



Kensington Park

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RESIDENTS' ASSOCIATION

**KENSINGTON PARK RESIDENTS'  
ASSOCIATION INCORPORATED**

**CONSTITUTION AND BYLAWS**

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## INTRODUCTION

### 1. Name and Registered Office

- 1.1 **Name:** The name of the Association is "Kensington Park Residents' Association Incorporated".
- 1.2 **Registered office:** The registered office of the Association is at 145 Manukau Rd, Epsom, Auckland 1023 or such other place as the Committee decides from time to time.

### 2. Definitions and Interpretation

- 2.1 **Definitions:** In this document, unless the context otherwise requires:
- 2.1.1 **Act** means the Incorporated Societies Act 1908;
- 2.1.2 **Annual General Meeting** means an annual general meeting of the Association, convened and conducted in accordance with this Constitution.
- 2.1.3 **Association** means the Kensington Park Residents' Association Incorporated, an incorporated society registered under the Act.
- 2.1.4 **Authority** means any local body government or other authority having jurisdiction or authority over or in respect of any part of Kensington Park or its use.
- 2.1.5 **Body Corporate** means anybody corporate resulting from the subdivision of any part of the Land under the Unit Titles Act 2010.
- 2.1.6 **Bylaws** means bylaws made by the Association from time to time under rule 4.1.
- 2.1.7 **Capital Improvements** means expenditure in respect of the Common Facilities relating to;
- 2.1.7.1 new capital additions; or
- 2.1.7.2 structural repairs, replacements, substantial renewal; or
- 2.1.7.3 periodic maintenance where the frequency of expenditure is not less than 12 months.
- 2.1.8 **Committee** means the committee of the Association established in accordance with this Constitution in order to manage the affairs of the Association.
- 2.1.9 **Commercial Member** means a Member whose Property is designated to be used for commercial purposes at Kensington Park by an instrument on the Owner's Title or is reasonably determined by the Association to be, or as being, used primarily for commercial purposes at Kensington Park.
- 2.1.10 **Common Facilities** means all land, natural features, buildings, structures, plant, equipment, facilities, services and other amenities associated with Kensington Park owned (whether directly or indirectly), leased, licensed, maintained or otherwise held, levied or operated in whole or in part by the Association from time to time including those facilities from time to time transferred to the Association by the Developer, by any other company which is directly or indirectly controlled by the Developer, or by any company of which the Developer is a subsidiary (whether directly or indirectly), including:
- 2.1.10.1 any walkways through Kensington Park (whether public or private);
- 2.1.10.2 the landscaping of the Land, the road verges and entranceways and those areas in Kensington Park which are planted out or covered in trees, shrubs or natural ground cover material;

- 2.1.10.3 the fencing, retaining walls, gates, screening walls, seating, signs, stairs, exterior lighting fixtures, and similar external hard landscape items;
- 2.1.10.4 the playgrounds, swimming pools, fields, parks, associated equipment and any other facilities (including land and buildings);
- 2.1.10.5 the water, energy and telecommunications reticulation systems and their associated pipelines, transformers, switches, lines, cables, ducting, pumps, wells, tanks and related equipment, not otherwise the responsibility of the local authority or a third party utility supplier, from the points of entry of supply to the Land or the points of demarcation with any third party supplier, to the point of entry into a Property;
- 2.1.10.6 the signage and directory boards at the main entrance ways to Kensington Park;
- 2.1.10.7 such other facilities serving Kensington Park which, by the passing of a Special Resolution, the Members resolve should be under the control and direction of the Association.
- 2.1.11 **Constitution** means the rules and constitution of the Association and any amendments, regulations or bylaws in effect pursuant to this Constitution.
- 2.1.12 **Design Controls** means the design controls, procedures and guidelines that form part of the Bylaws.
- 2.1.13 **Design Review Board** means the board from time to time appointed under rule 18.1 to consider design approval applications by Members.
- 2.1.14 **Developer** means Kensington Park Holdings Limited and its transferees and assigns.
- 2.1.15 **Development Period** means a period which has commenced and which will end twelve (12) months after the development of Kensington Park is complete and the Developer no longer retains any material interest therein as a land developer. For the purposes of this definition, Kensington Park will be deemed complete upon the issue of the last certificate(s) of title for all Properties intended to be constructed by the Developer within Kensington Park.
- 2.1.16 **Encumbrance** means the encumbrance in favour of the Association noted or to be noted against each Owner's Title.
- 2.1.17 **Exemption Notice** means the Securities Act (Kensington Park Properties Limited) Exemption Notice (No 2007/26).
- 2.1.18 **Facility Expenses** means in each Financial Year the total sum of all rates, taxes, payments, costs, liabilities and expenses incurred by the Association, and which have been properly and reasonably assessed and paid (or assessable and payable) or otherwise incurred:
  - 2.1.18.1 in respect of the Common Facilities and the operation of the Association, including the cost of Capital Improvements;
  - 2.1.18.2 in the operation of the Association (including the Management Fees and Management Expenses as defined in the Management Agreement);
  - 2.1.18.3 in the administration and enforcement of a scheme for the provision of services, benefits and facilities to the Properties;
  - 2.1.18.4 and will include (without limitation) the following:
    - 2.1.18.4.1 all rates levied by any Authority which are at any time levied upon the Common Facilities or upon the Association in respect of the Association's interest in the Common Facilities or are paid or payable by the Association as a result of the receipt of any money under this Constitution;

- 2.1.18.4.2 all premiums and costs payable by the Association in respect of all policies of insurance effected on the Common Facilities for sums insured up to their full replacement value or, at the option of the Association, to their full value on an indemnity covered basis against loss, damage or destruction by such risks as the Association may deem necessary or desirable, including consequential loss and public risk liability;
- 2.1.18.4.3 the cost of operating, supplying, servicing, maintaining, inspecting, testing and repairing all and services from time to time provided to the Owners, the Properties or generally at Kensington Park, including watering equipment and systems, any water features, communications, equipment and systems (including telephone, cable television and satellite television equipment and systems), fire-fighting and protection equipment and systems, emergency or other alarm services or systems, security and monitoring services and systems; electrical and plumbing services, waste and rubbish compression and disposal systems and the plant and equipment required for any of such or other services and systems;
- 2.1.18.4.4 all charges for lighting, gas and power, and all other forms of energy incurred by the Association in connection with the Common Facilities, and other services or requirements furnished or supplied to the Common Facilities for the general benefit or purposes of the Common Facilities, including maintenance costs of lighting and power systems and equipment;
- 2.1.18.4.5 all sanitation costs in respect of Kensington Park, including the costs of the removal and disposal of all waste and garbage from all properties contained in Kensington Park;
- 2.1.18.4.6 all costs for the provision, at intervals deemed appropriate by the Association, of security services to the Common Facilities or Kensington Park generally;
- 2.1.18.4.7 all costs of repairs, maintenance, renovations and landscaping of the Common Facilities, including Common Facilities that are not owned by the Association but that the Association is obliged or agrees to maintain from time to time;
- 2.1.18.4.8 all costs and expenses (including the costs of obtaining necessary reports) payable, incurred or suffered by the Association in complying with the Association's obligations under the Building Act 2004;
- 2.1.18.4.9 all other items of expense which the Association, acting reasonably, considers necessary to incur for the good management and appearance of the Common Facilities;
- 2.1.18.4.10 all costs of managing, controlling and administering the Common Facilities, including such costs that consist of wages, allowances or other emoluments paid to persons employed by or contracted to the Association;
- 2.1.18.4.11 all wages, allowances and other emoluments and any other payments by way of compensation including redundancy compensation paid or allowed to employees engaged for any of the above purposes together with any taxes and levies on the same;

- 2.1.18.4.12 allowances or compensation may be paid to Association committee members or those acting on behalf of, where time or personal expense is incurred;
- 2.1.18.4.13 attendance allowance or compensation may be paid to Association committee members for attendance at Association committee meetings as per a schedule passed at an AGM;
- 2.1.18.5 but excluding, for the purposes of calculating each member's Proportion:
  - 2.1.18.5.1 any such costs or expenses which are the sole responsibility of any Owner; and
  - 2.1.18.5.2 the costs of any Capital Improvements recovered from Transfer Levies set under rule 16.1, which comprise a sinking fund for such Capital Improvements.
- 2.1.19 **Financial Year** means:
  - 2.1.19.1 the period from the date of incorporation of the Association to the following 31 March; and
  - 2.1.19.2 each 12 month period commencing on 1 April and ending on the following 31 March or such other period selected by the Committee.
- 2.1.20 **GST** means goods and services tax charged under the Goods and Services Tax Act 1985.
- 2.1.21 **Invitee** means any invitee of or any visitor to an Owner or Occupier.
- 2.1.22 **Kensington Park** means the residential/commercial development proposed by the Developer, comprising a master planned community to be developed and constructed on the Land.
- 2.1.23 **Land** means:
  - 2.1.23.1 Lot 3 Deposited Plan 318969 Certificate of Title NA74275 (North Auckland Land Registry);
  - 2.1.23.2 Lot 1 Deposited Plan 66936 Certificate of Title NA78D/762 (North Auckland Land Registry); and
  - 2.1.23.3 such further land which the Developer decides will be incorporated within Kensington Park from time to time during the Development Period;
  - 2.1.23.4 such further land which the Association decides may be purchased from time to time.
- 2.1.24 **Manager** means the person, firm, or company appointed to manage the Association under rule 21. Where no manager has been appointed, any reference to "Manager" in this Constitution will be deemed, where appropriate, a reference to the Committee, subject to rule 20.1.
- 2.1.25 **Management Agreement** means the agreements for the management of Kensington Park.
- 2.1.26 **Member** means a member of the Association.
- 2.1.27 **Member's Proportion** means the proportion of the aggregate of the Occupied Internal Areas of the Properties owned by a Member bears to the total Occupied Internal Areas except where rule 14.4 applies.
- 2.1.28 **Occupied Internal Area** means the internal building area (excluding storage lockers, garaging/carparks and decks) of any home, commercial premises or other development on any Property.

- 2.1.29 **Occupier** means a person occupying any Property under any lease, licence or other occupancy right and will include the Owner and all members of the Owner's family.
- 2.1.30 **Owner** means each person registered as a proprietor (whether individually or with others) of a Property.
- 2.1.31 **Owner's Title** means the certificate of title issued for an Owner's Property.
- 2.1.32 **Ponds** means storm water treatment and detention ponds located, or to be located, on the Land.
- 2.1.33 **Postal Vote** means a vote by a Member, eligible to vote, cast in legible writing in relation to a resolution of the Association in a prescribed form and received by the Manager no later than a prescribed time prior to a general meeting, in respect of a motion to be voted on at that general meeting without material amendment (materiality to be determined by the chairperson acting reasonably – see rule 22.4.5) and such postal vote is only permitted if rule 21.5 applies.
- 2.1.34 **Principal Member** means the Developer or any transferee and/or successor whether in whole or in part or parts of Kensington Park, that continues the promotion and carrying out of such development and that the Developer nominates as the Principal Member, and its/their nominated representatives.
- 2.1.35 **Property** means a property in Kensington Park:
- 2.1.35.1 for which a separate title (including a unit title or certificate of title for an estate in fee simple) has issued; and
  - 2.1.35.2 which either:
    - 2.1.35.2.1 is a bare lot available for immediate development as:
      - 2.1.34.2.1.1 a residential property;
      - 2.1.35.2.1.2 a commercial property (including commercial accommodation); or
      - 2.1.35.2.1.3 any other use permitted within Kensington Park;
    - 2.1.35.2.2 including in each case, a lot of which development/ construction has started; or
    - 2.1.35.2.3 has been fully developed as:
      - 2.1.35.2.3.1 a residential property;
      - 2.1.35.2.3.2 a commercial property (including commercial accommodation); or
      - 2.1.35.2.3.3 any other use permitted within Kensington Park,
      - 2.1.35.2.3.4 but does not include any lot capable of further subdivision.
- 2.1.36 **Public Reserve** means any public reserve within or adjoining Kensington Park which the Association is required to maintain.
- 2.1.37 **Registrar** means the person holding office from time to time as Registrar of the Incorporated Societies in terms of the Act.
- 2.1.38 **Rental Agency** means such entity(s) as is established or appointed by the Developer to control and administer the letting of the Properties for residential accommodation purposes and if no such entity(s) has been established by the Developer, means the Association or such entity(s) established or appointed by the Association for that purpose.



- 2.1.39 **Residential Member** means a Member whose Property is designated for residential purposes at Kensington Park by an instrument on the Owner's Title or is reasonably determined by the Association to be, or as being, used primarily for residential purposes.
- 2.1.40 **Shared Facility** means any part of any Property that as the result of either:
- 2.1.40.1 shared ownership; or
- 2.1.40.2 registration of a legal interest (by way of example only, a right of way), the responsibility for upkeep lies with more than one Member.
- 2.1.41 **Special Resolution** means a resolution of the Association in general meeting passed by a majority of not less than 75% of the Members (which must include the Principal Member, if any) entitled to vote in person, by proxy or postal vote (if permitted under rule 21.5) on the question.
- 2.1.42 **Total Occupied Internal Area** is the sum total of the Occupied Internal Areas of all of the Properties as at a given date.
- 2.1.43 **Transfer Levy** means the levy referred to in rule 16 of this Constitution.
- 2.1.44 **Working Day** means a day of the week other than Saturday, Sunday, and any New Zealand Statutory Holiday.
- 2.2 **Interpretation:** In this Constitution where the context permits:
- 2.2.1 one gender will include the other gender.
- 2.2.2 reference to a person will include a company.
- 2.2.3 reference to a party will include that party's executors administrators successors and assigns.
- 2.2.4 a reference to a statute includes:
- 2.2.4.1 all regulations under that statute;
- 2.2.4.2 all amendments to that statute; and
- 2.2.4.3 any statute substituting for it which incorporates any of its provisions.
- 2.2.5 reference to currency will mean New Zealand dollars (NZ\$) exclusive of GST.
- 2.2.6 GST will be paid by any party in receipt of a taxable supply in addition to any consideration therefore.
- 2.2.7 the table of contents and headings are for convenience only and will not affect the interpretation of this document.
- 2.2.8 references to rules are references to the rules in this Constitution.

## **RESIDENTS' ASSOCIATION OBJECTS, DUTIES AND POWERS**

### **3. Objects**

- 3.1 **General objects:** The Developer intends to:
- 3.1.1 Create a quality development;
- 3.1.2 Establish the Common Facilities in Kensington Park for the benefit of the Members and Kensington Park generally; and
- 3.1.3 Transfer ownership of the Common Facilities to the Association for the benefit of the Members in accordance with a deed of transfer to be prepared by the Developer.

3.2 **Specific objects:** The Association is formed to play a key role in preserving the financial and lifestyle interests of the Members in maintaining infrastructure and regulating the common access and other cooperative features of Kensington Park, and to promote the following objects for the benefit of Members:

- 3.2.1 The maintenance, preservation and enhancement of the unique character, size and recreational and administrative capabilities of Kensington Park as a premium lifestyle community;
- 3.2.2 The ownership, leasing or control and continued ownership, leasing and control of the Common Facilities by the Association;
- 3.2.3 To ensure the proper supply, operation, maintenance, repair, renovation and replacement of the Common Facilities;
- 3.2.4 To promulgate and enforce the Bylaws and covenants to establish codes of behaviour applicable to Members and to benefit Members, the Common Facilities and Kensington Park generally;
- 3.2.5 To create, regulate and implement appropriate Design Controls in respect of each Property to ensure a continuity of building style and prevent the use of different and extreme building themes that are not in harmony with each other. This control is intended to emphasise and highlight the quality and value of property in Kensington Park where houses and commercial facilities blend together and flow on from each other;
- 3.2.6 To manage the use of the Common Facilities and develop further Common Facilities;
- 3.2.7 To maintain the Common Facilities and Kensington Park generally as a safe, clean and well-presented environment having regard to the age, appearance and aesthetics of Kensington Park as a whole;
- 3.2.8 The full and proper use of the Common Facilities by Members and, where appropriate, members of the public;
- 3.2.9 To liaise and consult with each Body Corporate within Kensington Park to ensure an integrated management plan for Kensington Park as a whole;
- 3.2.10 To fulfil the meeting and financial reporting requirements of the Securities Act 1978 in relation to a scheme of participatory securities;
- 3.2.11 To engage in any other enterprise or activity which the Association considers to be in the interests of the Members;
- 3.2.12 To preserve the value and integrity of Kensington Park;
- 3.2.13 To assist, and co-operate with, the Developer to procure completion of Kensington Park;
- 3.2.14 To levy Members for the purpose of meeting the objects set out in this rule 3.2; and
- 3.2.15 To do any act or thing incidental or conducive to the attainment of any of the above objects.

3.3 **Excluded objects:** The Association does not have as an object the following:

- 3.3.1 The pecuniary gain of Members, and (subject to rule 23.1) no Member will be entitled to receive any dividend out of any levy, fee, donation or other income or funds of the Association; or
- 3.3.2 The carrying on of trading activities; or
- 3.3.3 The carrying on of business for profit.

3.4 **Members may contract:** A Member may enter any agreement or understanding with the Association for the supply of any goods or services for such consideration and on such other terms and conditions as would be reasonable if that person were not a Member.

#### 4. Duties of the Association

- 4.1 **Bylaws:** For the fulfilment of the purposes and objects of the Association, but subject to rule 4.2, the Association will from time to time:
- 4.1.1 Promulgate the Bylaws for the use of the Common Facilities (including any restrictions on use for security, maintenance or other reasons) and Bylaws concerning the behaviour of Owners, Occupiers and Invitees and Bylaws governing the use of Properties;
  - 4.1.2 Amend and review the Bylaws as appropriate;
  - 4.1.3 Enforce the Bylaws, taking such action in this regard as the Association thinks fit.
- 4.2 **Bylaws:** The current bylaws are those Bylaws attached as Schedule 1 to this Constitution.
- 4.3 **Operate and Manage the Common Facilities:** The Association will own, operate, manage, and where applicable, lease or let out on hire, the Common Facilities and all improvements located on the Common Facilities.
- 4.4 **Repair of Common Facilities:** The Association will ensure the proper use, operation, maintenance, repair, renovation and replacement of the Common Facilities, so as to keep the Common Facilities in good order consistent with standards generally proposed or adopted in superior communal facilities of similar nature, and to prevent them from becoming a danger or nuisance, and undertake such Capital Improvements as are necessary for this purpose. Each Member agrees and allows the Association (and parties engaged by it under rule 4.9) access to the Member's Property for the purposes of this rule 4.4. However, the Association will make good any damage caused by such access within a reasonable time after completion of any work carried out to give effect to this rule 4.4.
- 4.5 **Insurance:** The Association will effect and maintain all insurances as it considers prudent with respect to the Common Facilities, the Association's affairs and members of the Committee, and will meet all costs of such insurance (which will include all valuations and other professional fees required or deemed desirable for the purposes of such insurances and the cost of certificates relating to such insurances).
- 4.6 **Rates and Taxes:** The Association will pay all local and governmental authority rates and other taxes and charges levied on or with respect to the Common Facilities. The Association has all rights granted by law to contest the legality and the amount of those taxes and charges.
- 4.7 **Books of Account:** The Association will keep books and records of the Association's affairs and make those books and records, together with current copies of the Bylaws, available for inspection by Owners on request during normal business hours.
- 4.8 **Body Corporate Secretary:** The Association and/or the Manager may from time to time act as Body Corporate Secretary for all or some of the Bodies Corporate within Kensington Park.
- 4.9 **Service contractors and utility suppliers:** The Association may, from time to time, nominate a service contractor (with respect to management, maintenance, security, landscaping or other such services as the Association considers desirable) or a utility supplier (with respect to the supply of utilities to the Common Facilities) as a service contractor (on an exclusive or non- exclusive basis) to Kensington Park. Any Member wishing to contract for services within Kensington Park will, where a service contractor has been nominated in respect of those services wherever reasonably possible use that nominated service contractor.
- 4.10 **Register of Members:** The Association will maintain a register of Members recording:
- 4.10.1 The name, address, occupation, contact details (at home and work) of each Member, or if the Member is not a natural person, of a contact person for that Member. No notice of any trust express, implied or constructive will be entered on the register of Members;
  - 4.10.2 The name, address, occupation, contact details (at home and work) of each Occupier, or if the Occupier is not a natural person, of a contact person for that Occupier;
  - 4.10.3 The date on which each Member became a member of the Association;
  - 4.10.4 Where there is more than one Owner of a Property, which of such Owners is entitled to vote in accordance with rule 7.1.4;

4.10.5 The name, contact person and contact details of any mortgagee over a Property.

The Committee will ensure that the register of Members is audited by a full and current member of NZ Institute of Chartered Accountants (NZCIA) or a full and current member of an accounting body affiliated with the International Federation of Accountants (IFAC) after all Properties have been sold by the Developer and thereafter once every two years.

- 4.11 **Public Reserve:** The Association will ensure the proper maintenance of the Public Reserve(s) in accordance with any agreement entered into between the Association, the Developer and the Auckland Council.
- 4.12 **Transfer of Facilities:** The Association acknowledges that the Developer may, from time to time, transfer land and/or facilities for communal use of the Association, and the Association must accept transfer of such land and/or facilities.
- 4.13 **Pond:** The Association shall maintain, repair and renew the fountains and aeration devices located in the Pond, ensure the proper maintenance of all landscaping improvements and landscaped areas within or adjacent to the Pond and shall within such reasonable time following request by Auckland Council (or its successor) remove the fountains and aeration devices so that Auckland Council (or its successor) may undertake routine maintenance (annual maintenance and de-silting) or as otherwise required for the effective operation of the Pond.
- 4.14 **Incidental Activities:** The Association may carry out any other duty or activity which is necessary or incidental to any other specific duty contained in this Constitution.

## 5. Powers of Association

- 5.1 **Powers of the Association:** Subject to the express terms of this Constitution, and to the Act, the Association will have all the powers as are expressly set out in this Constitution or as are necessary to further the objects and duties set out above.
- 5.2 **Powers vested in Committee:** Without limiting the above, the administration of the Association will be vested in the Association in general meeting, and will be delegated to the Committee. The Committee may exercise all of the powers, authority and discretions of the Association as permitted by this Constitution and do on its behalf all such acts as the Committee deem necessary or expedient. The powers, authority and discretions as exercised by the Committee are subject always to any limits which may, from time to time, be imposed by the Association. The Committee may delegate any of its powers to committees consisting of such member or members of their body as they think fit or to the Manager. Any committee so formed will in the exercise of the powers so delegated conform to directions of the Committee.
- 5.3 **Bank Accounts:** The Association will establish an account or accounts at a bank, and any drawings on such account(s) (including any cheque(s) drawn on such account(s)) will be made by two authorised persons. Authorised signatories may only be added or removed by approval of the Committee.
- 5.4 **Legal Proceedings:** The Association may initiate and pursue legal proceedings for itself or on behalf of any or all of the Members.
- 5.5 **Granting Access:** The Association may, from time to time, grant access to the Common Facilities to any person for the purpose of constructing, erecting, operating or maintaining the Common Facilities.
- 5.6 **Management:** The Association may enter into a management agreement or agreements for such period, at such remuneration and on such terms and conditions as the Association may think fit, for the delegation of its responsibilities to ensure the proper operation, repair, maintenance and replacement of the Common Facilities and to fulfil any other duties of the Association.
- 5.7 **Deeds:** Any contract, if made between private persons, will be entered into by the Association in writing and signed by the chairperson or under the common seal of the Association, in each case in accordance with a resolution of the Committee.
- 5.8 **Other Documents:** All other documents and written announcements, requiring execution on behalf of the Association, must be signed by the chairperson.

## 6. Limitation of Powers

- 6.1 **Limitations:** Notwithstanding any other provision of this Constitution or any other enabling power, except as otherwise authorised by Special Resolution, the Association's powers will be restricted as follows:
- 6.1.1 The Association may not borrow any money other than short-term borrowing to cover any temporary shortfall in meeting the Association's obligations under this Constitution;
  - 6.1.2 The Association will hold the Common Facilities in its own name and will not mortgage, charge, encumber, transfer or otherwise deal with such Common Facilities provided that where the Association is obliged to grant any interest in or right in respect of the Common Facilities by any agreement with the Developer, such interests or rights may be granted by the Committee;
  - 6.1.3 The Association will hold all funds with a Bank registered under the Reserve Bank of New Zealand Act 1989, and will not invest those funds other than in term deposits not exceeding 3 years;
  - 6.1.4 All Common Facilities designed for recreational purposes will be used only for such purposes.

## **MEMBERSHIP**

### 7. Owner Members

- 7.1 **Owners to be Members:** Each Owner will be a Member, and only Owners will be Members, and for that purpose.
- 7.1.1 The Encumbrance and restrictive covenants will be noted against the Owner's Title in favour of the Association, whereby each Owner covenants to become and remain a Member, and to perform the obligations of a Member as set out in this Constitution and otherwise containing terms required by the Association.
  - 7.1.2 Each Member will, prior to settling the sale of a Property, procure the purchaser to enter into, execute and deliver to the Association a deed of covenant in favour of the Association, wherein the purchaser covenants to become (contemporaneously with the transfer of the Property), and remain, a Member, and to observe and perform the obligations of a Member as set out in this Constitution. The deed of covenant or encumbrance will be prepared by the Association's solicitors, and the selling or transferring Member will pay the reasonable legal costs and disbursements of the Association's solicitors.
  - 7.1.3 The rights, privileges and obligations of a Member are not assignable (except by transfer of the Property to which membership is associated).
  - 7.1.4 If there is more than one Owner of a Property, such Owners must collectively constitute one Member and the liability of such Owners, in relation to their membership, will be joint and several.
  - 7.1.5 Membership of the Association cannot be terminated and an Owner cannot resign as a Member.
  - 7.1.6 A member ceases to be a Member immediately on the registration of a transfer of the Owner's Title (after the Association has consented to the transfer in terms of rule 9.2.3) provided that such cessation will not relieve a person of any obligation or liability arising before that person ceased to be an Owner.
  - 7.1.7 Each Member will, immediately before ceasing to be an Owner, provide the Association with the details and documents necessary for maintenance of the register of Members pursuant to rule 4.10 in respect of the new Owner of the Property and, upon entry of the details into the register, the new Owner will become a Member.

- 7.2 **Fee.** The Association will be entitled from time to time to set such reasonable fee in relation to the issue of a membership or transfer of a membership as the Association in its sole discretion determines. If the Association incurs third party costs in relation to the issue, or transfer, of a membership, the applicant or seller will meet those reasonable third party costs.
- 7.3 **Members of Staged Development.** The Members acknowledge that the Kensington Park may be developed in stages, with new Owners becoming Members as additional land is added adjacent to Kensington Park and/or as each stage is completed.
- 7.4 **Companies and trusts.** Where a company, trust or other non-natural person is an Owner, that company, trust or non-natural person must nominate a natural person (being a Committee Member, officer, trustee or equivalent of that non-natural person) to be the Member for and on behalf of that non-natural person.
- 7.5 **Categories of membership.** The Association may, at any time, specify categories of membership (including between Residential Members and Commercial Members) to recognise any category of usage that may be appropriate.

## 8. Principal Member

- 8.1 **Principal Member.** Until Kensington Park is completed, the Developer will be the Principal Member, regardless of whether the Developer is at any time a Member. The purpose of the Principal Member is to ensure that the Developer can develop Kensington Park as a premium development.
- 8.2 **Limited rights.** The Principal Member will have only the rights and obligations specified in this Constitution, and will have no other rights or obligations as a Member. No reference in this Constitution to a Member will be taken as including a reference to the Principal Member.
- 8.3 **Resignation of Principal Member.** At the end of the Development Period, the Developer will be deemed to have resigned as Principal Member and, thereafter, there will be no Principal Member.

## 9. Obligations of Members

- 9.1 **Compliance with Constitution and Bylaws.** Each Member agrees to promptly and fully comply with the terms of this Constitution, the Bylaws and any covenants given in favour of the Association by such Member (whether by separate deed of covenant or as noted against each Owner's Title). No amendment to this Constitution will be made which results in there being any conflict between the provisions of this Constitution (including any rule or Bylaw) and the provisions of any such covenant.
- 9.2 **Sale of a Property.** Where a Member sells (the "Seller") a Property:
- 9.2.1 The Seller will, notwithstanding any other provision in this Constitution, remain liable for sums owed to the Association by that Seller including unpaid levies (annual, special or otherwise) and the Transfer Levy.
- 9.2.2 Without limitation, the Seller will continue to be liable as a primary and principal debtor for all indebtedness of the purchaser of the Property (the "Purchaser") to the Association until such time as:
- 9.2.2.1 The transfer of the certificate of title for that Property to the Purchaser is registered at the Land Transfer Office; and
- 9.2.2.2 The deed of covenant, specified in rule 7.1.2 is received by the Association; and
- 9.2.2.3 The Seller has complied with its obligations under this rule 9.2.
- 9.2.3 The Seller must obtain the consent of the Association to the transfer of the Seller's property prior to the date of transfer, which the Association will not be obliged to provide unless:
- 9.2.3.1 The Seller has:
- 9.2.3.1.1 paid all sums owed by it to the Association in full (including all levies, and all fees charged or costs incurred under rule 7.2); and

- 9.2.3.1.2 provided the Purchaser's particulars and documentation in accordance with rule 7.1.7.
- 9.2.3.2 the Purchaser has given a written acknowledgement to the Association that it has read and understood this Constitution, all the then current Bylaws and any covenants noted against the Owner's Title.
- 9.2.4 The Seller will not be entitled to any refund of any levies or any other financial contribution paid to the Association.
- 9.3 **Lease of Property:** For the purpose of this rule 9.3, the term "lease" means any change in possession of a Property for consideration including any form of lease, tenancy, licence or assignment and includes providing accommodation to any paying guest, and the term "tenant" means any person taking possession under a lease.
  - 9.3.1 No Member will lease the Member's Property for a period shorter than 32 days and all leases must be through an approved Rental Agency. Where rule 9.3.1 applies, Members must not advertise the Member's Property for lease other than through the Rental Agency(s). This rule 9.3.1 will not apply to a lease to friends or family of the Member, being persons known to the Member who have not been introduced to the Member's Property through any form of marketing, provided that the Member notifies the Manager.
  - 9.3.2 Any Property leased through an approved Rental Agency pursuant to this rule will be leased by the Rental Agency on behalf of the Member at the market rent applicable for that type of Property in Kensington Park and otherwise on normal residential letting and commission conditions applicable as between landlord/rental agent and landlord/tenant.
  - 9.3.3 Any member landlord is responsible for the compliance of tenants, and guests of tenants, adherence to the Constitution and Bylaws.
- 9.4 **Assignment or subletting:** Any assignment or subletting of the type or in the manner referred to in s227 of the Property Law Act 2007 will be a breach of the provisions of this Constitution.
- 9.5 **Payment of Rates and Compliance with Obligations:** Each Member acknowledges that it is still liable to pay rates and charges levied by the Auckland Council (or their respective successors) and to otherwise comply with all legal obligations in respect of the Member's Property.
- 9.6 **Agreement to grant access and easements.** Each Member agrees to grant the Association:
  - 9.6.1 access to; and
  - 9.6.2 any easements, encumbrances and/or covenants over or under; that Member's Property reasonably necessary to permit the Association give effect to this constitution and any Bylaw.
- 9.7 **Agreement for Association to Maintain Shared Facility:** Each Member agrees the Association has the right to determine that the maintenance and upkeep of a Shared Facility will be managed by the Association and maintained as if it was Common Property.

## 10. Compliance by Occupiers and Invitees

- 10.1 **Application to Occupiers and Invitees.** A reference to an act or omission by any Member will include any act or omission by any mortgagee in possession of that Member's Property, the Occupiers of the Member's Property, and any Invitees.
- 10.2 **Details of Occupiers.** A Member must advise the Association of details of the Occupiers of the Member's Property.
- 10.3 **Compliance with Constitution and Bylaws.** Each Member must ensure Occupiers comply with this Constitution and the Bylaws. In any case of persistent default by an Occupier, the Member will on demand by the Association, terminate the Occupier's right to occupy the Property. A copy of this Constitution, the Bylaws and any covenants given in favour of the Association by that Member will be attached to every lease, licence, or other document defining occupancy rights.

## 11. **Members' Assistance to Developer for Common Facilities**

11.1 **Future Development.** The Members acknowledge that development of Kensington Park is ongoing. The Association is required to allow the Developer such access to, and interests in, the Common Facilities as are necessary or desirable for the development of Kensington Park to proceed, and to allow the Developer to add, replace, alter or remove structures and services forming part of the Common Facilities, and to procure that its Members amend this Constitution if such amendment is necessary or desirable for the development to proceed. The Members further acknowledge that the provisions of this rule 11.1 do not limit any other obligations agreed to by a Member or otherwise binding on a Member. The Association and each Member individually agrees:

- 11.1.1 To grant and now grants to the Developer access to the Common Facilities and the Member's Property with such vehicles, machinery and tools as the Developer desires for the purpose of proceeding with the development. However, the Developer will:
  - 11.1.1.1 Make good any damage caused by the Developer accessing a Member's Property under the provisions of this rule 11.1;
  - 11.1.1.2 In so doing, will not unreasonably interfere with that Member's quiet enjoyment of that Member's Property.
- 11.1.2 To grant, and now grants, such easements in favour of the Developer, any Member and/or the Association over or under the Member's Property as are required for Kensington Park to proceed or as may be necessary or desirable for development of Kensington Park, that easement to include terms equivalent to those set out in rule 11.1.1.
- 11.1.3 Not to prevent, hinder or obstruct the use by the Developer of the Common Facilities, the addition, replacement, alteration or removal where not required of structures and/or services forming part of the Common Facilities by the Developer, or the granting of any interests in the Common Facilities by the Association to the Developer.
- 11.1.4 Not to oppose, or permit or take part in any opposition to the development of Kensington Park.
- 11.1.5 To support any resolution to amend this Constitution, where the Association is bound by agreement with the Developer, to procure such amendment.
- 11.1.6 To sign any document or do any other thing reasonably necessary to support any resource consent or other authorisation applied for by or on behalf of the Developer in respect of Kensington Park.
- 11.1.7 To permit the Association to temporarily close the Common Facilities as may be required for the development to proceed or as may be necessary or desirable for the development of Kensington Park.

11.2 **Encumbrance.** The Encumbrance must be noted against each Owner's Title in favour of the Association. The Association must not, except by Special Resolution and with the prior written consent of the Principal Member (if there is one), agree to any alteration of the terms of the covenants as first noted against each such Owner's Title.

## 12. **Use of Common Facilities by Members, Occupiers and Invitees**

- 12.1 **Use of Common Facilities.** Subject to this Constitution and the Bylaws relating to the use of the Common Facilities, and subject to rule 12.4, each Member and Occupier will be entitled to use the Common Facilities for the proper purposes for which they were designed.
- 12.2 **Use by Invitees.** Limitations on the number of Invitees per Property exist for the use of the Common Facilities. Bylaws and facility specific rules govern their use.
- 12.3 **Designated Use of Common Facilities.** The Association may from time to time determine that:
  - 12.3.1 Some or all of the Common Facilities ("Designated Facilities") are to be available for the use by one or more of the Members ("Designated Members") and by Occupiers of those Designated Member Properties and their Invitees, where such Properties are located within one or more discrete areas within Kensington Park and have common interests by reason of their proximity, use, size and/or demand on the Common Facilities; and



- 12.3.2 Other Members ("Non-Designated Members") and their Occupiers and Invitees are not entitled to use those Designated Facilities, and in those circumstances, Designated Facilities will be available for use only by Designated Members and their Occupiers and Invitees.
- 12.4 **User Charges for Use.** The Association will be entitled to set a user fee or charge for persons who wish to use any of the Common Facilities. The Manager will collect or arrange for the collection of the user fees and charges on behalf of the Association and these will be paid into the Association's bank account and will form part of its general assets provided that the Developer, Principal Member and Manager will be entitled to use the Common Facilities at any time and invite any number of guests to view or use the Common Facilities and will not be required to pay any user fees and charges.
- 12.5 **Restrictions and Reservations.** The Association will be entitled to refuse any person (including a Member) access to the Common Facilities if in its sole discretion it considers that:
- 12.5.1 the Common Facilities are at or near full capacity;
- 12.5.2 to do so is in the interests of safety; or
- 12.5.3 admittance of any further persons would interfere with the use and enjoyment of the Common Facilities by Members and Occupiers using the Common Facilities at that time.
- 12.6 **No warranty as to capacity.** The Association makes no warranty as to the availability and capacity of the Common Facilities or their suitability for use as recreational facilities.
- 12.7 **Ownership of the Common Facilities.** From the date that the ownership of any of the Common Facilities is transferred to the Association, the Developer will not be responsible for the upkeep, maintenance or improvement of the Common Facilities nor will it be required to provide any further facilities, equipment, services, fixtures, fittings or chattels for the Common Facilities.
- 12.8 No acceptance of the transfer of common facilities to the Association will be automatically given if the facility fails to meet common building regulations, standards, and is fit for the purpose intended.

### 13. Breach of Obligations

- 13.1 **Breach of obligations.** Upon any breach of this Constitution or any Bylaw by a Member ("Defaulting Member"):
- 13.1.1 Where damage has been caused to the Common Facilities or any other Member's Property, the Defaulting Member will immediately make good such damage or, at the option of the Association or other Member, as the case may be, reimburse the Association/Member for the costs of such making good;
- 13.1.2 If the breach continues for three (3) Working Days after notice is given by the Association or the Manager to the Defaulting Member to remedy the breach, the Association/Manager may do anything, including paying money, necessary to remedy the breach;
- 13.1.3 All money paid and expenses incurred by the Association or Manager (including any legal costs) in remedying, or attempting to remedy, a breach of this Constitution or any Bylaw by a Defaulting Member, or incurred in the exercise, or attempted exercise, or enforcement or attempted enforcement of any power, right or remedy of the Association in respect of such breach, will be a debt due from the Defaulting Member to the Association;
- If any money payable, by a Defaulting Member to the Association or the Manager, is in arrears and unpaid for five (5) Working Days (whether or not formal demand for payment has been made and without any formal demand being necessary) such money will be payable on demand and will bear interest at the rate of 5% per annum above the Association's banker's overdraft rate (or in the absence of such rate such other benchmark lending rate (as nominated by the Association)) applicable during the continuance of the default computed on a daily basis from the due date until the date of payment in full;

- 13.1.4 After receipt of a default notice under rule 13.1.2, the Defaulting Member will not be entitled to exercise the rights and benefits of membership of the Association (including any right to vote at a general meeting) and will not be entitled to use the Common Facilities (except roads and access ways). This rule will not relieve the Defaulting Member from the obligation to pay all monies due to the Association or the Manager under the terms of this Constitution.
- 13.2 **Enforcement of covenants.** Without prejudice to rules 13.1.1 to 13.1.5, each Member acknowledges that there are, or are likely to be, covenants and/or encumbrances registered over the Owner's Title in favour of the Association. In the event of the Defaulting Member's breach of the Constitution and/or any Bylaw, the Association may:
- 13.2.1 take action to enforce the terms of the relevant covenants;
- 13.2.2 take action to enforce the terms of any encumbrance;
- 13.2.3 take any other action at law or in equity that may be available to the Association for the enforcement of this Constitution.
- 13.3 **Principal Member may take action.** Notwithstanding any other rule in this Constitution, the Principal Member is irrevocably authorised to, at any time and in its sole discretion, on behalf and in the name of the Association, take action, including court or tribunal proceedings, against any Defaulting Member to enforce or require remedy of a breach by the Defaulting Member of this Constitution. The Principal Member will not be required to obtain the prior consent of the Association to any such action, proceeding or claim but will upon request inform the Association about any action, proceeding or claim and the Association will give its full co-operation to the Principal Member, including the prompt reimbursement of the Principal Member's costs (including solicitor/own client costs) of any such action, proceeding or claim.
- 13.4 **Persistent default of an Occupier.** In the event of persistent default by an Occupier of a Member's Property of this Constitution or the Bylaws, the Member will, on demand by the Association and at the Member's cost, and where legally possible, terminate the Occupier's rights to use and occupy the Member's Property.

## **FACILITY EXPENSES**

### **14. Computation and Payment of Levies**

- 14.1 **Levies to be fair.** Each Financial Year, the Association will set the levies described in this rule 14 and rule 15. All levies must be set in a way that is fair and equitable to the Association and to all Members, including the Residential Members, the Commercial Members, and any category of Membership specified in rule 7.5, and any group(s) of Designated Members (as defined in rule 12.3.1). The levies for a Financial Year will be set taking into account the estimated Facility Expenses for the Financial Year and any contingency sums/special levies contemplated under rule 15.2.
- 14.2 **Estimate of Facility Expenses.** Prior to or as soon as practicable after the commencement of each Financial Year, the Association will set an annual levy and, by written notice, advise each Member of the Association's estimate ("Association's Estimate") of each Member's Proportion of the Facility Expenses for that Financial Year, plus any contingency sum or special levy as the Association, in its sole discretion, elects for that Financial Year.
- Payment of Facility Expenses.** Subject to rule 14.8, each Member will by the 20<sup>th</sup> of the month following the date of the Association's invoice pay to the Association the Association's Estimate of the Member's Proportion of the Facility Expenses for the current Financial Year in the manner set by the Association.
- 14.3 **Excluded Property.** For the purposes of setting and collecting levies under this rule 14, rule 15 and, where applicable, rule 16:
- The Association must not levy any "Excluded Property". For the purposes of calculating the payment of levies, an "Excluded Property" is defined as:

- 14.3.1 The earlier of the dates either the Developer notifies the Association that it may levy such Property from, or the date that is 15 months after the date the property meets the definition of Property, whichever date first occurs; or
- 14.3.2 While the Owner of the Property is the Principal Member.
- 14.4 **Statement of Facility Expenses.** Until Kensington Park is completed, then as soon as practicable after the end of each Financial Year the Association will provide each Member with an itemised statement of the actual Facility Expenses for the just completed Financial Year or any period in terms of rule 14.7.1, as the case may be, and:
- 14.4.1 If the Member's Proportion of the actual Facility Expenses for the previous Financial Year or any period is greater than the total of the monthly payments made by the Member under rule 14.3 or 14.7.1.1, the Member will within one month of notification pay to the Association the difference, or;
- 14.4.2 If the Member's Proportion of the actual Facility Expenses for the previous Financial Year or any period is less than the total of the monthly payments made by the Member under rule 14.3 or 14.7.1.2, the Association will credit the difference to the Association's Estimate for the then current Financial Year, or;
- 14.4.3 If on completion of Kensington Park the actual Facility Expenses in any financial year is greater or less than all the Member's Proportions the difference will be carried forward to the following financial year and reflected in the following year's Estimate of the Members' Proportions of the Facility Expenses.
- 14.5 **Estimate not available.** If the Association has failed to advise a Member of the Association's Estimate for the Financial Year before the date on which the first payment is due under rule 14.3, the Member will on that date and every other date on which a payment is due under rule 14.3 pay 1/12th of the Association's Estimate applicable to the previous Financial Year. On the Association's Estimate for the Financial Year being advised to that Member:
- 14.5.1 Rule 14.3 will apply thereafter.
- 14.6 **New Properties.** Where in any Financial Year new Properties ("New Properties") become available:
- 14.6.1 The Association will, on any New Properties becoming available, levy the Owners of those Properties such proportion of the Association's Estimate of the Member's Proportion of the Facility Expenses for the balance of the current Financial Year. The Association may at its discretion, revise the Association's Estimate of each Member's Proportion of Facility Expenses. If on revision, of the Association's Estimate of each Member's Proportion of Facility Expenses, it is found that any Member's Proportion of Facility Expenses for the current Financial Year is:
- 14.6.1.1 greater than the total payment(s) made or due for the current Financial Year, then the Member will within one month of written notification pay the Association the difference between the Member's Proportion of Facility Expenses and the revised Member's Proportion of Facility Expenses, or;
- 14.6.1.2 less than the total payment(s) made for the current Financial Year then the Association will credit the difference to the Association's Estimate for the succeeding Financial Year.
- 14.7 **Charge against the Property.** If a levy or any instalment of the Association's Estimate is in arrears, the defaulting Member may be required by the Association to pay a late charge including interest at the rate of 5% per annum above the Association's banker's overdraft as the Association may determine. That late charge (plus any reasonable handling costs) is to be a charge against the Member's Property to which the levy relates and will be added to that levy.
- 14.8 **Personal Obligation.** Levies are the personal and individual debt of the Member. No diminution or abatement of levies is allowed for inconveniences arising from making of repairs or improvements to the Common Facilities. A Member is not exempted from liability for any levies through non-use of Common Facilities or otherwise.

14.9 **Certificate of Indebtedness.** The Association will, on the application of a Member, or any person authorised in writing by such Member, provide the Member or authorised person with a certificate of the indebtedness of the Member to the Association calculated to the date specified in the application. The statement will show:

- 14.9.1 the Association's Estimate of such Member's Proportion of Facility Expenses for the current Financial Year;
- 14.9.2 the manner and time of payment of the Association's Estimate;
- 14.9.3 payments made by the Member on account of Facility Expenses in the current Financial Year;
- 14.9.4 payments due from the Member on account of Facility Expenses in the current Financial Year and not paid by the Member; and
- 14.9.5 the amount of any Transfer Levy of the Member which is then recoverable or will be recoverable for a given sale price by the Association pursuant to rule 16;
- 14.9.6 any accumulated unpaid default interest;
- 14.9.7 whether or not it has received notice that any proceedings are pending against the Association, and, in favour of any person dealing with that Member, the certificate will be conclusive evidence of the matters certified therein. The Member may only apply for a certificate of indebtedness once in any year and on each occasion that a Member transfers ownership of a Property.

14.10 Information for estimates during Development Period. The Association will provide to a Member, within five (5) Working Days of receiving a request, a statement of the levies that are estimated to be or were payable by that Member under this rule 14. that:

- 14.10.1 comprises estimates, historical data or both;
- 14.10.2 is itemised in relation to the different Common Facilities and services provided in relation to Kensington Park;
- 14.10.3 contains a statement in relation to each of the Common Facilities and services as to whether the levy is fixed, variable or based on the Member's Proportion;
- 14.10.4 contains a statement as to which of the Common Facilities and services were, or are expected to be, provided in each Financial Year within the period;
- 14.10.5 contains a statement as to what stage of development Kensington Park is at, at the end of each Financial Year within the period;
- 14.10.6 contains, if a levy is based on the Member's Proportion, a statement of a formula by which the levy can be calculated together with a worked example; and
- 14.10.7 contains a statement of the principal assumptions on which any estimates are based.

## 15. Special and Differential Levies

15.1 **Capital Improvements levy.** At any special meeting of the Association, the Association may, from time to time, fix an additional levy to be paid by each Member together with the monthly instalments of the Association's Estimate for that Member, to be set aside as a sinking fund to allow for and meet the costs of Capital Improvements.

15.2 **Special levies.** At any special meeting of the Association, the Association may make a special levy, payable by any or each Member at such times as are set by the Association, as the Association considers necessary, including:

- 15.2.1 for it to meet its obligations under this Constitution;
- 15.2.2 where costs are incurred as a result of a Member's breach of any provisions of this Constitution provided that in the case of willful or negligent damage caused by, or purposeful work undertaken at the request of, one or more but not all of the Members or their agents, contractors, employees, residents or invitees (not being maintenance or

repair), then such cost will be at the sole expense of the Member(s) creating the damage or requesting the work;

15.2.3 where circumstance and fairness dictates that particular costs should be otherwise allocated then such costs will be fairly allocated between the Members having the benefit thereof.

15.3 **Levies for Designated Members.** Where the Association has made a determination under rule 12.3, the Association may in setting or fixing any annual levy or special levy, to the extent that the amount to be set or fixed relates to any Designated Facility, calculate the amount required from Members on the basis that only Designated Members are liable to contribute to that levy and that Non-Designated Members are not required to contribute to that levy.

15.3.1 For the purposes of this rule 15.3, where any levy is set or fixed in relation to a Designated Facility a Member's Proportion will mean that proportion which the Occupied Internal Areas of the Property or Properties owned by a Designated Member bear to the sum total of the Occupied Internal Areas of all Properties owned by all of the relevant Designated Members.

15.4 **Levies for Shared Facilities.** Where the Association has made a determination under rule 9.7, the Association may set or fix an annual levy or special levy, to the extent that the amount to be set or fixed relates to the upkeep and maintenance of the Shared Facility and calculate the amount required from the Members responsible for the upkeep and maintenance of that Shared Facility. For the purposes of this rule 15.4, where any levy is set or fixed in relation to a Shared Facility a Member's Proportion will be determined by the Association having regard to ownership, registered interests and that proportion which the Occupied Internal Areas of the Property or Properties owned by a contributing Member bears to the sum total of the Occupied Internal Areas of all Properties owned by all of the contributing Members.

## 16. Transfer Levy

16.1 **Transfer Levy.** A Member may not sell, assign, gift, transfer or otherwise dispose of their Property or any part or interest in the Property to any other person, firm or company unless such Member has first paid to the Association in cash on the date of settlement or on such other terms and conditions as the Association will agree a levy equal to one percent (1%) plus GST (if any), of the gross transaction value (the "Transfer Levy").

16.2 **Assessing the Transfer Levy.** The term "gross transaction value", for the purposes of rule 16.1, means at the option of the Association the actual gross sale price received by the Member for each Property and improvements on each Property in money or money's worth or the market value of the Property and improvements to be determined by a registered public valuer agreed to by the Member and the Association and failing agreement by two valuers, one appointed by each party, and their umpire and otherwise in accordance with the Arbitration Act 1996 and its amendments.

16.3 **Exceptions.** Notwithstanding the above provisions of this Constitution, the Transfer Levy will not be payable on any of the following transactions:

16.3.1 any transfer from the Principal Member;

16.3.2 inter Kensington Park transactions (namely where the Member is contemporaneously purchasing a replacement Property within Kensington Park);

16.3.3 inter party transactions (that is to say, a transaction between Owners who are already joint tenants or tenants in common of a Property);

16.3.4 immediate family transactions (that is to say transactions between spouses or de facto partners or parents and their children);

16.3.5 estate planning transactions (that is to say transactions between an Owner and a trustee of an inter vivos trust settled by one or more of those Owners where the trust is substantially for the benefit of that Owner and their descendants);

- 16.3.6 the distribution of the Property in specie from the trustees of an inter vivos trust to a beneficiary of such inter vivos trust, provided that such beneficiary is a spouse, defacto partner, parent, child or other descendent of the settlor of such inter vivos trust;
  - 16.3.7 the transmission of the Property on the death of an Owner to a trustee or executor and the subsequent transfer of the Property to the Owner's beneficiaries;
  - 16.3.8 mortgages; or leases for less than three (3) years.
- 16.4 **Variations.** Notwithstanding the above provisions of the Constitution and the amount stipulated in rule 16.1, the amount of the Transfer Levy may be varied by any of the following:
- 16.4.1 At any Special Meeting of the Association the amount of the Transfer Levy may be varied with a resolution passed with a majority of 75% of those in attendance.
- 16.5 **Transfer Levies used primarily for Capital Improvements only.** Transfer Levies paid to the Association must be held by the Association in a separate account(s) and used primarily as a sinking fund for the Capital Improvements.
- 16.6 The Association may authorise the use of a portion of any money in the transfer levy account(s) to temporarily fund any short term cash flow timing difference in the collection of the annual levy and payment of Facility Expenses.
- 16.7 If the Transfer Levy sinking fund reaches a level which the Committee considers is adequate to cover future foreseeable capital improvements then any excess may be applied to cover a portion of the annual maintenance costs of the Common Facilities.

## **OPERATION OF THE RESIDENTS' ASSOCIATION**

### **17. The Committee**

- 17.1 Role of the Committee. The Committee is responsible for the management of the affairs of the Residents Association.
- 17.1.1 Membership of the Committee. The Committee (collectively called "Committee Members") shall consist of:
    - 17.1.1.1 a chairperson (who will be chosen from the general Committee members subject to rule 17.3.2) and;
    - 17.1.1.2 a minimum of five and a maximum of nine general Committee members, as determined by the Association in general meeting. The Committee has the ability to co-opt members to the Committee.
- 17.2 **Powers.** The administration of the Association will be vested in the Association in general meeting, and will be delegated to the Principal Member until the end of the Development Period and, following that, will be vested in the Committee in accordance with this rule 17. The Committee may exercise all of the powers, authority and discretions of the Association as permitted under this Constitution and do on its behalf all acts as it deems necessary or expedient. The powers, authority and discretions as exercised by the Committee are subject always to any limits which may from time to time be imposed by the Association. The Committee may delegate any one or more of its powers to a sub-committee of Committee members, a Committee member, the Manager or any other person(s). In exercising the Committee's delegated powers, any delegate must comply with any directions that the Committee may impose.
- 17.3 **Election of Committee Members**
- 17.3.1 Nominations for Committee members shall be received by the Manager (30) thirty days prior to the date set for the annual general meeting and shall be promptly circulated to Members. Nominations must be submitted on the prescribed form and shall contain the nominee's signature by way of consent. In the event of there being insufficient or no nominations for the positions, nominations from the floor shall be accepted by the meeting, provided any person whose nomination has been submitted in writing for any of the Committee positions shall automatically be elected to that position.

- 17.3.2 The elected Committee shall, at its first meeting following each Annual General Meeting, elect a Chairperson of the Committee from within the elected Committee Members.
- 17.3.3 The term of office for all Committee Members shall be two (2) years, expiring at the conclusion of the relevant Annual General Meeting. Any Committee Member may be re-elected to the Committee for a maximum of two (2) subsequent and consecutive term of office.
- 17.3.4 The terms of office for Committee Members elected or appointed in 2014 shall be between one (1) and two (2) years so as to ensure the rotation of Committee Members. The terms of office shall be determined by agreement of the Committee and failing such agreement by vote of the Committee. Thereafter the terms of office of Committee Members shall be for two (2) years.
- 17.3.5 Retirement of any Committee member can at any time supersede rule 17.3.4 from the date of the written resignation from the Committee is received by the Chairperson.
- 17.4 **Rights of Committee Members.** All Committee Members shall have the right to attend, speak and vote at all Committee meetings.
- 17.5 **Vacancies on the Committee.** Any vacancy in the Committee, which occurs during any Committee Member's term of office, may be filled by the Committee.
- 17.6 **Removal of Committee Member.** The Residents Association in a special general meeting, called for this purpose, may by resolution remove any Committee Member, before the expiration of their term of office. The vacancy caused by such removal will be filled in accordance with Rule 17.5. Notification of the special general meeting shall be given to the Committee Member affected by the proposed resolution and she or he shall be given the opportunity prior to, and at, the special general meeting, to make submissions in writing and/or verbally to the Members about the proposed resolution.
- 17.7 **Chairperson.** Subject to rule 17.3, the Committee from time to time will appoint, remove and replace a chairperson for such term as it sees fit from one of their number to chair Committee meetings and otherwise exercise the powers of the Chairperson set out in this Constitution.
- 17.8 **Quorum for Committee Meetings.** Where a majority of the Committee Members are present at a Committee Meeting, this will constitute a quorum.
- 17.9 **Voting.** Resolutions of the Committee will be passed by the majority. Each Committee member will be entitled to exercise one vote. Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by all of the Committee members will be as valid and effectual as if it had been passed at a meeting of the Committee duly convened and constituted.
- 17.10 **Casting Vote.** Subject to rule 17.9 in the case of an equality of votes the Chairperson may exercise a casting vote.
- 17.11 **Seal.** The Committee will obtain a common seal for the use of the Association and will provide for its safe custody. The common seal will not be used except by resolution of the Committee. Every instrument to which the common seal is affixed will be signed by any two members of the Committee.
- 17.12 **Powers of the Committee.** The Committee shall have the power to:
- 17.12.1 develop and implement strategies, policies and procedures for the administration, promotion and development of the Kensington Park Residents Association;
  - 17.12.2 establish and delegate such powers as it considers appropriate, such other commissions, committees and groups as it considers appropriate to assist it to carry out its responsibilities;
  - 17.12.3 co-opt, engage, contract or otherwise agree to obtain the assistance or advice of any person or organisation for the Committee;
  - 17.12.4 appoint a General Manager/ Chief Executive Officer / Contracted Management Company and such appointment may be on such terms and conditions as the Committee may determine.

- 17.12.4.1 Where such a person is appointed that person/company shall be an ex officio member of the Committee but shall possess no power of voting;
- 17.12.4.2 Where such entity is a commercial operation then such appointment will be made through an open and transparent selection process.
- 17.12.5 publish the rules for the Residents Association;
- 17.12.6 subject to this Constitution, fill vacancies of the Committee, any commissions, committees and other groups which are established by it.

**17.13 Meetings of the Committee:**

- 17.13.1 The Committee shall meet at such places and times, and in such manner, as it shall determine.
- 17.13.2 The Chairperson shall chair Committee meetings, or in his/her absence any other Committee Member determined by the Committee.
- 17.13.3 A resolution in writing, signed or assented to by facsimile, or other form of visible or other electronic communication by all the Committee Members shall be as valid and effectual as if it had been passed at a meeting of Committee Members. Any such resolution may consist of several documents in like form each signed by one or more Committee Members.
- 17.13.4 A meeting of the Committee may be held where one or more of the Committee Members is not physically present at the meeting, provided that:
  - 17.13.4.1 all persons participating in the meeting are able to communicate with each other effectively simultaneously and instantaneously whether by means of telephone or other form of communication;
  - 17.13.4.2 notice of the meeting is given to all the Committee Members in accordance with the procedures agreed from time to time by the Committee and such notice specifies that Committee Members are not required to be present in person at the meeting;
  - 17.13.4.3 if a failure in communications prevents rule 17.13.4.1 from being satisfied and such failure results in the quorum not being met, the meeting shall be suspended. If communication is not re-established within 15 minutes from the interruption the meeting shall be deemed to have terminated or adjourned.

**17.14 Committee Minutes and Records:**

The Committee will cause proper minutes to be kept of the proceedings of all meetings of the Association and of the Committee. All business transacted at such meetings signed by the Chairperson will 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.

**18. The Design Review Board**

- 18.1 **Composition.** The Design Review Board will comprise the Principal Member and, after the resignation of the Principal Members, the following persons:
  - 18.1.1 Three (3) representatives of the Association appointed by the Committee;
  - 18.1.2 Additional representatives may be co-opted by the Committee from time to time;
  - 18.1.3 A landscape architect with appropriate qualifications and expertise appointed from time to time by the representative of the Association subject to approval by the Committee;
  - 18.1.4 An architect appointed from time to time by the representative(s) of the Association subject to approval by the Committee.
- 18.2 **Design Controls.** The Design Review Board may revise and publish from time to time the Design Controls in respect of any home, commercial premises or other development within Kensington Park. Each Member is to fully comply with the Design Controls and any other rule relevant to design control.



- 18.3 **Design approval.** Members are to familiarise themselves with the Design Controls before commencing any alteration, addition or modification in any building or other structure within Kensington Park.

This includes, but is not limited to, the appearance of a building and immediate surroundings as laid out in the Design Controls including:

- 18.3.1 window treatments, or
- 18.3.2 colour, or
- 18.3.3 gardens, decks, fences, or
- 18.3.4 ornaments and sculptures.

The Member must first submit the design for the proposed work to the Design Review Board for written approval in accordance with the Design Controls. The Design Review Board may refuse plans which, in its reasonable opinion, do not comply with the Design Controls.

- 18.4 Before commencing any alteration, addition or modification to any building or other structure (including fencing, garden features) within Kensington Park, the Member must first submit the design for the proposed work to the Design Review Board for its written approval in accordance with the Design Controls. The Design Review Board may refuse any plans which, in its reasonable opinion, do not comply with the Design Controls.
- 18.5 **Approval costs.** All costs of the design approval process will be met by the Design Review Board unless the Design Review Board considers, in its sole discretion, that negotiation relating to disputed designs is in wide variation to the Design Controls in the event of which the Member seeking approval will pay the Design Review Board the hourly rate equivalent to an arm's length architect's fee to consult and make recommendations to make such design compliant.

## 19. Principal Member

- 19.1 **Principal Member.** Until Kensington Park is fully completed and while the Principal Member is in office in accordance with rule 8.1:
- 19.1.1 The full government and control of the Association will be vested in the Principal Member, which may exercise all the powers, authorities and discretions vested in the Committee and in addition may exercise all the powers of the Association which are not by statute required to be exercised by the Association in general meeting;
  - 19.1.2 The Principal Member will be entitled to exercise the number of votes equal to one more than the number of Members voting in person, by proxy or by postal vote (if permitted under rule 21.5) at any meeting of the Association and, for the avoidance of doubt but subject to rule 23.3, this right may without limitation be exercised on any matters requiring a Special Resolution;
  - 19.1.3 Any minute entered in the minute book of the Association's proceedings signed by the Principal Member will, in any matter not expressly required by the statute to be done by the Association in general meeting, have the effect of a resolution of the Association;
  - 19.1.4 The Committee will be under the control of the Principal Member, whose opinion will prevail in the event of any difference of opinion, and they will be bound to conform to the Principal Member's directions in regard to the Association's business. For the avoidance of doubt, the Committee will act in an advisory role to the Principal Member to enable the Principal Member to form its opinions and make decisions under this rule.
- 19.2 **Effect on Meeting.** Notwithstanding anything contained or implied in this Constitution:
- 19.2.1 So long as the Principal Member is in office, no resolution that is passed by the Association in general meeting or by the Committee will have any force unless the resolution is in writing and signed by the Principal Member; and

- 19.2.2 So long as the Principal Member is in office, **it** is not necessary to hold the formal meetings of the Committee, but any resolution signed by the Principal Member will be as valid and effectual as if it were a resolution unanimously passed at any meeting of the Committee.
- 19.3 **Right to Convene General Meetings.** The Principal Member may at any time convene upon such notice as he/she/it thinks fit a general meeting of the Association and, to the extent permissible by law, may regulate all proceedings at such meetings and from time to time determine the quorum for any meeting whether of Members or of the Committee, notwithstanding anything to the contrary to this Constitution.
- 19.4 **Principal Member Provisions Paramount.** This Constitution in so far as it relates to the proceedings and powers of the Committee and/or the Association will in all respects be read subject to the provisions relating to the Principal Member in this rule 19. Should there be any inconsistency or contradiction, the provisions relating to the Principal Member in this rule 19 will be paramount.

## 20. Manager

- 20.1 **Duties.** Subject to rule 17.12.4,2, the Committee will appoint, remove and replace a Manager from time to time to carry out such of the obligations of the Association, and exercise such of the discretions and powers of the Association, as the Committee sees fit. Such appointment will be for the term, at the remuneration and on such terms and conditions as the Committee may agree with the Manager.
- 20.2 **Rights and responsibilities.** The appointed Manager will enter into a contract with the Association to provide management and other services to the Members (amongst other things);
- 20.2.1 the appointment and management of landscaping contractors to maintain Kensington Park;
- 20.2.2 management of the security arrangements for Kensington Park and employment of relevant contractors (if necessary);
- 20.2.3 the monitoring and enforcement of the Bylaws, including the control of behaviour of Residents and visitors to Kensington Park to a level deemed generally acceptable by a majority of Members;
- 20.2.4 coordination of rubbish collections for Kensington Park;
- 20.2.5 coordination of minor repairs/maintenance with subcontractors;
- 20.2.6 management of the provision of external services to a Property (e.g. gas, electricity, water, sewer, telecommunications, fibre optics);
- 20.2.7 the bulk purchase of utility services for Kensington Park;
- 20.2.8 operation and maintenance of an 'intranet' for communications between Members of Kensington Park;
- 20.2.9 management of a booking system (if required) for any Common Facilities;
- 20.2.10 maintenance of the cleanliness of all Common Facilities through employment of external contractors;
- 20.2.11 co-operate with the Rental Agencies within Kensington Park.
- 20.2.12 co-operate with the Principal Member;
- 20.2.13 convene general meetings when requested to do so in accordance with this Constitution, including convening the passing of a resolution without a meeting;
- 20.2.14 attend all meetings of the Committee and have full speaking rights at such meetings;
- 20.2.15 give all notices required to be given by these rules or as directed from time to time by the Association or the Committee;
- 20.2.16 keep minutes at all general meetings and Committee meetings and enter into the minute book:
- 20.2.16.1 the time, date and venue of such meeting;

- 20.2.16.2 all business considered and resolutions passed at such meeting;
  - 20.2.17 hold in safe custody the common seal of the Association;
  - 20.2.18 receive, and issue receipts for, all annual and special levies, additional fees and any other moneys paid to the Association;
  - 20.2.19 operate and maintain a current bank account in the name of the Association;
  - 20.2.20 pay all accounts properly incurred by or on behalf of the Association;
  - 20.2.21 report immediately to the Association any Member who fails to pay special levies or additional fees within the prescribed period;
  - 20.2.22 keep all financial records and any security documents in safe custody;
  - 20.2.23 compile all proper accounting records from time to time as required by the Act or by the Committee which give a true, fair and complete account of the financial affairs and transactions of the Association; and
  - 20.2.24 compile the financial statements immediately following each Financial Year as required by the Act, and provide for the auditing of those records and the distribution of the audited financial statements to Members as soon as is reasonably practicable after each audit is completed and, in any event, no later than five (5) months of the end of the Financial Year.
- 20.3 **Changes to Scope of Services.** The scope of services supplied by the Manager may be altered by the Committee in a fair and equitable manner. Should the scope of services be materially altered, the management fee for the affected Properties will be adjusted, up or down, in a fair and equitable manner. Likewise, the scope of services offered by the Manager may be varied with the approval of the Committee.
- 20.4 **Reporting.** The Manager must report on a regular basis to the Committee.

## 21. General Meetings

- 21.1 **Annual General Meeting.:** In addition to any other meetings in that year, the Association will hold an Annual General Meeting each year. Not more than 15 months will elapse between the date of one Annual General Meeting and that of the next. The Committee will determine the time and place of each year's Annual General Meeting.
- 21.2 **Special General Meetings.** A general meeting other than an Annual General Meeting may be requested by the Committee, or by written requisitions signed by not less than 25% of the Members, or by written notice of the Principal Member (if there is one). The Chairperson of the Committee will call a special general meeting within 15 Working Days of receiving an effective request.
- 21.3 **Powers of the Association in general meeting.** The Association in general meeting may, by resolution, exercise all powers, authorities and discretions of the Association notwithstanding that any such power, authority and discretion may have been delegated to the Committee by or pursuant to this Constitution.
- 21.4 **Power of the Association to pass a resolution without a meeting.** Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by 75% of the Members entitled to vote in person, by proxy, or by postal vote (if permitted under rule 21.5) at general meetings together with the Principal Member (if there is one), will be as valid and effectual as if it had been passed at a general meeting of the Association duly convened and constituted.
- 21.5 **Postal Voting.** Notwithstanding any contrary provision in this Constitution, a Member (including the Principal Member, if any) is only permitted to exercise a postal vote at a general meeting of the Association if a local authority, government department, the Minister of Health, the Prime Minister, or the New Zealand government (or similar entity or person) orders restrictions on the gatherings of people for reasons such as (but not limited to) a pandemic or other emergency, causing the Association to be unable, by law, to allow Members (all or some) to attend a general meeting in person.
- 21.6 **Quorum.** No business will be transacted at any general meeting of the Association unless the quorum is present when a meeting proceeds to business. Quorums will be not less than 20% of all Members or 10 Members (whichever is the lesser) eligible to vote at general meetings, present in person, by proxy,

or by postal vote (if permitted under rule 21.5) and the Principal Member (if there is one).

- 21.7 **Notice of General Meeting.** A notice of general meeting of the Association will be sent to every Member not less than 10 Working Days before the date of such meeting. Such notice will specify the date, time and venue of such meeting. In the case of a general meeting, other than an Annual General Meeting, such notice will specify all business and all notices of motions to be considered at such meeting, and include a postal vote form (if permitted under rule 21.5). No business or notice of motion which is not specified will be discussed or transacted at such meeting.
- 21.8 **Notice of Annual General Meeting.** A notice of the Annual General Meeting (AGM) of the Association will be sent to every Member not less than 40 Working Days before the date of such meeting. Such notice will specify the date, time and venue of such meeting. At such time of notification, Members will be invited to submit items in writing for discussion at the meeting within 10 working days of meeting notification. An agenda and postal vote form (if permitted under rule 21.5) and associated business documents will be made available 10 working days prior to the Annual General Meeting. No business or notice of motion which is not specified will be discussed or transacted at the notified AGM.
- 21.9 **Failure to give notice.** The accidental omission to give notice to any member, or the non- receipt of such notice, by any Member, will not invalidate the proceedings at any such meeting.
- 21.10 **The Chairperson.** The chairperson at any general meeting will be:
- 21.10.1 the chairperson of the Association; or
  - 21.10.2 if the chairperson is not present or is unwilling to take the chair, then those Committee members who are present may choose one of their number to chair the meeting; or
  - 21.10.3 if for any reason no chairperson is selected by the Committee, any Member appointed by a majority of Members present in person or by proxy.
- 21.11 **Adjournment.** If a quorum is not present within half an hour from the time appointed for the holding of a general meeting convened on requisition of Members, the meeting will be dissolved. In any other case the meeting will stand adjourned to the same day in the next week, at the same time and place, or to such other day and such other time and place as the Committee will determine (such date not to be later than 14 days from the date of the adjourned meeting). If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present (including in person, by proxy and postal vote (if permitted under rule 21.5) together with the Principal member (if there is one) will constitute a quorum.
- 21.12 **Adjourned Meetings:** No business other than that business which might have been transacted at the meeting from which the adjournment took place, will be transacted at any adjourned meeting. Members will not be entitled to receive any notice in respect of adjourned meetings.

## 22. Voting

- 22.1 **One Member one Vote.** At a general meeting of the Association, each Member (not at that time being in breach of the Constitution) will be entitled to one vote for each Property of which that Member is a registered proprietor, which may be exercised either in person, by proxy or by postal vote (if permitted under rule 21.5). Where there is more than one Owner in respect of a Property, and such Owners are collectively a Member pursuant to rule 7.1.4 only one such Owner will be entitled to vote. In the absence of agreement between such Owners as to who will exercise this vote, the Owner appearing first on the certificate of title to the Property will be entitled to exercise the vote. On the death of any Member, and pending the transfer of the Member's Property, the executor of that Member's estate will be entitled to exercise that Member's vote.
- 22.2 **Corporation representatives.** Any corporation which is a Member may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Association, and the person so authorised will be entitled to exercise the same powers on behalf of the corporation which that person represents as that corporation could exercise if it were an individual Member, and references in this Constitution to a Member being present in person will mean and include a representative appointed pursuant to this rule, and such person may also stand for election to the Committee.

- 22.3 **No vote if fees unpaid.** Unless all invoiced levies and additional fees for the immediately preceding financial year have been paid in full, by the Member to the Association, the Member will not be entitled to vote at any general meeting of the Association, whether in his/her/its own right or as a proxy for another person. This rule will not apply to the Principal Member, however to the extent that money is apportioned to the Principal Member, the Principal Member will be liable to pay those moneys.
- 22.4 **Voting at meetings.** At any general meeting:
- 22.4.1 A motion may be put to the vote by the Chairperson or by any Member present, which has previously been included in the Agenda.
- 22.4.2 Motions put to the vote will be decided on voices or a show of hands and shall include postal votes (if permitted under rule 21.5), unless a poll is demanded on or before declaration of the result of the voices or show of hands by:
- 22.4.2.1 the chairperson of the meeting; or
- 22.4.2.2 at least five Members present in person or by proxy.
- 22.4.3 A declaration by the chairperson that a resolution has been carried or lost or any entry to that effect in the Association's minute book, will be conclusive evidence of that fact, without further proof of the number or proportion of votes recorded in favour of or against such resolution.
- 22.4.4 If postal votes are permitted under rule 21.5, postal votes shall be included in the count of votes on the motion at the general meeting or adjourned general meeting at which the motion is to be voted on.
- Every postal vote that is permitted under rule 21.5 must be in a form prescribed by the Manager from time to time.
- 22.4.5 In the event that an amendment to a motion is moved at a general meeting, the chairperson shall determine whether that amendment is material (acting reasonably in all respects) and if determined to be a material amendment, no postal votes (if permitted under rule 21.5) will be counted in respect of that affected motion.
- 22.4.6 Resolutions will be passed by a majority of votes, except where a Special Resolution or the unanimous resolution of all Members is required by the Constitution.
- 22.4.7 In the case of a tie in votes, the chairperson may exercise a casting vote.
- 22.5 **Good Faith.** Members will, in exercising any vote at any general meeting, or as a Committee member, exercise such vote in good faith with a view to ensuring that all Members are treated equally by the Association, and that each Member will bear that Member's Proportion of all Facility Expenses and of all costs and expenses to be met by levies made by the Association under rule 14 and/or 15, irrespective of whether any expenditure by the Association benefits all Members.
- 22.6 **Appointment of Mediator.** An independent mediator will be appointed to act in a dispute between any Members and the Developer concerning the Developer's compliance with this Constitution when exercising its powers or performing its duties as the Principal Member if 51% or more of all Owners vote to appoint a mediator. The Members in question must promptly give full written particulars of the failure ("dispute") to the Principal Member, and the dispute will be referred to mediation. The mediation process is:
- 22.6.1 the parties will appoint a mediator and if they fail to agree the mediator will be appointed by the President of the New Zealand Law Society or the President's nominee;
- 22.6.2 the parties must co-operate with the mediator in an effort to resolve the dispute;
- 22.6.3 if the dispute is settled, the parties must sign a copy of the terms of settlement;
- 22.6.4 if the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease;
- 22.6.5 the cost of the mediator's fee and costs including travel, room hire, refreshments etc must be met as to half by the Association and as to half by the Principal Member;

- 22.6.6 the terms of settlement are binding on the parties; the terms of settlement may be tendered in evidence in any legal proceedings;
- 22.6.7 the parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator, during the mediation period are not admissible in any arbitration or legal proceedings.

## 23. General

23.1 **Dissolution.** The Association may be wound up in accordance with Section 24 of the Act. Upon the winding up of the Association:

- 23.1.1 ownership of the Common Facilities will vest in; and
- 23.1.2 the then balance of any sinking fund collected for Capital Improvements or other purposes under rule 15 will be distributed to,
- 23.1.3 the Members as tenants in common in shares equal to the Member's Proportion as at the date of winding up, and the Association will take all necessary steps to vest legal title to the Common Facilities in the Members.

### 23.2 Alteration of Constitution.

This Constitution will not be amended, added to or rescinded except at an Annual General Meeting, or a general meeting convened for that purpose, and unless written notice of the proposed amendment, addition or rescission will have been given to all Members in accordance with this Constitution. Notwithstanding any other rule in this Constitution, this Constitution will not be amended, added to or rescinded without the prior written consent of the Principal Member (if there is one) or so as to alter, add to or rescind rules 4.1, 4.2, 7.1, 8, 9.1, 11.1, 13.2, 13.3, 14.4, 14.9, 17.1, 17.2, 17.3, 18, 19, and 23.2, or otherwise so as to detrimentally affect the rights of the Principal Member. The Members each irrevocably appoint the Principal Member their attorney for the purposes of signing any alteration, addition or rescission of rules pursuant section 21 of the Act.

23.3 **Alteration of Certain Rules.** Notwithstanding rule 23.2, rules 14.11 and 22.6 or any rule or part of a rule that would, if amended, have the effect of altering these rules so that a condition in the Exemption Notice would no longer be met must be approved by a Special Resolution (excluding the Developer and Principal Member) provided that rules 3.3 is not to be amended, added to or rescinded under any circumstances whatsoever.

23.4 **Introduction, Alteration or Cancellation of Bylaws.** If the Committee wishes to promulgate new Bylaws, or vary or cancel any Bylaws, the Bylaw will not be effective until it is approved by the Members by Special Resolution and the prior written consent of the Principal Member (if there is one).

23.5 **Acceptance by Registrar.** No such amendment, addition or rescission will be valid unless and until accepted by the Registrar.

23.6 **Liability of Members.** No Member will be under any liability in respect of any contract or other obligation made or incurred by the Association.

23.7 **Association to Indemnify.** The Association will indemnify and keep indemnified:

- 23.7.1 each Member against any liability properly incurred by such Member in respect of the affairs of the Association, to the extent of the property owned by the Association; and
- 23.7.2 members of the Committee from and against any liability in respect of any act or omission in their capacity as a Committee member, to the extent of property owned by the Association, except where criminal liability is adjudged in respect of that Committee member.

23.8 **Action in Law.** No action in law or otherwise will lie in favour of any Member against any other Member or the Committee, or any Committee member in respect of any act or omission pursuant to this Constitution. Nothing in this rule will prevent an action in respect of any loss or expense arising from the willful default of the person against whom such action is taken.

- 23.9 **Member to Indemnify Association.** Each Member will indemnify and keep indemnified the Association from and against any action, claim, demand, loss, damage, cost, expense and liability which the Association may suffer or incur, or for which the Association may become liable, in respect of or arising from any breach of this Constitution or the Bylaws by the Member.
- 23.10 **Dispute Resolution.** Without detracting from rule 22.6, any difference or dispute which may arise between a Member and the Association concerning this Constitution or any act or thing to be done, suffered or omitted under this Constitution, or concerning the construction of this Constitution can be referred to mediation as indicated in rule 22.6.1, 22.6.2, 22.6.3, 22.6.4, 22.6.6, and 22.6.7, and/or direct to the arbitration of a single arbitrator if the parties can agree upon one, but otherwise to two arbitrators (one to be appointed by either party) and an umpire (to be appointed by the arbitrators before entering upon the reference). Where a mediator is appointed, the cost will be shared equally between the Member raising the dispute and the Association. Any dispute, difference or question as to the jurisdiction of the arbitrator will be determined by the arbitrator. The arbitration will be conducted in accordance with and subject to the provisions of the arbitration statutes for the time being in force in New Zealand. All members are to accept arbitration as final.
- 23.11 **Approval.** Where in this Constitution any reference is made to the approval or consent of the Association or the Principal Member:
- 23.11.1 Such approval or consent will be given at the sole discretion of the Association, or the Principal Member, as appropriate;
  - 23.11.2 No approval or consent given on any occasion by either of the Association or the Principal Member will serve as a precedent for, or be binding in any way with respect to, any future application for consent or approval; and
  - 23.11.3 Such reference will mean the prior written approval or consent of the Association or the Principal Member as appropriate.

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# **SCHEDULE 1 BYLAWS**

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## 1. INTRODUCTION

- 1.1 **Constitution:** These Bylaws are those adopted by the Association under the provisions of the Constitution.
- 1.2 **Effective date:** These Bylaws come into force and effect on and from 1 January 2007. The Bylaws may be added to, amended or modified from time to time as provided for in the Constitution.
- 1.3 **Interpretation:** Terms and expressions used in these Bylaws are defined and guidelines for interpretation are set out in the Constitution. All references to Member(s), in these Bylaws, is deemed to include reference to Occupier(s) and Invitee(s) unless the context otherwise requires.
- 1.4 **Definitions:** In this document, unless the context otherwise requires:
  - 1.4.1 Commercial Members means those members operating within Kensington Park on a commercial basis e.g. Retail Stores
  - 1.4.2 Gathering means a group of 20 or more persons, or persons who, while as guests on members property, are visible to other members
  - 1.4.3 Household pets means any pet which is usually contained within the house e.g. Caged Birds, Tropical Fish and/or Turtles in an Aquarium
  - 1.4.4 Long-term means overnight or longer
- 1.5 **Objectives:** The Members have agreed upon Objectives for the development, management and operation of Kensington Park, in the form of principles and guidelines to apply to the development and then operation of Kensington Park over time intended to encourage and allow for coordination, preservation and enhancement of amenity and value for all as follows through:
  - 1.5.1 High levels of design, design standards and specifications;
  - 1.5.2 High level environmental standards - balancing commercial with ecologically sustainable principles, e.g. through the efficient use of energy;
  - 1.5.3 Professional and consistent management apply to all parts of the Common Facilities;
  - 1.5.4 High quality product and presentation which is premium in every class of property represented in Kensington Park - entertainment, commercial, retail and residential;
  - 1.5.5 Building and growing a place of harmony and community within Kensington Park.
- 1.6 **Purpose of the Bylaws:** The Bylaws are one of the tools, together with legal structural design, precise contracting and professional management, by which the standards and requirements to apply to the development, management, operation and use of Kensington Park will be maintained and observed.
- 1.7 Application of the Bylaws: The Bylaws apply to:
  - 1.7.1 All Properties in which the Members have an interest and to the land owned, leased, licensed or otherwise held by the Association from time to time; and
  - 1.7.2 All Members and Occupiers of, and Guests to, Kensington Park.
  - 1.7.3 All members, occupiers, and guests to Kensington Park will comply with these bylaws, local law, and legislative obligations

## 2. CONDUCT IN KENSINGTON PARK

- 2.1 **Considerate behaviour:** Each Member will make no noxious, noisy, improper, offensive or unlawful use of any Property or the Common Facilities, and will use their Property and the Common Facilities only for the purposes for which they were designed. No Member will undertake any activity which is or may become a nuisance, cause unreasonable embarrassment, disturbance or annoyance to the other Members or Member's Guests in the use and enjoyment of their Properties and the Common Facilities as assessed by the Manager, the Committee, or appointed sub-committee.
- 2.2 **Supporting Serenity:** In order to be considerate of other Members' peace in the community, any activities on a Member's Property which will or are reasonably likely to cause excessive noise should be limited to before 10 pm (Sunday to Thursday) and 12 midnight (Friday and Saturday). To consider the serenity of other members, social gatherings exceeding these times should be occasional in nature. In the event of any unavoidable noise in a Property, at any time, the Member will take all practical means to minimise annoyance of the neighbours by closing all doors, windows and curtains of the Property and also such further steps as may be within the Member's power for the same purpose. Common Facilities may be used for private functions with the express approval of the Manager. This Bylaw exists to prevent the need for neighbours having to call out noise control officers employed by local councils, law enforcement officers, and/or enter into disputes with each other.
- 2.3 **Vehicle repairs:** When undertaking any vehicle or mechanical repairs, these must be self-contained within the garage. The member shall take all necessary safety precautions to mitigate the risk of danger to themselves, other members, or property.
- 2.4 **Don't litter:** No Member will drop any litter in or on the Common Facilities.
- 2.5 **Don't damage the Common Facilities:** No Member will do any act which detracts from the attractiveness, state of repair, or possible voidance of insurance of the Common Facilities. If any damage or loss occurs, the Member will immediately report such damage to the Manager.
- 2.6 **Temporary structures:** No temporary (more than 3 days) structures of any kind are to be installed on members' properties or common facilities unless they are to the rear of the dwelling and not visible from the road, driveway, or walking paths.
- 2.7 **Signs and placards:** No member, or representative of the member, may place a sign, placard, banner or emblem of any kind, or allow to be kept or placed, in Kensington Park with the exception of one "Open Home" sign, which may only be displayed whilst event is occurring.
- 2.8 **Decency:** No Member will engage in, or allow any person to engage in, any criminal activity within Kensington Park and under no circumstances will the Member use or allow use of the Member's Property for any activity or purpose that is unlawful, immoral or indecent or which offends commonly accepted standard of decency. By way of example, any of the following is expressly prohibited:
- 2.8.1 Escort agency, brothel, massage parlour and/or sauna;
  - 2.8.2 "rap" parlour;
  - 2.8.3 Striptease;
  - 2.8.4 Topless bar and/or restaurant;
  - 2.8.5 The showing or supply of pornographic films or videos from Properties belonging to Commercial Members.
- 2.9 **Rubbish disposal:** No Member will store or dispose of any rubbish except into bins or receptacles for removal on usual days by the local authority or by independent contractors. Bins or rubbish receptacles should be placed and retrieved on the day of collection.
- 2.10 **Smoke free:** No smoking in any part of the Common Facilities.

- 2.11 **Residential use:** No residential member will conduct any commercial activity from the Property (Including the garage) or store on that Property any plant equipment used for commercial activities, without the written consent of the Manager unless the Property has been designated a Commercial Premises only by the Kensington Park Residents' Association.
- 2.12 **No auctions:** No member will permit any auction, garage sale or similar activity to be conducted or take place in any Property or on the Common Facilities.
- 2.13 **Rental Agencies:** In accordance with sections 9.3 and 9.4 of the Constitution, any lease or rental, or marketing of a member's property for lease, must be through an Association approved rental agency.

### **3. SWIMMING POOL AND SAUNA RULES**

#### **3.1 Pool Safety, Health & Hygiene**

- 3.1.1 For health and hygiene reasons we encourage you to shower before entering the pool. No pets are allowed within the building and the facilities must not be used while under the influence of alcohol or drugs. If you have a medical condition, please take additional care in the pool and sauna.
- 3.1.2 No running, jumping, pushing or diving in the swimming pool.
- 3.1.3 No food or drink is allowed in or around the pool or sauna
- 3.1.4 Swimming aids may be used but no swim toys, boogie-boards, balls etc. in the pool, whilst other members are sharing the facility.
- 3.1.5 Rules displayed on the "Use of this Facility" board in the Pool/Sauna house must be followed at all times.

### **4. GYMNASIUM RULES**

#### **4.1 Use by Guests**

- 4.1.1 All guests wishing to use Gym must be accompanied by a Kensington Park resident

#### **4.2 Rules Board**

- 4.2.1 Rules displayed on the "Use of this Facility" board in the Gym must be followed at all times.

### **5. TENANT RULES**

#### **5.1 Application Form**

- 5.1.1 All members, or their agent, must make written application when tenanting their property; this application must be accompanied by an Application Form, completed and signed by the prospective tenant
- 5.1.2 All tenants must complete an Application Form (as attached) in accordance with section 9.3 of the Constitution;

#### **5.2 Rules**

- 5.2.1 Only those applicants noted on the Application Form are permitted to reside in Kensington Park
- 5.2.2 Tenants are permitted to use all of the common facilities
- 5.2.3 Tenants are responsible for ensuring all guests abide by the Rules and Bylaws of Kensington Park

## 6. PETS

- 6.1 **Only family pets:** No animals, livestock or poultry of any kind are to be raised, bred, or kept on any Property except for domestic dogs, cats, or other household pets which are kept for the purpose of providing companionship for the Member's family. Animals are not to be raised, bred or kept for commercial purposes or for food
- 6.2 **Control and supervision:** Control and supervision: All permitted pets must be under control and supervision of the Member, and for this purpose:
- 6.2.1 All dogs will be on a leash when outside the boundaries of a Member's Property;
- 6.2.2 All pet debris and droppings will be immediately picked up and disposed of;
- 6.2.3 No pet will make any noise as to disturb or otherwise cause a nuisance;
- 6.2.4 All pets will be maintained in a healthy condition, and all laws and regulations relating to the keeping of pets are complied with;
- 6.2.5 All pets must be properly tagged for owner identification; and
- 6.2.6 Any member who does not adhere to the points above or has a pet which causes unnecessary disturbance may be advised that their pet can no longer reside at the Member's Property.
- 6.3 **Number of pets:** Occupiers are permitted to have only two pets within the Occupier's property.
- 6.3.1 Any occupiers with in excess of two pets as at 1<sup>st</sup> July 2014, are permitted to retain pets, but upon death, will not replace any pets that may lead to non-compliance with 6.3 above.

## 7. BUILDING APPEARANCE AND DESIGN CONTROLS

- 7.1 **Attractive appearance:** Each Member has a duty to keep the Property and all improvements on it in an attractive, clean, and well-maintained condition, and will not permit the accumulation of unsightly rubbish, equipment, implements or materials on the Property.
- 7.2 **Building standards:** All proposed alterations, or new structures, must comply with all applicable standards outlined in the Design Controls, and be approved by the Design Review Board prior to any work commencing.
- 7.3 **Building colours:** No Member is to alter in any manner whatsoever the colour and exterior appearance of the building erected on the Property except in accordance with the Design Controls and with the written permission of the Design Review Board.
- 7.4 **Antennae, satellite dishes and solar collectors:** Unless approved by the Design Review Board, no Member may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus, or solar collecting panels or equipment on a Property unless such apparatus is erected and maintained in such a way that it is screened from public view.
- 7.5 **All window treatments to be acceptable to the Design Review Board:** Any window or door treatments, blinds, louvers, or curtains displayed in public view must comply with the range of treatments listed in the Design Controls, and that are approved by the Design Review Board.
- 7.6 **Seasonal decorations:** Outdoor seasonal decorations must be in working order and good repair. Decorations will be set up and taken down in accordance with the Design Controls.
- 7.7 **Air-conditioning:** Any air-conditioning apparatus must be approved by the Design Review Board.
- 7.8 **Washing and clothes hanging devices:** No clothing, bedding or other articles will be hung on the windows, balconies or on the outside of the Property or its windows. These restrictions however shall not apply in respect to clothing, bedding or other articles hung on any clothesline installed or erected on the Property in accordance with consent given under clause 18.3 of the Constitution. Refer to the Design Controls for further information.

## 8. GARDEN AND LANDSCAPE MAINTENANCE

- 8.1 Members are responsible for the upkeep of the gardens and/or landscape of their property, where applicable. Refer to the Design Controls for further information. Any changes to Members' gardens should be submitted to the Design and Review Board prior to any changes taking place.
- 8.2 **Garden and Landscape Maintenance:** All grass, hedges, shrubs, vines and planting of any type is to be kept trimmed and, at regular intervals, mowed, trimmed and cut so as to maintain the same in a neat and attractive manner. Trees, shrubs, vines and plants that die are to be removed and replaced with comparable plants. No weeds, vegetation or waste materials are to be placed or permitted to accumulate on any part of the Property.
- 8.3 **Fences:** Any fences or walls erected or maintained on a Property must have the approval of the Design Review Board.
- 8.4 **Park Landscape:** Members may submit changes on the overall landscape for the Park to the Design and Review Board. Members are not to interfere with the common area landscaping.

## 9. ROADS

- 9.1 **Notification of vehicle registrations:** Each Member will provide the Manager with the registration number of all vehicles belonging to the Member which will be used on any roads within Kensington Park.
- 9.2 **Visitor Parking:** To ensure adequate visitor parking, Members will park according to the following rules, any exceptions will only be permitted by the approval of the Manager. The Manager will consider all applications in relation to impact on visitor parking availability:
- 9.2.1 **Non-car Parking restrictions:** any camper van, van, truck over one tonne, trailer or recreational vehicle (including boat, watercraft, jet ski, motor home or travel trailer) bus or aircraft may not park on the roads or those parts of the Common Facilities specified by the Association for parking purposes, for any continuous period exceeding 4 hours in duration, with the exception of a camper van/motor home which can park for one night maximum to enable the loading or offloading of supplies.. Exceptions may be permitted with approval by the Manager; and
- 9.2.2 **Members Parking:** all members must utilise their allocated garage car parks associated with their residence for parking purposes prior to parking on the road and driveways on a long-term basis. Long-term parking on the driveway or road is only permitted with the written permission from the Manager; and
- 9.2.3 **Members Parking Review:** all long-term parking permits will be reviewed by the Manager annually
- 9.3 **Prohibited vehicles:** No camper vans, vans, trucks over one ton, trailers, vehicles with advertising signage, recreational vehicles (including boats, watercraft, jet skis, motor homes, travel trailers) buses, aircraft, motorcycles, motor scooters, motorised gardening equipment, garden implements, equipment or tools may be kept on any Member's Property unless the same is fully enclosed within the garage located on the Property. **This Bylaw does not apply to:**
- 9.3.1 Vehicles and equipment temporarily visiting a Member's Property in connection with the maintenance of a Property and remaining for such period of time as is reasonably necessary to provide the service or to make the delivery to a Property or the Common Facilities. Any vehicle, boat or equipment kept, stored or parked in breach of this Bylaw or the parking rules referred to in clause 9.3 above will be subject to the Bylaw enforcement process outlined in section 12.
- 9.4 **Safer Roads:** In the interests of pedestrians and children, please keep your speed below 30Kmh within Kensington Park

## 10. KEYS AND ACCESS CARDS

10.1 **Keys and Access Cards for Common Facilities:** To ensure adequate provision for members, any duplicate or lost keys and access cards for the common facilities must be requested from the Manager. A fee may be applied for duplicate keys and access cards.

## 11. CLOSING THE COMMON FACILITIES

11.1 **Closure:** The Manager may close any or all of the Common Facilities as the Manager considers necessary for security, health, or safety reasons, or for the purposes of maintaining or repairing the Common Facilities. The Manager will endeavour to give reasonable notice to the Members of any proposed closure unless the situation requires immediate closure.

## 12. BYLAW ENFORCEMENT POWERS AND PROCESS

12.1 Guidance for behaviour which is incompliant with these bylaws will follow a warning process prior to invocation of disciplinary action as outlined in section 12.4; and

12.2 All outstanding fines will remain chargeable against the member's property until paid in full; and

12.3 If any member wishes to enter into dispute with the Association, that member agrees to enter into mediation, and if unresolved through this mediation, then arbitration. The decision of the arbitrator shall be accepted by both parties; and

12.4 In order to help members comply with these bylaws, individual infringement fines may be applied in line with section 12.5. Any behaviour leading to an infringement must be remediated within the enforcement process (section 13). Accrued balances meeting or exceeding a value of \$2,500 will be recovered through a debt recovery process and registered with Baycorp.

12.5 The following are the fines to be applied for incompliant behaviour by members;

12.5.1 **Penalties for Compliance Breach:** Fines are set as;

12.5.1.1 Any breach of section 2.7 of these Bylaws (Signs and Placards) will incur an initial fine of \$1,000 and a recurring fine of \$100/day thereafter until the breach has been remedied and compliance with the Bylaws for this breach is restored; or

12.5.1.2 All other breaches of these Bylaws (with the exception of section 2.7) will incur an initial fine of \$200, and a recurring fine of \$100/day thereafter until the breach has been remedied and compliance with the Bylaws for this breach is restored.

## 13. ENFORCEMENT PROCESS

13.1 It is not the Association's wish to apply fines for breaches of the Bylaws, and where breaches have occurred, the Manager will give consideration to the following guidelines before exercising the authority to apply fines;

13.1.1 the effect of that breach will be assessed; and

13.1.2 the deliberate intention or gross negligence of the member to commit that breach.

13.2 In general, the manager will first seek to gain compliance through verbal requests. If then necessary, by way of written request for compliance. Should a breach still be outstanding or to occur regularly, then after giving consideration to clause 13.1, a fine may be applied.

## **14. APPENDIX 1: TENANCY REQUEST APPLICATION**

THIS FORM WILL BE PROVIDED BY THE MANAGER

### **Kensington Park Residents Association Tenancy Request Application Form**

In order that the Manager and Committee can form a view, and consider all applicants on the same basis, in regard to the suitability of a prospective tenant as described in the Bylaws the following details must be provided within each letter of application.

#### **1. Name of all applicants to occupy the Premises:**

Surname - Given Names

1.

2.

#### **2. Last domiciled address:**

#### **3. Full Contact details of the Principal Applicant:**

#### **4. Credit reference(s) - Principal Applicant:**

1.

2.

3.

#### **5. Motor Vehicle Registration number, Make and Model of all applicants:**

1.

2.

#### **6. Residential references from previous landlords**

(Principal Applicant - Through period of preceding 24 months)

1.

2.



7. The applicants acknowledge that they have discussed and understand the Bylaws and Design Control Regulations pertaining to Kensington Park and Body Corporate Rules (if applicable) with the Manager or his Agent, and agree to abide them should their application be successful; copies of all documents have been received.

7.1. The applicants agree that no copies of keys are to be made; and understands that any further issue of keys require a written application to the Manager and payment of any fees thereof.

7.2. The applicants acknowledge that should this application be successful only those names stated on this application form will reside at the property.

7.3. The applicant agrees to be bound to these conditions and the 'Tenants Rules' should the applicant become the Tenant.

Principal Applicant's signature:

Date

*The Manager and/or Committee of Kensington Park Residents' Association may, as prescribed under the Bylaws of Kensington Park, without prejudice, draw a conclusion as to the acceptance or not of the application without further correspondence being entered into. Denial of any application is in no way intended to be, or to be seen, as prejudicial toward, or any judgement upon the character, position or reputation of the applicant. Documents pertaining to applications remain confidential to Kensington Park Residents' Association and may be formally destroyed by the Association without further notice.*

Complete and return to the Manager:

KPRA Manager: Auckland Property Management Limited (Toni Heath)

Physical Address: 13 Parkside Drive, Kensington Park, Orewa

Ph: 021 894 546 (Toni)

Email: [admin@kpra.net.nz](mailto:admin@kpra.net.nz)

## 15. APPENDIX 2: POOL, SAUNA AND GYM RULES

### POOL AND SAUNA RULES: HAZARDS AND COUNTER-MEASURES

#### SWIMMING POOL:

- **NO** running or jumping in or around the pool.
- **Maximum** of 5 people in the pool at any time.
- Do **NOT** enter the pool if you feel unwell or have had any stomach bugs in the last 2 weeks.
- Showers are recommended before and after use of the pool.
- Pool toys are **NOT** permitted with an exception for clean swimming aids.
- Edging tiles slippery when wet.
- Underwater Ledge around pool Perimeter.
- Overall depth of pool is 1.2m.

#### SAUNA:

- Hot glass entry door. (Please take care when opening or closing the door)
- Open faced heating unit including hot stones.  
(Please take care when moving around the unit and/or applying water for steam)
- Raised lip to sauna floor on entry.
- Tiled floor may become slippery when wet.

#### GENERAL BEHAVIOUR:

- **NO** running, jumping, pushing, diving, bad behaviour or unruliness is allowed around the pool area.
- Visitors to the pool facility must be always accompanied by a resident.

#### FOOD AND / OR DRINK:

- **NO** food or drink is permitted in or around the pool and sauna areas.
- **NO** glass under any circumstance is allowed in the pool or sauna area.

#### SWIMMING AIDS:

- Swimming aids may be used.
- **NO** pool toys including boogie boards, balls etc.

#### PERSONAL TRAINERS:

- Are not permitted

#### FIRST AID:

- A first aid kit and defibrillator is located on the wall in the foyer.
- Eye wash is located on the wall opposite the bathrooms.

To report defects or maintenance please phone the Facilities Maintenance Co-ordinator:

**027 262 5598**

**In the case of an emergency call 111**

## **POOL AND SAUNA RULES continued:**

### **SUPERVISION AND CONSIDERATION**

- All equipment and apparatus will be maintained regularly. Please advise the manager of any equipment malfunction.
- This area is **NOT** supervised. All users **MUST** take all reasonable precautions to prevent any harm or injury occurring to themselves or others.
- All users are to acquaint themselves with the recognised hazards list and their appropriate counter measures to prevent unwanted events occurring.
- Any person under the age of 14 years **MUST** be accompanied by an adult aged 18 years or older who is also a resident. This adult is responsible for their care at all times.
- All users are asked to show consideration to others present at the same time.
- Facilities are open for use between the hours of 6:00am and 9:00pm.
- However, the pool may be closed due to maintenance at any time.
- **Please replace the pool cover before leaving the pool area.**

### **USAGE BY RESIDENTS AND NON-RESIDENTS**

- A maximum of 4 people per property are allowed in the pool area at one time.
- For numbers greater than this, approval must be given by the manager.
- Non-Residents must always be accompanied by a Resident.
- The security fobs are personalised to each property and must not be given to guests to use.

### **MAXIMUM UTILISATION NUMBERS**

- In the interest of individual comfort and safety: **No more than 5 people are to use the pool and no more than 4 people are to use the sauna at any one time.**

### **SAUNA LIMITATIONS**

- Persons under the age of 14 are **NOT** allowed to use this facility.
- This sauna is always operational during open hours. In the interest of health and safety it is highly encouraged that at least 2 persons occupy the sauna at any one time to avoid serious injury.
- This sauna operates at 80 – 100 degrees. Consider taking regular breaks to avoid injury.

### **HEALTH AND HYGIENE**

- All persons using this facility are asked to shower prior to entering this area.
- Pets are not permitted in this area on **ANY** occasion.
- Persons using these facilities must not be under the influence of drugs or alcohol. If you have a medical condition, please seek the advice of a doctor or specialist before using the pool or sauna.

### **NAPPIES**

- Children who are not toilet trained must wear swim nappies in the pool. These are provided in a marked wall container adjacent to the entrance door.

To report defects or maintenance please phone the Facilities Maintenance Coordinator:  
**027 262 5598**

**SCHEDULE 2**

**Management Agreement – Table of Contents**

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# Management Agreement FOR KENSINGTON PARK

DATED this 7<sup>TH</sup> day of APRIL 2021

## PARTIES

1. KENSINGTON PARK RESIDENTS ASSOCIATION INCORPORATED ("Association") and
2. AUCKLAND PROPERTY MANAGEMENT LIMITED ("Manager")

together the "Parties", and individually a "Party".

## BACKGROUND

- A. The Association owns, holds, operates, maintains and manages and/or will own, hold, operate, maintain and manage certain communal property and facilities (defined as the "Common Facilities" in the Constitution) in accordance with the Constitution.
- B. The Constitution requires the Association to operate and maintain the Common Facilities for the benefit of the Members, such Members being property owners in Kensington Park.
- C. The Association has resolved to appoint the Manager to perform certain duties and provide certain services for the management and maintenance of the Common Facilities and Kensington Park generally.
- D. The Manager has agreed to accept that appointment and to manage the Association on the terms set out in this Agreement.

## THE PARTIES AGREE AS FOLLOWS:

### 1 Definitions

1.1 **Definitions:** In this Agreement, unless the context requires otherwise:

**Agreement** means this agreement and includes all schedules and appendices, as the same may be amended by the Parties from time to time;

**Association** includes the Association's successors, transferees and assigns;

**Association's Representative** means the person or persons appointed by the Association from time to time to liaise with the Manager;

**Commencement Date** means 1<sup>st</sup> July 2021

**Constitution** means the constitution of the Association;

**Expiry Date** means that date being 30<sup>th</sup> June 2024

**Force Majeure Event** means any of the following events:

- (a) act of God;
- (b) any act of a public enemy, war, civil unrest, or act of military authority;
- (c) fire, flood, earthquake, landslide, or other elements of nature;
- (d) epidemic;

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- (e) any act of a third party (not being an employee, agent or sub-contractor of that party) engaged in terrorist activity or sabotage;
- (f) results in the provision of the Services to the Association being unlawful or impossible; and
- (g) any other event outside the control of the affected Party, provided that the following will not be Force Majeure Events on which a Party is entitled to rely:
  - i. an event that was reasonably foreseeable;
  - ii. any strike, lockout or other labour dispute of the workforce of that Party, its subcontractors or suppliers;
  - iii. an event where the event could have, or it is likely that the event could have, been prevented, avoided, overcome or mitigated by the affected Party by:
    - (a) either implementation of contingency plans agreed between the Parties or which either Party has represented it has in place;
    - (b) or exercising a reasonable standard of care;
  - iv. an event for which the Party affected is or was directly responsible;
  - v. any act or omission of a subcontractor or supplier of a Party unless and to the extent that the subcontractor or supplier was itself affected by an event, which if it occurred in relation to that party would have been a Force Majeure Event;
  - vi. the insolvency of either Party, or a subcontractor or supplier of either Party, or lack of funds for any reason;

**GST** means goods and services tax charged at the current rate;

**Insolvency Event** means, In relation to a Party:

- (a) the presentation of an application for the liquidation of that Party that is not discharged within 30 days of its filing or which is not demonstrated to the other Party prior to the expiry of that 30 day period as being an application that is frivolous or vexatious;
- (b) any step taken in, or towards, the making of any compromise, proposal or deed of arrangement with all or some of that Party's creditors;
- (c) the appointment of a liquidator, receiver, statutory manager, or similar official, to that party;
- (d) that Party being unable to pay its debts as they fall due in the ordinary course of business;
- (e) the suspension or threatened suspension by that Party of the payment of its debts;
- (f) the enforcement of any security against the whole, or a substantial part, of that Party's assets;
- or
- (g) (g) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;

**Kensington Park** means a residential and commercial development, known as Kensington Park.

**Management Expenses** means the costs and expenses of the Manager in fulfilling its obligations pursuant to this Agreement;

**Management Fee** means the fee payable to the Manager under clause 6;

**Manager** includes its successors, transferees and assigns together with, where the context requires, its agents, employees and contractors;

**Manager's Representative** means the person appointed by the Manager from time to time for the purposes of clause 8;

**Office** means the on-site office located within the Pool House or such other location as agreed from time to time;

**Relevant Authority** means any government, local, or statutory or non-statutory authority or body having jurisdiction over Kensington Park and/or the Common Facilities;

**Services** means the facilities management and associated services to be performed by on or behalf of the Manager as listed in Schedule 1.

**Term** means the period of three (3) years starting on the Commencement Date and, subject to the terms of this Agreement, ending on the Expiry Date;

**1.2 Interpretation:** In this Agreement, unless the contrary intention appears:

1.2.1 headings are for convenience only and do not affect the interpretation of this agreement;

1.2.2 words importing:

1.2.2.1 the singular includes the plural and vice versa;

1.2.2.2 any gender includes the other genders;

1.2.2.3 if a word or phrase is defined, the same words and phrases have corresponding definitions;

1.2.3 a reference to:

1.2.3.1 a person includes a firm, unincorporated association, corporation and a government or statutory body or authority and vice versa;

1.2.3.2 a person includes its legal personal representatives, successors and assigns;

1.2.3.3 a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

1.2.3.4 a part, section, clause, annexure, exhibit or schedule are references to parts, sections, clauses, annexure, exhibits or schedules of or to (as the case may be) this document;

1.2.4 a right includes a benefit, remedy, discretion, authority or power;

1.2.5 an obligation includes a warranty or representation and a reference to a failure to observe, or perform an obligation includes a breach of warranty or representation;

1.2.6 provisions or terms of this document or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;

1.2.7 time is to local time in New Zealand;

1.2.8 \$ or dollars is a reference to the lawful currency of New Zealand;

1.2.9 this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;

1.2.10 writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes electronic and facsimile transmission;

1.2.11 the word "including" means including, without limiting the generality of the foregoing. **1.3 Rule of Construction:** This Agreement will not be construed to the disadvantage of any Party or Parties on the basis that they or anyone associated with, or of which they exercise any control, put it forward.



## 2 Appointment

- 2.1 **Manager to provide Services:** The Association appoints the Manager for the Term of this Agreement to provide the Services as defined by Schedule 1.
- 2.2 **Acceptance of appointment:** The Manager accepts the appointment on the terms set out in this Agreement

## 3 Status of the Manager

- 3.1 **No partnership:** The relationship between the Association and the Manager is that of principal and agent. Nothing in this Agreement will be treated as creating a joint venture, partnership relationship or create a trust between the Parties. Neither Party will have the authority to act for or to incur any obligation on behalf of the other Party except as expressly provided in this Agreement or any agreement entered into pursuant to this Agreement.
- 3.2 **Manager not responsible for Association:** The Manager will not by reason of its management of the Association be responsible for any of the Association's legal, equitable, statutory or other obligations.
- 3.3 **Manager not liable for loss through breach of Bylaws:** The Manager is not liable for any damage or loss caused through a breach of the Bylaws by any Member, Occupier, Invitee or any other person in or about Kensington Park.

## 4 Obligations of the Manager

- 4.1 **Performance of the Services:** The Manager will use all reasonable endeavours to:
- 4.1.1 perform or procure the Services as listed in Schedule 1, and ensure that the Services are performed to the best standards in the applicable industry;
- 4.1.2 provide services to the Association in accordance with sound commercial practice and in accordance with any reasonable directions (not inconsistent with the terms of this Agreement) which may from time to time be given to the Manager by the Association;
- 4.1.3 account to the Association for the Common Facilities in the possession, custody or control of the Manager;
- 4.1.4 regularly advise the Association in relation to any correspondence, reports, enquiries and complaints relating to the Common Facilities or the Services;
- 4.1.5 keep itself fully apprised and advise the Association of the condition, layout, construction, location, character, plan and operation of all utility services and machinery associated with the common facilities, and security or other systems and Irrigation and MATV, or other, systems installed with Kensington Park;
- 4.1.6 cost, buy, sell, replace, erect, construct, repair, exchange, lease, hire or otherwise acquire and install fixtures, fittings, equipment, improvements and additions to the Common Facilities, upon the instruction of the Association if the Association resolves and makes a request;
- 4.1.7 liaise with the Association's Representative on a regular basis; and
- 4.1.8 administer the Association's accounts and levy Members on behalf of the Association and, if instructed, any Body Corporate.





**4.2 Variations and additions to the Services:**

4.2.1 The Association may, from time to time, request a variation to the Services that:

- 4.2.1.1 increases or decreases any quantity or quality of any Services required; or
- 4.2.1.2 omits or changes the Services required; or
- 4.2.1.3 requires any additional services not required under this Agreement to be provided.

4.2.2 Upon receiving a variation request the Manager will nominate the price, if any, for each variation request as follows:

- 4.2.2.1 by providing a unit rate or a fixed price, as requested; or
- 4.2.2.2 by calling for subcontract prices; or
- 4.2.2.3 by a combination of any of 4.2.2.1 and 4.2.2.2 above.

4.2.3 If the Association accepts the Manager's nominated pricing, a variation will be forwarded to the Association's Representative for signing and returning to the Manager's Representative.

4.2.4 Any decreases to any quantity or quality of any services which result in a variation to the Management Fee, such decrease will require the Association to give the Manager Ninety (90) days' notice prior to the decrease in remuneration becoming effective.

**4.3 Powers:** Subject to any limitations contained in this Agreement, and in the course of providing services, the Manager may:

- 4.3.1 exercise all powers, authority and discretions of the Association;
- 4.3.2 enter into agreements with other persons for the provision of services and/or materials for the proper performance of the Services and be reimbursed by the Association for the cost of these services and materials;
- 4.3.3 take any action that the Manager deems necessary or desirable either in its own name or in the name of the Association to ensure and maintain compliance with the Constitution and the Bylaws by the Members or any Member individually and be reimbursed by the Association for the cost (including solicitor and own client costs) for any such action.

**4.4 Limitations:** The Manager will not be entitled, without the prior approval of the Association:

- 4.4.1 to enter into any agreement, arrangement, transaction or contract on behalf of the Association;
- 4.4.2 to carry out any Capital Improvements



- 4.4.3 to promulgate any Bylaws;
  - 4.4.4 to allow any person, other than a Member, Occupier or Invitee, to use the Common Facilities;
  - 4.4.5 to initiate any action at law or equity, or to enter into any dispute resolution or mediation on behalf of the Association.
  - 4.4.6 to impose or levy a fine on any member without first advising the Association's Representative of such intended actions
- 4.5 **Satisfaction of obligations:** If the Manager has used all reasonable endeavours to carry out the Services then the Manager will have satisfied its obligations under this Agreement.
- 4.5.1 **Exclusion of liability:** The Manager is not liable to the Association if the Manager permits or fails to do anything it is obliged to do, if the doing or permitting or failure arises from the Association failing to make the appropriate decision.

## 5 The Association's obligations

- 5.1 **Obligations and duties:** The Association must:
- 5.1.1 appoint the Association's Representative
  - 5.1.2 permit the Manager to manage the Association without interruption or disturbance by the Committee, or the Association's agents, employees or contractors;
  - 5.1.3 grant the Manager and all persons authorised by the Manager the right to:
    - 5.1.3.1 enter on to the Common Facilities at all times;
    - 5.1.3.2 temporarily close the Common Facilities; and
    - 5.1.3.3 add, remove, modify or alter structures and/or services forming part of the common Facilities; in connection with the fulfilment of the Manager's duties and obligations:
  - 5.1.4 provide the Manager with copies of all documents necessary to enable the Manager to perform its obligations under this Agreement including current copies of the Bylaws, current plans and any other document identifying the location and character of the services and amenities installed or erected on the Common Facilities;
  - 5.1.5 provide (or reimburse) the Manager with all materials and parts used or supplied in carrying out the Services;
  - 5.1.6 give its full support and cooperation to any action the Manager may elect to take under clause 4.3.3; and
  - 5.1.7 promptly do all things which may be reasonably necessary to enable the Manager fully and effectively to manage the Association in the manner contemplated including arranging the execution of all notices, paper and documents required by the Manager to enable the Manager to carry out the Services;
  - 5.1.8 meet the costs associated with the Office for cleaning, rental and electricity.
- 5.2 **Requirement for consent:** If any statute, the Constitution or any Bylaw requires the Association to obtain a consent or authorisation prior to the performance of any duty or obligation under this Agreement then the Association must use its best endeavours to obtain such consent or authorisation at its cost and keep the Manager informed of its endeavours.

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**5.3 Obligation to other Agreements:** The Association must not pass any resolution varying or rescinding (or purporting to vary or rescind) the Agreement to pay all expenses relating to the gardeners who are in the employ of the Manager to solely maintain the grounds of Kensington Park.

## **6 Management Fee**

**6.1 Calculation:** The Management Fee is set out in Schedule 2 of the Agreement.

**6.2 Payment of Management Fee:** The Association must pay the Management Fee inclusive of GST without deduction, reservation or set-off whatsoever to the Manager in equal monthly instalments due on the 1st day of each month, the month being the month of service until the Expiry Date.

## **7 Staff Management**

**7.1 Management:** The Manager will

7.1.1 Manage the staff and contractors necessary to perform the services; and

7.1.2 be responsible for the recruitment, day to day management and supervision of all staff including compliance with all relevant legislation.

7.1.3 be responsible for the payment of wages, salaries, benefits and entitlements to the Association's staff and the costs, charges and entitlements of any contractors. The selection, remuneration and bonuses offered to the staff remains the responsibility of the Association.

## **8 Attendance at Meetings**

**8.1 Manager to attend meetings:** The Association requires the Manager and/ or the Manager's Representative to attend meetings of the Association in accordance with Schedule 1.

**8.2 Ability to be heard at meetings:** The Manager and the Manager's Representative will be entitled to be heard on any matter or question in relation to the Services which may arise at any such meeting.

## **9 Instructions to Manager**

**9.1 Issuing Instructions:** All directions and instructions given by the Association to the Manager must be given by the Association's Representatives and, if required by the Manager, must be given in writing.

**9.2 Conferring:** In relation to the performance of the Services by the Manager, the Manager may confer from time to time with the Association's Representatives and will confer in good faith if requested by the Association's Representatives.

## **10 Agreement with Members individually**

**10.1 Separate agreements:** The Manager may enter into agreement with Members for the provision of additional services to those Members upon such terms and conditions as may be agreed between those parties.

## **11 Assignment**

**11.1 Assignment of Contract:** Entitlement to directly or indirectly assign, transfer or otherwise dispose of any of its rights or interests in, or any of its respective obligations or liabilities under or in connection with, or arising out of this Agreement, is subject to written authorisation of the

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Association. Should the Manager seek such authorisation it is required to provide the Association with three (3) months' notice of this intention; the Association then has the right to conduct its own due diligence with respect to the prospective assignee, such due diligence to be conducted within the three (3) month period. For clarification, no assignment of this Agreement can occur without the express written consent of the Association, such consent shall not be unreasonably withheld to an assignment to a responsible, solvent, experienced and reputable assignee.

**11.2 Documentation:** The instrument is to be prepared by the Manager's solicitors at the expense of the Manager.

**11.3 Release on assignment:** Upon the assignment, the Manager will be released and discharged from any further liability under this Agreement but without prejudice to the rights and remedies of either Party arising in respect of any matter or thing occurring prior to the date of assignment.

## 12 Subcontracting

**12.1 Ability to subcontract:** The Manager may engage or employ any contractor, subcontractor or agent for the provision of the Services (in whole or any part).

**12.2 No release of liability:** The contracting or subcontracting by the Manager of any of its duties or obligations under this Agreement in whole or in part will not relieve the Manager in any way whatsoever from its responsibility for due performance of this Agreement in accordance with its terms and conditions and the Association's policies and budget.

## 13 Renewal of Agreement

**13.1** The Association will conduct an open and transparent process for the renewal of its management contract. On the basis the current Manager has received satisfactory annual reviews during the term of this contract the Association will use its best endeavours to include the current manager in any negotiations or tender process.

## 14 Failure to Perform Services

**14.1 Failure by the Manager:** Where the Association, acting reasonably, believes that the Manager has failed to comply with the requirements of any Service, the Association may notify the Manager in writing specifying:

14.1.1 the time, location and extent of such failure to comply, including whether it related to quality or quantity;

14.1.2 the name of the person reporting the failure to comply; and

14.1.3 where the failure is capable of being rectified, the Association's requirement and reasonable timeframe required for the Manager to make good and if necessary rework the Services at the Manager's cost in all respects.

**14.2 Rectification:** If within ten (10) Working Days of receipt of such notice from the Association, the Manager's Representative has not disputed the matters contained in the notice or agreed to an alternative solution with the Association's Representative, then the Manager will rectify the failure as required by the Association. If the Association's Representative and the Manager's Representative are unable to agree on an alternative solution, then either Party may invoke the dispute resolution procedure.

**14.3 Additional obligations:** Where the Manager is required to make good or rework any Service;



14.3.1 the replacement cost of approved parts required by the Manager In making good or reworking the Service will be met by the Manager; and

14.3.2 the making good or reworking will be carried out by the Manager without interfering with the provision of any other Services agreed to be undertaken by the Manager and will not be a reason for failing to deliver any Service,

14.4 **Disputes:** Any dispute arising out of a requirement to rectify or rework a Service will be dealt with in accordance with the dispute resolution provisions.

## 15 Force Majeure

15.1 **Relief:** Neither Party will be liable for any delay nor failure to perform its obligations pursuant to this Agreement if such delay or failure is due to Force Majeure.

15.2 **Suspension of obligations:** If a delay or failure of a Party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations will be suspended.

15.3 **Termination:** If a delay or failure by a Party to perform its obligations due to Force Majeure exceeds sixty (60) days, either party may immediately terminate the Agreement on providing a further sixty (60) days' notice in writing to the other Party.

## 16 Delay in Payment

16.1 **Default interest:** The Association must pay the Manager interest on any amount that has become due for payment and remains unpaid from and including the date it becomes due for payment, during the period it remains unpaid, on demand or at times notified by the Manager, calculated on daily balance at the rate equal to 4% per annum above the Manager's bankers' indicator rate quoted from time to time.

## 17 Dispute Resolution

17.1 **Initiating the process:** Any dispute arising in connection with this Agreement which cannot be settled by negotiation between the Parties or their representatives is to be settled according to clause 17.2.

17.2 **Formal process:** The order for resolution of a dispute will be:

17.2.1 **Good Faith:** The Parties Undertake to use all reasonable efforts in good faith to resolve any dispute which arises between them in connection with this Agreement.

17.2.2 **Notice:** A Party will, as soon as reasonably practicable, give the other Party notice of any dispute in connection with this Agreement.

17.2.3 **Internal Dispute Resolution:** Any dispute will be referred:

17.2.3.1 initially to the Association's Representative and the Manager's Representative, who will endeavour to resolve the dispute within 10 Working Days of the giving of the notice; and

17.2.3.2 if the Association's Representative and the Manager's Representative do not resolve the dispute within the time referred to in clause 17.2.3.1, to the Chairman of the Association or his/her nominee and the Managing Director of the Manager or his/her nominee who will endeavour to resolve the dispute within a further 10 Working Days.

**17.2.4 Mediation:** If, following the relevant internal dispute resolution procedures set out in clause 17.2,3.2, the Parties fail to resolve the dispute then the Parties will try to settle their dispute by mediation before resorting to litigation. Either Party may initiate mediation by giving written notice to the other Party. The mediator will be agreed by the Parties but if the Parties cannot agree on one within five Working Days after the mediation has been initiated, then the mediator will be selected by the President of L.EADR Inc. (Lawyers Engaged in Alternative Dispute Resolution) or its successor.

**17.2.5 No Arbitration:** Clause 17.2 provides for a form of alternative dispute resolution and is not a reference to arbitration.

**17.2.6 Equitable relief:** Nothing in this clause will prevent a Party from seeking urgent equitable relief before an appropriate court.

## 18 Termination

**18.1 Termination for fault:** Either Party may terminate this Agreement, without prejudice to any of their other rights or remedies, by written notice to the other Party if;

**18.1.1** the other Party commits or allows to be committed any breach of the terms of this Agreement, or any agreement collateral to this Agreement and fails to remedy the breach or fails to provide a solution to the breach acceptable to the non-defaulting Party within 20 Working Days of receiving written notice of such breach or such other timeframe agreed by the Parties; or

**18.1.2** the other Party becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of Insolvency Event; or

**18.1.3** the other Party abandons or repudiates this Agreement.

## 19 Disengagement

**19.1 Consequences:** On termination of this Agreement:

**19.1.1** the Association will be entitled to require the Manager to continue to perform the Services for a period of up to six (6) months, on the same terms and conditions of this Agreement;

**19.1.2** the Manager will do all things reasonably necessary to effect the orderly transition and migration to the Association or any third party service provider nominated by the Association of the Services from the Manager;

**19.1.3** the Manager will deliver to the Association all records and information (in any form or medium) relating to the Association and/or Kensington Park in the possession, power or control of the Manager, provided that if the Manager is the terminating party then the Manager will not be required to comply with this clause 19.1 until all money properly due for payment in respect of the Services has been paid, in full, to the Manager.

## 20 Warranty as to the correctness of information supplied to Manager

**20.1 Reliance on information:** The Manager is entitled to rely on information concerning the management and administration of Kensington Park certified by any person authorised by the Association and the Association through that authorised person warrants that any such information is, prima facie, true and accurate.

- 20.2 **Association to indemnify:** The Association Indemnifies the Manager against any loss or damage caused to any person by the provision of any information which is incorrect or inaccurate
- 20.3 **Conclusive evidence:** Any certificate under the hand of the Association or under the hand of an authorised representative of the Association will be conclusive evidence of the facts contained in that certificate and the Manager need not be concerned to enquire as to the validity or accuracy of such facts.

## 21 Warranties as to Authorisation

- 21.1 **Association has authority to enter Agreement:** The Association warrants that it has the authority to enter into this Agreement.
- 21.2 **Signatory warranty:** Each Party warrants that the persons signing this Agreement are duly authorised to do so on behalf of the Manager and the Association.

## 22 Indemnity

- 22.1 **Indemnity:** Except in the event of the wilful default of the Manager, the Association indemnifies and holds harmless the Manager and each of its employees, officers, agents and contractors, on an after-tax basis, from and against all claims, demands, losses, costs, damages and expenses (including reasonable legal costs on a solicitor and own client basis) properly incurred by the Manager in carrying out its duties and obligations or as instructed from time to time by the Association.

## 23 Safety and security

- 23.1 **Manager not insurer:** The Association acknowledges that the Manager is not the Insurer or guarantor of the security or safety of the Common Facilities, or any person or any property on the Common Facilities.
- 23.2 **Indemnity:** The Association indemnifies the Manager from and against all claims, demands and liability which may arise from the Association's failure to provide adequate security within the Common Facilities or by reason of any ineffective security measures taken by the Association.

## 24 Costs

- 24.1 **Each Party liable for own costs:** Each Party will be responsible for its own costs of and incidental to the negotiation, preparation and signing of this Agreement but any stamp duty payable in this Agreement will be paid by the Manager and if not paid by the Manager may be paid by the Association and recovered from the Manager as a liquidated debt payable on demand.

## 25 Notices

- 25.1 **Notices and Communications:** Each notice or other communication in relation to this Agreement is to be made in writing through email or by personal delivery to the addressee at address, and marked for the attention of the person from time to time designated by the addressee to the other Party. The initial email contact, address and relevant person of each party are set out in clause 25.2.
- 25.2 **Addresses and email contacts:** The addresses, contact person and email contacts of the Parties are:

**Kensington Park Residents Association Incorporated**

Address: Chairperson of KPRA  
13 Parkside Drive  
Kensington Park  
Orewa, 0931

Email: rossnlucey@xnet.co.nz

Attention: Ross Pratt

Address: Kensington Park Holdings Ltd  
1 Parkside Drive  
Orewa, 0931

Email: gm@kensingtonpark.co.nz

Attention: Lucy McKimney

**Auckland Property Management Limited**

Address: Senior Body Corporate Manager,  
145 Manukau Road  
Epsom, Auckland.

Email: [tania.coster@aucklandproperty.net](mailto:tania.coster@aucklandproperty.net)

Attention: Tania Coster

Or any replacement address notified to the other Party by notice from time to time

**25.3 Deemed delivery in the case of personal delivery;** A communication will be deemed to be received when delivered

**25.4 Email:** Except for sign-offs or invoices, the Parties may also send notices and other communications to each other by electronic mail. Receipt of a notice served by electronic mail will be deemed to have occurred only when a reply acknowledging receipt is sent by a recipient. The time of dispatch will be deemed the same as the time of receipt. Notices dispatched by electronic mail will be deemed to have been received and dispatched at the following respective addresses of the Parties (or any replacement address notified to the other party by notice from time to time):

**Kensington Park Residents Association Incorporated**

Email address: rossnlucey@xnet.co.nz

Attention: Ross Pratt

**Auckland Property Management Limited**

Email address: [tania.coster@aucklandproperty.net](mailto:tania.coster@aucklandproperty.net)

Attention: Tania Coster

**25.5 Agents for Service:** The Parties each irrevocably appoint the persons at the following addresses as the respective Parties agents for service of any legal proceedings:

**Association's Agent: North Harbour Law**

Address: 3 Alice Avenue  
Orewa 0931  
Auckland

**Auckland Property Management Limited**

Address: 145 Manukau Road,  
Epsom, Auckland






- 26 **Counterparts:** This Agreement may be signed in any number of counterparts all of which, when taken together, constitute one and the same instrument. A Party may enter into this Agreement by executing any counterpart.
- 27 **Severability:** If any provision of this Agreement is, or becomes, unenforceable, illegal or invalid for any reason, the relevant provision will be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity, if such modification is not possible then such provision will be severed from this Agreement without affecting the enforceability, legality or validity of any other provision of this Agreement.
- 28 **Waiver:** Any delay, failure or forbearance by a Party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Agreement will not operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of this Agreement will not be effective unless that waiver is in writing and is signed by the Party against whom that waiver is claimed. **A waiver of any breach will not be, or be deemed to be, a waiver of any other, or subsequent, breach.**
- 29 **Entire agreement:** This Agreement:
- 29.1 constitutes the entire agreement between the Parties; and
- 29.2 supersedes and extinguishes all prior agreements and understandings between the Parties, relating to the subject matter of this Agreement.
- 30 **Amendments in writing:** No amendment to this Agreement will be effective unless it is in writing and signed by authorised signatories of each of the Parties.
- 31 **Governing law and Jurisdiction:** This Agreement is governed by, and is to be construed in accordance with, the laws of New Zealand. Each Party irrevocably submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under, or in connection with, this Agreement.

SIGNED FOR AND ON BEHALF OF KENSINGTON PARK RESIDENTS ASSOCIATION (Inc.) BY:

Name D. ROSS PRATT Signed  Chairperson  
Date 18/5/21

FOR AND ON BEHALF OF AUCKLAND PROPERTY MANAGEMENT LTD BY:

Name STEVEN GARLAND Signed  Senior Body Corporate Manager  
Date 7/4/21

# Schedule 1: The Standard Services

## Introduction:

The KPRA Constitution sets out in Clause 20 the duties, rights, and responsibilities of any individual or company employed as Manager of the Association.

Auckland Property Management Ltd., as Manager, will work with the Committee and the Principal Member, in accordance with the Constitution and By-Laws. It will ensure that the residents' lifestyle within Kensington Park and the operations required to sustain that lifestyle are seamless and harmonious.

Half yearly review meetings will be held between the KPRA Governance Sub-Committee and both the Manager's representative and a senior APM officer. These will be convened by KPRA to review the Company's performance in relation to the Management Contract, in addition to periodic performance reviews with on-site management.

The standard services to be provided for the agreed management fee are as follows:

## 1. Members

- 1.1 Maintain the register of Members in accordance with rule 4.10 of the Constitution. Share Members' details and updates with Kensington Park Holdings Ltd (KPHL) on a reciprocal basis to ensure all parties have accurate data at all times.
- 1.2 Ensure that each Member, prior to settling the sale of a property, has arranged for the purchaser to forward a duly executed Deed of Covenant and Power of Attorney as specified in rule 7.1.2 of the Constitution.
- 1.3 Set up, maintain, and provide access to effective communication between the Manager, the Members, and the Association.

## 2. Contributions

- 2.1 Each year calculate each Member's Proportion of the annual Facility Expenses to be charged quarterly for payment on the 20<sup>th</sup> of the month following. Charges will be levied on 30 April, 31 July, 31 October, and 31 January.
- 2.2 Advise each Member and receive payment of the quarterly levy as charged and account for such payments to the Association. Every month report to the Association all levies charged, and payments received.
- 2.3 Make recommendations to the Committee as to the level of and/or due dates for payment, of any Special and Differential Levies required under Clause 15 of the Constitution.
- 2.4 Keep full and complete records of:
  - 2.41 Facility Expenses.
  - 2.42 Estimates of Facility Expenses and each Member's Proportion.
  - 2.43 Payments from Members on account of Facility Expenses.
  - 2.44 The indebtedness of each Member.



- 2.5 Each month provide a statement of all Members' indebtedness to the Association where such indebtedness exceeds 60 days.
- 2.6 Each month provide any member with an overdue account, formal advice of the amount owing and how long the overdue sum has been outstanding. Such advice will include any interest that has accrued on the overdue debt. If requested a Certificate of Indebtedness will be provided to that Member, or any person authorised by the Member, in accordance with rule 14.10 of the Constitution.
- 2.7 Reconcile estimated and actual Facility Expenses and advise Members of any further payments required, or credits being given in respect of the Facility Expenses when determined by the Association.

### 3. Financial Services

- 3.1 Deposit immediately all sums received on behalf of the Association to the credit of the Association in such bank account(s) as may from time to time be designated by the Association.
- 3.2 Manage and operate the bank accounts, investments and term deposits of the Association and complete full reconciliations every month.
- 3.3 Ensure all financial transactions conform to the Association's approved and agreed Purchasing Policy, payment guidelines, special approvals, and annual budget.
- 3.4 Ensure all accounts from creditors of the Association are properly scheduled, authorised and payment effected as and when due.
- 3.5 Manage the 1% Transfer Levy. This includes receipts from vendors of qualifying property sales, the allocation of the funds to the Capital Funds account and the distribution of any of the Capital Account funds to the Long-Term Maintenance Fund.
- 3.6 Complete all IRD requirements including GST, Income Tax, PAYE, ACC, Kiwi Saver and FBT as and when required by the relevant legislation.
- 3.7 Provide full monthly financial statements to the Finance sub-committee for approval and submission to the full Committee. Each monthly report must include a Statement of Income and Expenditure for the month; a Schedule of current Bank Accounts and Investments as at the last day of the month; detailed statements for the Transfer Levy Capital fund and Long-term Maintenance Fund and a Balance Sheet that reflects the Association's financial position as at the end of the month being reported.
- 3.8 Arrange to have the financial accounts audited annually. To facilitate the audit complete financial records and full assistance must be provided to the auditor in a timely and cost-effective manner. Full audited annual financial accounts must be approved by the Association and submitted to the Registrar of Incorporated Societies in accordance with Clause 20.2.24 of the Constitution.
- 3.9 Prior to the commencement of each financial year, provide the Association with an estimate of the total Facility Expenses for the following year. (the annual budget). Concurrently calculate the Members levies needed to meet the projected facility expenses and advise any anticipated surplus or deficit to be carried forward from the operating accounts of the current year.



## 4 Rules and Covenants

- 4.1 Monitor the Bylaws and make recommendations to the Association as to any additions or amendments to the Bylaws.
- 4.2 Enforce the By-Laws as required by Clause 20.2.3 of the Constitution, ensuring adherence to the KPRA Compliance Policy as approved by the Committee from time to time.
- 4.3 Manage all complaints and/or breaches of the rules using the agreed procedures determined by the Committee. Any unresolved breaches are to be referred to the Committee.

## 5 Meetings

- 5.1 Participate fully as a non-voting member of the Committee and perform all functions of the Treasurer/Secretary as set out in Clause 17 of the Constitution.
- 5.2 Convene and administer the Association's Annual General Meeting as required by the Committee in accordance with clause 20.2.13 of the KPRA Constitution. This includes the preparation of the Agenda, the election of the Committee, the necessary advice to members including requesting proxies and, if required postal votes, and any other function associated with the AGM. Also fulfilling the same functions for any special general meeting called by the Association.
- 5.3 Attend the Gardens and Grounds sub-committee meetings as required.

## 6 Common Facilities

- 6.1 Maintain and update annually the Long-Term Maintenance Plan relating to the assets and common facilities of the Association. This will include those assets and common facilities still owned by KPHL but managed and maintained by KPRA.
- 6.2 Effect all insurances necessary pursuant to clause 4.5 of the Constitution including public and personal liability plus any other insurance cover deemed necessary from time to time.
- 6.3 Develop and maintain a Common Facilities maintenance schedule and ensure adherence to that schedule.  
  
The operation, maintenance, repair, and renovation of the common facilities may be undertaken by the KPRA Gardens and Grounds staff or by approved external contractors as appropriate.
- 6.4 Recommend to the Committee what capital Improvements, renovations, and replacements should be undertaken and, carry out those approved activities in a timely and cost-effective manner.
- 6.5 Manage any booking system (if required) for any Common Facility.
- 6.6 Ensure that all statutory compliance matters concerning the Common Facilities are kept current. This will include both Health and Safety in the workplace requirements specifically, but other licences, approvals etc that are necessary.



## 7 Services

- 7.1 Act as the agent for KPRA as employer of the Grounds and Gardens staff selected and funded by the Committee. This includes payment of wages as approved by the Committee, OSH requirements, specific training needs, site induction, general supervision, and any statutory requirements.

This also includes but is not limited to liaison with the Chair of the Grounds and Gardens sub-committee; undertaking annual and/or periodic performance and wage reviews; and any necessary disciplinary action deemed necessary.

- 7.2 Appoint and manage—contractors for the maintenance and repair of the Common Facilities. Manage, review, renew or renegotiate, and enforce any operational contract to which the Association is a party. This includes the management of the rubbish collection and liaison with Auckland Council in consultation with the Committee.
- 7.3 Manage the provision of external services to the Common Facilities (including but not limited to gas, electricity, water, sewer, telecommunications, fibre optics) and purchase and manage utility services for the Association’s Common Facilities and Assets.
- 7.4 Make recommendations to the Committee as to any service contractors to be retained and or employed by the Association.

## 8. Communications

- 8.1 Facilitate effective communication with members including distributing the KPRA Newsletter, the Manager’s Update, and such other documents required by the Committee Members.
- 8.2 Ensure any contractual arrangements entered into that may have a benefit for the wider community are advised to members.
- 8.3 Ensure the KPRA website is properly maintained to facilitate communication between the Association and members.

## 9. General

- 9.1 Be responsible for the day-to-day management of the Association.
- 9.2 Implement, maintain and manage the Health and Safety in the Workplace compliance programme including but not limited to regular walks around the park, attendance at Grounds staff “tool- box” discussions, and receiving, reporting, and follow-up with any relevant local or government authority.
- 9.3 Maintain the Asset Register of the Association.
- 9.4 Support new resident induction sessions and “Welcome to Kensington Park” functions as proposed by the Events sub-committee and approved and funded by the Committee.
- 9.5 Be present on-site at the KPRA office for 2 days per week or the equivalent thereof specifically for KPRA responsibilities. It is acknowledged that the Manager is also onsite for work associated with Bodies Corporates for 1 day per week or the equivalent thereof and it is not practicable to separate the 3 days into specific responsibility allocations.



- 9.6 Provide general support for community functions where possible, including but not limited to communication support, administration, and funding.
- 9.7 Attend the Design Review Board (DRB) regular meetings and assist with the implementation of decisions made in response to complaints received as possible breaches of the Constitution and By-Laws.
- 9.8 Attend the Gardens Review Board (GRB) meetings and liaise with KPHL and external advisors. Where appropriate assist the Gardens sub-committee chairperson and the staff with the implementation of any decisions made.

Handwritten signatures in blue ink, located in the bottom right corner of the page. There are two distinct signatures, one above the other.

## SCHEDULE 2:

### Fees

The Management and Administration Fee payable by the KPRA over the next three-year period will be based on the following premise.

**First Year:**

Period: 1<sup>st</sup> July 2021 to 30<sup>th</sup> June 2022.

A fee of \$103,400.00 per annum plus GST. This equates to a per member fee of \$220.00 plus GST, based on 470 dwellings.

**Second Year:**

Period: 1<sup>st</sup> July 2022 to 30<sup>th</sup> June 2023

A proposed fee in Year Two will be based on the Year One fee plus applying the CPI increase as noted in March 2022 assessed on the number of occupied dwellings as at the 30<sup>th</sup> June 2022.

For example the above starting point would be \$103,400.00 per annum plus GST, plus a CPI increase of say 2% for the year ended 31<sup>st</sup> March 2022 meaning that the fee per individual member would increase to \$224.40 plus GST. Therefore, if there were say 492 occupied properties at 30<sup>th</sup> June 2022 the total fee would be \$110,404.80 plus GST.

**Third Year:**

Period: 1<sup>st</sup> July 2023 to 30<sup>th</sup> June 2024

A proposed fee in Year Three will be based on the Year Two fee plus applying the CPI increase as noted in March 2023 assessed on the number of occupied dwellings as at the 30<sup>th</sup> June 2023.

For example the above starting point could be \$110,404.80 per annum plus GST, plus a CPI increase of say 2% for the year ended 31<sup>st</sup> March 2023 meaning that the fee per individual member would increase to \$228.90 plus GST. Therefore, if there were say 520 occupied properties at 30<sup>th</sup> June 2023 the total fee would be \$119,028.00 plus GST.



## Schedule 3:

### Services Outside the Standard Administration Fee

Tania \$150.00 per hour plus GST.  
Melissa \$120.00 per hour plus GST  
APM support staff \$90.00 per hour plus GST

The following items are deemed to be outside the Standard Services and when requested by KPRA may be provided at mutually agreed cost on a time in attendance basis.

1. **Event Management:** Where the Manager is requested to be on site for events or as a marketing resource to create and promote such events
2. **Attendance at General Meetings and Committee Meetings:** outside of two General Meetings, and regular Committee Meetings up to a maximum of 12 per annum.
3. **Website:** Major Development work to the KPRA website after the initial creation and development.
4. **Service** required to deal with large insurance claims and major after-hours callout assistance.
5. **On-site Security:** Retrieval of information from on-site security systems.
6. Creation, implementation and updating of policies including presentation and circulation.
7. Convene liaison meetings with Kensington park bodies corporate Chairpersons to assist KPRA facilitate an integrated management plan for Kensington Park as a whole.
8. Attend, conduct, and organise Residents' Forums.
9. Compile and display Mail Chimp bulk mail outs for Newsletters, Events, (currently on average 7-8 hours each mail-out every 6 weeks – Lana.)
10. Events promotion circulation and follow up.
11. Control any keys, access cards or fobs issued by or to the Association and provide for the copying of keys, access cards and fobs for contractors and KPRA Committee members.





## Schedule 4:

### Additional Service Commencing 1<sup>st</sup> November 2021

#### Design Review Board Administration:

Hourly Rate: \$150.00 per hour plus GST  
Scoped at 8-10 hours per month

Administration Services include:

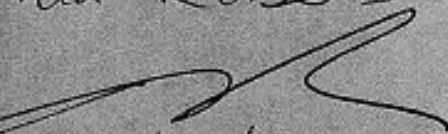
- APM to facilitate a generic email address for DRB.
- Fast Track any applications that meet the criteria required as per the 'Fast Track Approval' and 'Plant Palette' documents.
- Arrange a regular monthly meeting.
- Receive, acknowledge and review applications. Request additional information/take photos if required.
- Assign a unique reference number to application.
- Prepare applications for meeting and circulate to Board Members prior to meeting for pre-reading.
- Maintain the DRB Master Spreadsheet with all applications, results and timelines.
- Respond to applicants post meeting with result.
- Forward copy of any approvals to Body Corporate Manager if applicable.
- KPRA to maintain a copy on file.
- Report on applications to KPRA Committee at each monthly meeting.

Signed for and on behalf of Kensington Park Residents' Assn Inc (KPRA) by:

Name:

Paul Roberts

Signature:



Chairperson

Date:

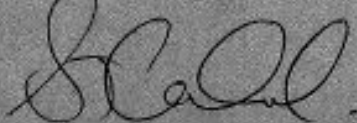
30/11/21

Signed for and on behalf of Auckland Property Management Ltd by:

Name:

Steven Garland

Signature:



Body Corporate GM

Date:

30/11/21