of a request in writing from five (5) members of the Association stating the purpose of such a meeting.
- 5.9.1 Within seven (7) working days after receipt of any such request the Secretary shall give notice to all members of the Association of the time and place at which the SGM shall be held and the business to be conducted.
- 5.9.2 Such a meeting shall be held within twenty-eight (28) working days after the request for the meeting is received.
- 5.9.3 Unless in exceptional circumstances, at least fourteen (14) working days' public notice of a SGM shall be given stating the purpose(s) of the meeting.
- 5.10 All meetings and resolutions shall be minuted and records kept.

## 6. Officers and Committee

- 6.1 The Committee will comprise not less than six (6) and not more than ten (10) elected members. All members of the Committee are Officers of the Association. Each Officer must complete and sign the Consent and Certificate of Officer form.
- 6.2 All Officers have a duty to act in good faith and in the best interests of the society; exercise powers for proper purposes only; comply with the Act and the Association's Constitution; exercise reasonable care and diligence; not create a substantial risk of serious loss to creditors; not incur an obligation the Officer doesn't reasonably believe the Association can perform.
- 6.3 Subsequent to the AGM, the elected members of the Committee will appoint three (3) Officers, to the positions of a Chairperson, a Secretary and a Treasurer. If deemed necessary

by the Committee a Deputy Chairperson can be appointed to facilitate the functioning of the Association.

- 6.4 The duties of the Chairperson shall be to act as Chairperson at all meetings and to ensure that the Constitution and any Rules are followed. In the absence of the Chairperson another member of the Committee may be appointed as Chairperson for that meeting.
- 6.5 The duties of the Deputy Chairperson shall be to act on behalf of the Chairperson in matters delegated by the Chairperson. The Deputy Chairperson is required to act in the spirit of the Chairperson and not act independently of the Chairperson and not make any decision without consultation with the Chairperson.
- 6.6 The duties of the Secretary shall be to keep written minutes of all meetings; to attend to all correspondence; to provide notices of meetings and a list of business to be transacted at all meetings; and to facilitate the general operation of the Association.
- 6.7 The duties of the Treasurer shall be to keep proper financial records; bank all monies received by the Association into one of the Association's bank accounts; pay all accounts; prepare annual accounts in accordance with the Constitution, and to file the annual accounts (financial statements) with the Registrar of Incorporated Societies. The Treasurer shall ensure that an accurate list of members of the Association and their contact numbers, their Kūaotunu and (where applicable) any other domicile address and email address and the date became member and date ceased to be a member (when applicable) is maintained.
- 6.8 The Chairperson shall appoint up to 3 Contact Persons. The Secretary shall be the Contact Person for the Registry of Incorporated Societies. The address of the Secretary shall be the Registered Office of the Association provided to the Registry.
- 6.9 Officers shall hold office until the conclusion of the subsequent AGM or earlier through retirement or removal from office. Officers are eligible for re-election. No Officer or Chairperson shall serve more than 5 consecutive terms without a simple majority of an Annual General Meeting members vote.
- 6.10 The Committee shall have power to appoint a member to fill any casual vacancy on the Committee until the next Annual General Meeting.
- 6.11 The Committee shall have the power to appoint up to two (2) further members with full voting rights to the Committee for any purpose for which they deem it either necessary or desirable that such further members be appointed.
- 6.12 If for any reason whatsoever the number of Committee members falls below the minimum threshold of six (6) the Committee shall have the power to call a Special General Meeting for the purpose of electing further members.
- 6.13 Committee members shall declare any potential conflict of interest to which clause 9.3 would be applied.
- 6.14 A minimum of six meetings of the Committee shall be held annually, when deemed necessary by the Chairperson or Secretary. At least seven (7) working days' notice shall be given of such meetings.
- 6.15 The Committee may set up subcommittees and for such purposes may co-opt other financial members, or other persons with special expertise, provided that any subcommittee must have as its Chairperson a member of the Committee.
- 6.16 At all meetings of the Committee the attendance of more than 50% of Committee members shall constitute a quorum.

- 6.17 Resolutions of the Committee require a simple majority of votes of those Committee members present at the meeting (either in person or electronically) to be passed.
- 6.18 In the event of an equality of votes the Chairman shall have an additional casting vote. Such a casting vote should normally favour the status quo.
- 6.19 Any member of the public may attend a meeting of the Committee. Such attendees may speak to an agenda item or other business relevant to the community, provided they advise the Chairperson 48 hours in advance. Time for Public Input shall be set aside on the agenda for that purpose, or the Chairperson may permit input during other agenda items. Public Input shall be limited to **5 minutes per speaker** and a total of 5 speakers, unless the Committee agrees otherwise.

## **7. Altering the Constitution**

- 7.1 The Constitution shall be amended only by vote at the AGM or at a SGM constituted for that purpose.
- 7.2 Proposed alterations to the Constitution shall be notified to all members in writing twenty-eight (28) working days prior to the date of the AGM or SGM at which such alterations are to be voted upon.
- 7.3 Alterations to the Constitution shall require **a simple majority** approval of the financial membership.
- 7.4 No addition or alteration of the Objectives, Personal Benefit or the Winding Up clauses shall be made which affect the non-profit deduction. The provisions and effect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document.

## **8. Financial**

- 8.1 The Annual Subscription shall be set at each AGM. Such a subscription is not refundable.
- 8.2 The Financial Year shall run from 1 April to 31 March in the subsequent year.
- 8.3 The Committee shall present to the AGM a full financial statement for the previous year **signed by the Treasurer.**
- 8.4 The Association shall not have the power to borrow money.
- 8.5 To pursue the Objectives in clause 3 the Committee reserves the right to apply for funding.

## **9. Personal Benefit**

- 9.1 Any income, benefit or advantage shall be applied to the objectives of the Association.
- 9.2 No member or associated person may derive any income, benefit or advantage from the Association except where that income or benefit is for the provision of services to the Association rendered in the normal course of business and charged at no more than accepted market rates for such services.
- 9.3 No member of the Association or any person associated with a member shall participate in or materially influence any decision made by the Association, in respect of the payment to or on behalf of that member or associated person of any income, benefit or advantage whatsoever.

Any such income shall be reasonable and relative to that which would be paid in an arms-length transaction (being open market value).

9.4 The provisions and effect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document.

## **10. Registered Office**

10.1 The Registered Office of the Association shall be at the address of the Secretary.

## **11. Winding Up**

11.1 The Association may by a majority of at least 65% of the membership present at a General Meeting held for that purpose resolve that the Association be wound up or dissolved at a date specified, provided that all liabilities of the Association have been duly discharged.

11.2 In the event of the winding up or dissolution of the Association, any assets of the Association after payment of all liabilities shall be deposited in a Trust Fund administered by three (3) qualified persons at least one of whom must be a member of the Law Society of New Zealand, and one must be a member of the Institute of Chartered Accountants. The funds or income from such funds shall, within a period of two years from the winding up or dissolution of the Association, be disbursed only for the betterment of the residents and ratepayers of Kūaotunu. If upon winding up or dissolution of the Association there remains after the satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid or distributed among the members of the Association but shall be given or transferred to some other organisation or body with similar objectives to the Association that also has an income tax exemption or for some other charitable purpose, within New Zealand.

11.3 No addition, alteration or rescission of Clause 11.2 of this Constitution shall be made without the written approval of the Inland Revenue Department.

## **12. Disputes**

12.1 [How a complaint is made](#)

12.1.1 [A member or an officer may make a complaint by giving to the committee a notice in writing that —](#)

- [a. States that the member or officer is starting a procedure for resolving a dispute in accordance with the society's constitution; and](#)
- [b. Sets out the allegation to which the dispute relates and whom the allegation is against; and](#)
- [c. Sets out any other information reasonably required by the Association.](#)

12.1.2 [The Association 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 ---](#)

- [a. States that the Association is starting a procedure for resolving a dispute in accordance with the society's constitution; and](#)
- [b. Sets out the allegation to which the dispute relates](#)

12.1.3 The information given under subclause 12.1.1b and 12.1.2b must be enough to ensure that a person against whom an allegation is made is fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response.

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

## 12.2 The person who makes a complaint has a right to be heard

12.2.1 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.

12.2.2 If the Association makes a complaint --

- a. The Association has a right to be heard before the complaint is resolved or any outcome is determined; and
- b. An officer may exercise that right on behalf of the Association.

12.2.3 Without limiting the manner in which the member, officer or the Association may be given the right to be heard, they must be taken to have been given the right if ---

- a. they have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
- b. an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
- c. an oral hearing (if any) is held before the decision maker; and
- d. the member's, officer's, or the Association's written statement or submissions (if any) are considered by the decision maker.

## 12.3 The person who is subject of complaint has right to be heard

12.3.1 This clause applies if a complaint involves an allegation that a member, an officer, or the Association (the respondent) ---

- a. has engaged in misconduct; or
- b. has breached, or is likely to breach, a duty under the society's constitution or bylaws or the Incorporated Societies Act 2022; or
- c. has damaged the rights or interests of a member or the rights or interests of members generally.

12.3.2 The respondent has a right to be heard before the complaint is resolved or any outcome is determined.

12.3.3 If the respondent is the Association, an officer may exercise the right on behalf of the Association.

12.3.4 Without limiting the manner in which a respondent may be given a right to be heard, a respondent must be taken to have been given the right if ---

- a. The respondent is fairly advised of all allegations concerning the respondent, with sufficient details and time given to enable the respondent to prepare a response; and
- b. The respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and

- c. An oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
- d. An oral hearing (if any) is held before the decision maker; and
- e. The respondent's written statement or submissions (if any) are considered by the decision maker.

#### 12.4 Investigating and determining dispute

12.4.1 The Association 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.

12.4.2 Disputes must be dealt with under the constitution in a fair, efficient, and effective manner.

#### 12.5 The Association may decide not to proceed further with the complaint if:

12.5.1 The complaint is trivial; or

12.5.2 The complaint does not appear to disclose or involve any allegation of the following kind:

- a. That a member or an officer has engaged in material misconduct:
- b. 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 Incorporated Societies Act 2022:
- c. That a member's rights or interests or members' rights or interests generally have been materially damaged.

12.5.3 The complaint appears to be without foundation or there is no apparent evidence to support it; or

12.5.4 The person who makes the complaint has an insignificant interest in the matter; or

12.5.5 The conduct, incident, event, or issue giving rise to the complaint has already been investigated and dealt with under the constitution; or

12.5.6 There has been an undue delay in making the complaint.

#### 12.6 The Association may refer a complaint

12.6.1 The Association may refer a complaint to ---

- a. a subcommittee or an external person to investigate and report; or
- b. a subcommittee, an arbitral tribunal, or an external person to investigate and make a decision.

12.6.2 The Association 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).

#### 12.7 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 ---

12.7.1 Impartial; or

12.7.2 able to consider the matter without a predetermined view.