



FRIENDS OF THE AUCKLAND BOTANIC GARDENS INC

CONSTITUTION

1. Introductory rules

- 1.1 Name 4
- 1.2 Charitable status 4
- 1.3 Commencement date of this constitution 4
- 1.4 Definitions 4
- 1.5 Purposes 5
- 1.6 Act and regulations 6
- 1.7 Restrictions on society powers 6
- 1.8 Registered office 6
- 1.9 Contact persons 6

2. Members

2.1 Minimum number of Members	7
2.2 Types of Members.....	7
2.3 Becoming a Member: consent.....	7
2.4 Becoming a member: process	8
2.5 Member's obligations and rights.....	8
2.6 Subscriptions and fees.....	8
2.7 Ceasing to be a Member.....	8
2.8 Obligations once membership has ceased.....	9
2.9 Becoming a member again.....	9
2.10 Complimentary members.....	9

3. General meetings

3.1 Procedures for all General meetings	9
3.2 Minutes.....	10
3.3 Annual General Meetings: when they will be held	10
3.4 Annual General Meetings: business.....	11
3.5 Special General Meetings.....	11

4. Committee

4.1 Committee composition	12
4.2 Functions of the Committee	12
4.3 Powers of the Committee	13
4.4 Sub-committees	13
4.5 General matter, committee	13

5. Committee meetings

5.1 Procedure.....	13
5.2 Frequency	14

6. Officers

6.1 Election and appointment of officers	14
6.2 Qualification of officers	14
6.3 Officers' duties	15
6.4 Term	16
6.5 Removal of Officers	16
6.6 Ceasing to hold office	16
6.7 Conflicts of interest	16
6.8 Indemnity for Officers.....	17

7. Records

7.1 Register of Members	17
7.2 Interests register	18
7.3 Access to information for Members.....	18

8. Finances

8.1 Control and management	18
8.2 Balance date	19

8.3 Special funds	19
9. Dispute resolution	
9.1 Meanings of dispute and complaint	19
9.2 How complaint is made.....	20
9.3 Complaints subcommittee	20
9.4 Complaint management.....	20
9.5 Complaint assessment appeal.....	21
10. Liquidation and removal from the register	
10.1 Resolving to put society into liquidation.....	21
10.2 Resolving to apply for removal from the register	22
10.3 Surplus assets	22
11. Alterations to the Constitution	
11.1 Amending this Constitution	22
12. Other	
12.1 Bylaws.	23
13. General	23
14. Interpretation of Constitution	23

1. Introductory rules

1.1 Name

The name of the society is Friends of the Auckland Botanic Gardens Incorporated (in this **Constitution** referred to as the ‘**Society**’).

1.2 Charitable status

The **Society** is registered as a charitable entity under the Charities Act 2005 – charities reference number CC251

1.3 Commencement date of this constitution

This **Constitution** comes into effect on the day following approval by **Members** at a **General Meeting**. Prior to that date, the existing Rules February 2016 Document governs the operation of the **Society**.

1.4 Definitions

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

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

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

‘**the Gardens**’ means the property at Hill Road, Manurewa, Auckland known as the Auckland Botanic Gardens and any parks or reserves under the control of the Manager, Auckland Botanic Gardens.

‘**Bylaws**’ means the administrative regulations for the **Society** that are a subordinate document to this **Constitution**.

‘**Committee**’ means the **Society**’s governing body.

‘**Complaint**’ means a communication **In Writing** from a **Member**, an **Officer**, or the **Secretary** on behalf of the **Society** that is intended to initiate a dispute resolution process. For a **Member** or **Officer** to make a **Complaint**, this can only be in relation to them being a **Member** of the **Society**.

‘**Constitution**’ means the rules in this document.

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

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

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

‘In Writing’ means a communication received in hardcopy form, via email, or via any special purpose electronic form created by the **Society** for a specific purpose. It does not include communications received via text message or via other electronic means.

‘Matter’ means—

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

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

‘Notice’ to **Members** includes any notice given **In Writing**.

‘Officer’ means a natural person who is a member of the **Committee**.

‘President’ means the **Officer** responsible for chairing **General Meetings** and committee meetings, and who provides leadership for the **Society**.

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

‘Registrar’ means the Registrar of Incorporated Societies.

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

‘Sent to Registered Address’ means for correspondence to be mailed or electronically transmitted to the latest updated postal or electronic address provided by the **Member**, with preferred method of communication indicated by the **Member**.

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

‘Treasurer’ means the **Officer** responsible for managing the financial records and preparing financial reports for the **Society**.

Vice President means the Officer elected to deputise in the absence of the **President**.

‘Working Days’ mean as defined in the Legislation Act 2019. Examples of days that are not **Working Days** include, but are not limited to, the following — a Saturday, a Sunday, and all New Zealand national public holidays.

1.5 Purposes

The **Society** is established and maintained exclusively for charitable purposes (including any purposes ancillary to those charitable purposes), namely:

- a. to promote and support the development of the Auckland Botanic Garden (hereinafter called **the Gardens**) for as long as **the Gardens** shall be kept and maintained as public gardens;
- b. to co-operate with the staff of **the Gardens**, with the consent of the Auckland Council, in promoting and supporting the interests of **the Gardens**;

- c. to foster public interest in New Zealand in horticulture and garden plants (particularly those suitable for the Auckland region) by working with **the Gardens** staff in arranging lectures, demonstrations, exhibitions, educational programmes and other activities to stimulate a greater interest in plants, gardening and other branches of horticulture;
- d. to assist the Auckland Council in acquiring funds and/or assets for special projects associated with the development of **the Gardens** facilities and services for the benefit of the public;
- e. to raise funds for the development of **the Gardens**;
- f. to promote the professional development of members of **the Gardens** staff;
- g. to conduct such activities that will promote membership of the **Society** and support its objectives.

Any income, benefit, or advantage must be used to advance the charitable purposes of the **Society**.

1.6 Act and regulations

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

1.7 Restrictions on society powers

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

The **Society**'s capacity, rights, powers, and privileges are subject to the following restriction:

If the Manager of **the Gardens** (or nominee) advises the **Society**'s **President In Writing** that in the view of the Auckland Council a particular course of action proposed by the **Society** would not be in the best interests of **the Gardens**, that course of action shall not be pursued.

1.8 Registered office

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

Changes to the registered office shall be notified to the **Registrar** at least 5 **Working Days** before the change of address for the registered office is due to take effect.

1.9 Contact persons

The **Society** shall have 3 contact person(s) – **President, Secretary and Treasurer** - whom the **Registrar** can contact when needed.

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

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

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

- a physical address or an electronic address, and
- a telephone number.

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

2. Members

2.1 Minimum number of Members

The **Society** shall maintain the minimum number of 20 **Members**.

2.2 Types of Members

The classes of membership and the method by which **Members** are admitted to different classes of membership are as follows:

Individual Members - Any person over the age of eighteen who is an individual subscribing member of the **Society** shall be classified as an ordinary member unless otherwise determined by the **Committee**.

Partner Members – being two persons residing at the same address who shall each be entitled to the privileges of membership including individual votes but with one mailing per address.

Family Members – being up to two adults and children up to 18 years of age residing at the same address who shall each be entitled to the privileges of membership with one mailing per address. This membership shall be entitled to two votes.

Student Members – being **Members** who are engaged in full-time study at any primary, secondary or tertiary educational institution. Those over 18 years of age are entitled each to one vote.

Honorary Life Member - At any **Annual General Meeting** at which a quorum is present an **Honorary Life Member** may be elected by reason of some outstanding service to the **Society**. Each nominee shall be proposed by one and seconded by another member of the **Society** and such nomination shall be in the hands of the **Secretary** of the **Society** by 30 June. The **Secretary** shall submit such nomination to the **Committee** at its next meeting after it has been received.

- If the **Committee** resolves by a 2/3rds majority to accept the nomination, it shall be presented to **Members** as a notice of motion included in the agenda for consideration at the next **Annual General Meeting**.
- The election shall be by ballot at which the nominee or nominees must receive at least two-thirds majority of the votes cast.
- Honorary life members shall be without liability for any subscription or levy, but otherwise have all entitlements of Ordinary Members including one vote.

Affiliate Members – which is a group, club or corporate body which on notification to the Chairman of the meeting appoint one person present at the meeting to exercise its vote. One nominated person is to have the privileges of membership.

All the provisions of this **Constitution** and of the **Bylaws** shall apply to all **Members**.

2.3 Becoming a Member: consent

Every applicant for membership under this **Constitution** must consent **In Writing** to becoming a **Member**.

Members who have been a **Member** of the **Society** prior to this **Constitution** are deemed to have provided that consent.

2.4 Becoming a Member: process

An applicant for membership must complete and sign a paper application form or submit an electronic application form which results in an internal email containing the applicant information. That person will become a **Member** on acceptance of that application by the **Committee** and on payment by them of the annual subscription for that class.

The **Committee** may accept or decline an application for membership at its sole discretion. The **Committee** must advise the applicant of its decision.

All membership applications will be retained in the **Society**'s membership records.

2.5 Member's obligations and rights

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

- All **Members** shall promote the interests and purposes of the **Society** and shall do nothing to bring the **Society** into disrepute.
- A **Member** is only entitled to exercise the rights of membership (including attending and voting at **General Meetings**) if all subscriptions and any other fees have been paid to the **Society** by their respective due dates.
- No **Member** is liable for an obligation of the **Society** by reason only of being a **Member**.

2.6 Subscriptions and fees

The annual subscription and any other fees for membership for the then current financial year shall be set by resolution of a **General Meeting**. Subscriptions shall be due and payable on 1 July in respect of the financial year then coming.

Any **Member** failing to pay the annual subscription within three calendar months of the date the same was due for payment shall be considered as unfinancial and shall have no membership rights and shall not be entitled to participate in any **Society** activity at the rate applicable to **Members** until all the arrears are paid. If such arrears are not paid within four calendar months of the due date the **Committee** may terminate the **Member**'s membership (without being required to give prior notice to that **Member**).

2.7 Ceasing to be a Member

A **Member** ceases to be a **Member**:

- by resignation as a **Member** by a notice **In Writing** provided by that **Member** to the **Committee**, or
- on termination of a **Member**'s membership following a dispute resolution process under this **Constitution**, or
- on death, or
- by resolution of the **Committee** where the **Member** has failed to pay a subscription due to the **Society** within four calendar months of the due date for payment.

with effect from (as applicable):

- the date of receipt of the **Member's** notice of resignation by the **Committee** (or any subsequent date stated in the notice of resignation), or
- the date of termination of the **Member's** membership under this **Constitution**, or
- the date of death of the **Member**, or
- the date specified in a resolution of the **Committee** for terminating **Members** with subscription payments overdue.

2.8 Obligations once membership has ceased

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

- shall cease to hold himself or herself out as a **Member** of the **Society**, and
- shall cease to be entitled to any of the rights of a **Society Member**.

2.9 Becoming a Member again

Any former **Member** may apply for re-admission in the manner prescribed for new applicants and may be re-admitted only by resolution of the **Committee**.

2.10 Complimentary members

The **Committee** may at its discretion offer complimentary but non-voting membership to supporters of the **Friends** and its interests.

3. General meetings

3.1 Procedures for all General meetings

The **Committee** shall give all **Members** at least 20 **Working Days' Notice In Writing** of any **General Meeting** and of the business to be conducted at that **General Meeting**.

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

Only financial **Members** may speak and vote at **General Meetings** in person.

No **General Meeting** may be held unless at least 15 eligible financial **Members** attend throughout the meeting, and this will constitute a quorum.

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

A **Member** is entitled to exercise one vote on any motion at a **General Meeting** in person. Voting shall in the first instance be decided on voices. Any **Member** present may request a show of hands or on demand of the chair of the meeting or of two or more **Members** present, by secret ballot.

In the event of a secret ballot, two **Members** (who are not nominees) appointed by the chair of the meeting shall act as scrutineers for the counting of the votes and destruction of any voting papers.

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

Written resolutions may not be passed in lieu of a **General Meeting**.

All **General Meetings** shall be chaired by the **President**. If the **President** is absent, the **Vice-President** and if the **Vice-President** is absent the meeting shall elect another member of the **Committee** to chair that meeting.

Any person chairing a **General Meeting** has a deliberative and, in the event of a tied vote, a casting vote.

Any person chairing a **General Meeting** may:

- With the consent of a simple majority of **Members** present at any **General Meeting** adjourn the **General Meeting** from time to time and from place to place but no business shall be transacted at any adjourned **General Meeting** other than the business left unfinished at the meeting from which the adjournment took place.
- Direct that any person obstructing the business of the **General Meeting**, or behaving in a disorderly manner, or being abusive, or failing to abide by the directions of the chair of the meeting be removed from the **General Meeting**, and
- In the absence of a quorum or in the case of emergency, adjourn the **General Meeting** or declare it closed.

The **Committee** may propose motions for the **Society** to vote on (**Committee Motions**), which shall be notified to **Members** with the **Notice** of the **General Meeting**.

Any **Member** may request that a motion be voted on (**Member's Motion**) at a **General Meeting**, by giving notice to the **Secretary** at least 30 **Working Days** before that meeting. The **Member** may also provide information in support of the motion (**Member's Information**). Notice of the motion shall be provided to **Members** with the written **Notice** of the **General Meeting**.

The wording of a motion as presented to a **General Meeting** may not be modified in that **General Meeting**.

3.2 Minutes

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

3.3 Annual General Meetings: when they will be held

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

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

- 6 months after the balance date of the **Society**
- 15 months after the previous **Annual General Meeting**.

3.4 Annual General Meetings: business

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

- confirm the minutes of the last **Annual General Meeting** and any **Special General Meeting(s)** held since the last **Annual General Meeting**,
- adopt the annual report on the operations and affairs of the **Society**,
- appoint a suitably qualified person to be auditor at each **Annual General Meeting** or if not so appointed then by the Committee and shall hold office until the termination of the **Annual General Meeting** next following his/her appointment. The remuneration of the Auditor shall be fixed by the Committee.
- adopt the **Treasurer's** report on the finances of the **Society**, and the annual financial statements, and to receive the Auditor's report
- approve subscriptions recommended by the **Committee** for the current financial year,
- consider any motions of which prior **Notice** has been given to **Members** with **Notice** of the **Meeting**, and
- appoint nominated **Officers, President, Vice President, Secretary, Treasurer** and **Committee** members. Nominations for all such positions shall be called for in written notice at least 25 working days prior to the **Annual General Meeting**, mailed to all financial **Members** at their last known address or email address. Persons seeking nomination should submit written application signed by themselves and two other **Members** of the Friends to the Secretary prior to the meeting.
- consider any general business.

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

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

3.5 Special General Meetings

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

The **Committee** must call a **Special General Meeting** if it receives a written request signed by at least 10 percent of **Members**.

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

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

4. Committee

4.1 Committee composition

The **Committee** will consist of:

- The **President** of the **Society**
- The **Vice-President** of the **Society**
- The **Immediate Past President** of the **Society**
- The **Secretary**
- The **Treasurer**
- Up to nine elected or co-opted members.

All **Officers** on the **Committee** must be **Members** of the **Society**.

4.1 Committee composition

The **Committee** will consist of:

- The **President** of the **Society**
- The **Vice-President** of the **Society**
- The **Immediate Past President** of the **Society**
- The **Secretary**
- The **Treasurer**
- Up to nine elected or co-opted members.

All **Officers** on the **Committee** must be **Members** of the **Society**.

In addition,

- the Manager, Auckland Botanic Gardens or nominee will be an ex officio member of the **Committee** and may speak at meetings but not propose motions nor have a vote.
- the City Council and the Local Board (whose area of responsibility includes the **Gardens** at Manurewa) will be invited to nominate representatives to be ex officio members of the **Committee** who may speak at meetings but not propose motions nor have a vote.
- the **President** may invite other persons to attend **Committee** meetings. These persons will not have the right to speak unless invited by the **President** nor propose motions nor have a vote.

4.2 Functions of the Committee

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

4.3 Powers of the Committee

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

- co-opt additional members to the **Committee** if there are vacancies;
- subject to prior approval at a **General Meeting** purchase take on lease, exchange hire or otherwise acquire any real or personal property or any interest therein, to deal in any such property to sell, let, hire or dispose of the same and to mortgage or charge any property of the **Society**;
- subject to prior approval at a **General Meeting**, the **Committee** shall have the power to borrow such amounts and on such terms as it thinks fit, and to give as security there for and interest thereon such security as the **Committee** shall determine;
- if the **Committee** shall determine, any part of the funds of the **Society** may be invested in the manner provided by the Trusts Act 2019, or any act amending or replacing the same, or may be invested in such other manner as the **Members** may at a **General Meeting** authorise;
- engage agents, servants and workers and to remunerate them in such a manner as it thinks fit and terminate the engagement of any agent, servant or worker.

4.4 Sub-committees

The **Committee** may appoint sub-committees consisting of such persons (whether or not **Members** of the **Society**) and for such purposes as it thinks fit. Unless otherwise resolved by the **Committee**:

- the quorum of every sub-committee is at least half the members of the sub-committee but not less than two,
- no sub-committee shall have power to co-opt additional members,
- a sub-committee must not commit the **Society** to any financial expenditure without express authority from the **Committee** but must report back any recommendations to the **Committee** and
- a sub-committee must not further delegate any of its powers.

4.5 General matters: committees

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

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

5. Committee meetings

5.1 Procedure

The quorum for **Committee** meetings is at least half the number of members of the **Committee**.

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

- by a number of the members of the **Committee** who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

- by means of audio, or audio and visual, communication by which all members of the **Committee** participating and constituting a quorum can simultaneously hear each other throughout the meeting.

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

The chair of the **Committee** is the **President**. If the **President** is not present, the **Vice President** or if that person is absent the members of the **Committee** present may choose one of their number to be chair of the meeting. The chair has a casting vote in the event of a tied vote on any resolution of the **Committee**.

5.2 Frequency

The **Committee** shall meet at least quarterly at such times and places and in such manner (including by audio, audio and visual, or electronic communication) as it may determine.

The **Secretary**, or **President**, shall give to all **Committee** members not fewer than 5 **Working Days'** **Notice** of **Committee** meetings, but in cases of urgency a shorter period of notice shall suffice.

6. Officers

6.1 Election or appointment of officers

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

- **Officers** shall be elected during **Annual General Meetings**.
- If a vacancy in the position of any **Officer** occurs between **Annual General Meetings**, that vacancy may be filled by resolution of the **Committee**. Any such appointee must qualify as an **Officer** (as described in the 'Qualification of Officers' rule below).
- A candidate's written nomination, accompanied by the information as described in the 'Qualification of Officers' rule below, shall be received by the **Society** at least 25 **Working Days** before the date of the **Annual General Meeting**.
- If there are insufficient valid nominations received, further nominations may be received from the floor at the **Annual General Meeting**.
- Votes shall be cast in such a manner as the person chairing the meeting determines. In the event of any vote being tied, the tie shall be resolved by the casting vote of the chair of the meeting.
- The failure for any reason of any financial **Member** to receive such **Notice** of the **General Meeting** shall not invalidate the election.

6.2 Qualifications of Officers

Every **Officer** must be a natural person who prior to election or appointment —

- is a **Member** of the **Society**, and
- has consented **In Writing** to be an **Officer** of the **Society**, and
- certifies **In Writing** that they are not disqualified from being elected or appointed or otherwise holding office as an **Officer** of the **Society** by this **Constitution** or the **Act**.
- only a natural person may be an **Officer** and each certificate shall be retained in the **Society's** records.

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

1. a person who is under 18 years of age.
2. a person who is an undischarged bankrupt.
3. a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Financial Markets Conduct Act 2013, or the Takeovers Act 1993, or any other similar legislation.
4. A person who is disqualified from being a member of the governing body of a charitable entity under section 16(2) of the Charities Act 2005.
5. a person who has been convicted of any of the following, and has been sentenced for the offence, within the last seven years—
 1. an offence under subpart six of Part 4 of the **Act**,
 2. a crime involving dishonesty (within the meaning of section 2(1) of the Crimes Act 1961),
 3. an offence under section 143B of the Tax Administration Act 1994,
 4. an offence, in a country other than New Zealand, that is substantially similar to an offence specified in subparagraphs (1) to (3),
 5. a money laundering offence or an offence relating to the financing of terrorism, whether in New Zealand or elsewhere.
6. a person subject to:
 1. a banning order under subpart seven of Part 4 of the **Act**, or
 2. an order under section 108 of the Credit Contracts and Consumer Finance Act 2003, or
 3. a forfeiture order under the Criminal Proceeds (Recovery) Act 2009, or
 4. a property order made under the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act.
7. a person who is subject to an order that is substantially similar to an order referred to in paragraph (6) under a law of a country, State, or territory outside New Zealand that is a country, State, or territory prescribed by the regulations (if any) of the **Act**.

6.3 Officers' duties

At all times each **Officer**:

- shall act in good faith and in what he or she believes to be the best interests of the **Society**, and
- must exercise all powers for a proper purpose, and
- must not act, or agree to the **Society** acting, in a manner that contravenes the **Act** or this **Constitution**, and
- when exercising powers or performing duties as an **Officer**, must exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances taking into account, but without limitation:
 - the nature of the **Society**,
 - the nature of the decision, and

- the position of the **Officer** and the nature of the responsibilities undertaken by him or her.
- must not agree to, cause or allow the activities of the **Society** being carried on in a manner likely to create a substantial risk of serious loss to the **Society** or to the **Society**'s creditors, and
- must not agree to the **Society** incurring an obligation unless he or she believes at that time on reasonable grounds that the **Society** will be able to perform the obligation when it is required to do so.

6.4 Term

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

No individual shall be eligible for re-election to the office of **President** after holding that office for three consecutive years. After standing down for one year that person shall again be eligible for election to the office of **President**.

6.5 Removal of Officers

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

- The **Officer** elected to the **Committee** has been absent from 3 committee meetings without leave of absence from the **Committee**.
- The **Officer** has brought the **Society** into disrepute.
- The **Officer** has failed to disclose a conflict of interest.
- The **Committee** passes a vote of no confidence in the **Officer**.

with effect from (as applicable) the date specified in a resolution of the **Committee** or **Society**.

6.6 Ceasing to hold office

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

Each **Officer** shall within 20 **Working Days** of submitting a resignation or ceasing to hold office, deliver to the **Committee** all books, papers and other property of the **Society** held by such former **Officer**.

6.7 Conflicts of interest

An **Officer** or member of a sub-committee who is an **Interested Member** in respect of any **Matter** being considered by the **Society**, must disclose details of the nature and extent of the interest (including any monetary value of the interest if it can be quantified)—

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

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

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

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

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

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

Where 50 per cent or more of the members of a sub-committee are prevented from voting on a **Matter** because they are interested in that **Matter**, the sub-committee will report back to the **Committee** that it is unable to make a recommendation and that the **Committee** shall consider and determine the **Matter**.

6.8 Indemnity for Officers

No member of the **Committee** shall be liable for the acts or defaults of any other member of the **Committee** or any loss occasioned thereby, unless occasioned by their wilful default or by their wilful acquiescence.

The members of the **Committee** shall be indemnified by the **Society** for all liabilities and costs incurred by them in the proper performance of the functions and duties, other than as a result of their wilful default.

7. Records

7.1 Register of Members

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

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

- Their name, and
- The date on which they became a **Member**, and
- A physical address, and
- An electronic address (if any), and
- A telephone number; and
- whether the **Member** is financial or unfinancial

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

The **Society** shall also keep a record of the former **Members** of the **Society**. For each **Member** who ceased to be a **Member** within the previous 7 years, the **Society** will record:

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

7.2 Interests register

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

7.3 Access to information for Members

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

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

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

- provide the information, or
- agree to provide the information within a specified period, or
- agree to provide the information within a specified period if the **Member** pays a reasonable charge to the **Society** (which must be specified and explained) to meet the cost of providing the information, or
- refuse to provide the information, specifying the reasons for the refusal, as per section 81 of the **Act**.

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

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

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

8. Finances

8.1 Control and management

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

- controlled, invested and disposed of by the **Committee**, subject to this **Constitution**, and
- devoted solely to the promotion of the purposes of the **Society** and the **Gardens** and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to **Members** of the **Society**,
- PROVIDED THAT nothing herein contained shall prevent the payment in good faith of reasonable and proper remuneration to any officers or servants of the **Society** in return for any services actually rendered to the **Society** nor for goods supplied in the ordinary and usual way of business nor prevent the payment of interest on money borrowed from any member of the

Society at a rate not exceeding the usual trading bank rate for the time being for interest on first mortgages or reasonable and proper rent for premises demised or lent by any member of the **Society**.

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

All money received on account of the **Society** shall be banked within 10 **Working Days** of receipt.

All accounts paid or for payment shall be submitted to the **Committee** for approval of payment and all withdrawals from bank accounts shall be signed or authorised electronically by two members of the **Committee**.

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

- correctly record the transactions of the **Society**, and
- allow the **Society** to produce financial statements that comply with the requirements of the **Act**, and
- would enable the financial statements to be readily and properly audited (if required under any legislation or the **Society's Constitution**).

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

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

8.2 Balance date

The **Society's** financial year shall commence on 1 July of each year and end on 30 June (the latter date being the **Society's** balance date).

8.3 Special Funds.

Gifts, donations, bequests or monies advanced to the **Society** for other than for its general purposes shall be set aside in a designated account within the **Society** and shall not be drawn against except pursuant to a resolution of the **Committee**. The capital and income from such gifts, donations, bequests or monies shall be used as specified in any attached conditions.

9. Dispute resolution

9.1 Meanings of dispute and complaint

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

The disagreement or conflict may be between any of **Members**, **Officers** or the **Society**.

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

- a **Member** or an **Officer** has engaged in misconduct.
- a **Member** or an **Officer** has breached, or is likely to breach, a duty under the **Society's Constitution, Bylaws** or the **Act**.

- the **Society** has breached, or is likely to breach, a duty under the **Society's Constitution, Bylaws** or the **Act**.
- a **Member's** rights or interests as a **Member** have been damaged or **Member's** rights or interests generally have been damaged as a result of engagement in an activity of the **Society**.

9.2 How complaint is made

A **Member** or an **Officer** may make a **Complaint** by giving to the **Secretary** a notice **In Writing** that:

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

The **Committee** or **Society** in a **General Meeting** may resolve to make a **Complaint** involving an allegation against a **Member** or an **Officer** by giving to the **Member** or **Officer** a notice **In Writing** that:

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

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

On receipt of a **Complaint**, the **Secretary** registers the **Complaint** and refers it to the complaints subcommittee for processing.

9.3 Complaints subcommittee

The complaints subcommittee consists of three people appointed by the **Committee** annually, and at other times if a vacancy occurs mid-year. These people may be an **Officer**, a **Member**, or any other person considered to be appropriate by the **Committee**.

When the **Secretary** receives a **Complaint**, if it is considered that a member of the complaints subcommittee has a direct interest in the **Complaint** or may not be impartial, then the **Secretary** will refer the **Complaint** to the **Committee** requesting the appointment of an alternative person.

9.4 Complaint management

On receipt of a **Complaint** the complaints subcommittee or other people assigned to manage the **Complaint** should review the **Complaint** within **10 Working Days**, to classify it as:

- Not a valid **Complaint** under the **Constitution**; or
- A trivial **Complaint**; or
- A moderate severity **Complaint** where written material provided is sufficient to assess it; or
- A serious **Complaint** where a meeting will be required.

For an invalid **Complaint**, the complaints subcommittee will draft an email response to the originator of the **Complaint** for despatch by the **Secretary** within 10 **Working Days**, advising the originator that the **Complaint** cannot be made under the **Constitution**.

For a trivial **Complaint**, the complaints subcommittee will draft an email response to the originator of the **Complaint** for despatch by the **Secretary** within 10 **Working Days**, advising the originator that the **Complaint** has been assessed as low impact and that no further action will be taken.

For a moderate or serious **Complaint**, the **Member** or **Officer** who is the target of the **Complaint**, or if the target is the **Society**, the **Committee**, are advised of the **Complaint** and requested to respond **In Writing** within 10 **Working Days**.

For a moderate **Complaint**, once a response has been received and distributed to the originator of the **Complaint**, the complaints subcommittee will:

- Make a decision on how it is to be handled; and
- Write a complaint assessment; and
- Request the **Secretary** to distribute it to the originator and target of the **Complaint** within 10 **Working Days**

For a serious **Complaint**, once a response has been received and distributed to the originator of the **Complaint** the complaints subcommittee will:

- Schedule an online or in person meeting within 15 **Working Days** involving the complaints subcommittee, the originator, the target, and the **President, Secretary** or nominee. In this meeting both the originator and target will have the opportunity to speak; and
- Immediately following the meeting, discuss the hearing with the **President, Secretary** or nominee; and
- Make a decision on how the **Complaint** should be handled; and
- Write a complaint assessment and request the **Secretary** to distribute it to the originator and target of the **Complaint** within 10 **Working Days**.

9.5 Complaint assessment appeal

On receipt of a complaint assessment, should the originator object to the decision, within no more than four weeks from the despatch of the assessment, the originator should explain their **reasons In Writing** to the **Secretary**. This communication will be forwarded by the **Secretary** to the **President**.

The **President** will assess the **Complaint** and either make a final decision or refer the **Complaint** back to the complaints subcommittee for reassessment.

The decision of the **President** is final, and no further correspondence in relation to the **Complaint** will then be accepted, unless the direction to the complaints subcommittee is to reassess the **Complaint**.

10. Liquidation and removal from the register

10.1 Resolving to put society into liquidation

The **Society** may be liquidated in accordance with the provisions of Part 5 of the **Act**.

The **Committee** shall give 25 **Working Days Notice In Writing** to all **Members** of the proposed resolution to put the **Society** into liquidation.

The **Committee** shall also give written **Notice** to all **Members** of the **General Meeting** at which any such proposed resolution is to be considered. The **Notice** shall include all information as required by section 228(4) of the **Act**.

Any resolution to put the **Society** into liquidation must be passed by a simple majority of all **Members** present and voting. A further **Special General Meeting** shall be called and held not earlier than 20 **Working Days** after the day of the meeting at which such resolution was passed to confirm or reject such resolution by resolution. If the resolution is confirmed at such **Special General Meeting**, the **Society** shall be wound up.

10.2 Resolving to apply for removal from the register

The **Society** may be removed from the **Register** in accordance with the provisions of Part 5 of the **Act**.

The **Committee** shall give 25 **Working Days** written **Notice** to all **Members** of the proposed resolution to remove the **Society** from the **Register**.

The **Committee** shall also give written **Notice** to all **Members** of the **General Meeting** at which any such proposed resolution is to be considered. The **Notice** shall include all information as required by section 228(4) of the **Act**.

Any resolution to remove the **Society** from the **Register** must be passed by a simple majority of all **Members** present and voting.

10.3 Surplus assets

If the **Society** is liquidated, or removed from the **Register**, no distribution shall be made to any **Member**, and if any property remains after the settlement of the **Society**'s costs, debts and liabilities, that property must not be paid to or distributed amongst the **Members** of the **Society**, or any of them, but must be given or transferred to one or more charitable institutions or clubs within New Zealand having objects similar to or in sympathy with the objects of the **Society**, or to one or more charitable funds or causes within New Zealand the purposes of which are likely to further or be in sympathy with the objects for which the **Society** is constituted so long as the **Society** complies with this **Constitution** and the **Act** in all other respects.. The recipients must be determined by a majority of **Members** present in person at a **General Meeting** to be held in accordance with these Rules at or before the winding up, or the dissolution and in default of the recipients being determined in the above manner, then the recipients are to be as determined by the High Court of New Zealand.

11. Alterations to the Constitution

11.1 Amending this Constitution

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

The **Society** may amend or replace this **Constitution** at a **General Meeting** called in accordance with Clause 3 and subject to the Objects of the **Society** by a resolution passed by three fourths of those **Members** present and voting. It is recommended that the **Constitution** be reconsidered at every **Annual General Meeting**.

The **Committee** may propose resolutions to amend or replace this **Constitution** as long as three fourths of the **Committee** agree. Notice of the proposed resolution is to be given with **Notice** of the **General Meeting** and accompanied by a written explanation of the reasons for the proposal.

Any proposed resolution instigated by **Members** to amend or replace this **Constitution** shall be signed by at least 15 eligible **Members** and given **In Writing** to the **Committee** at least 30 **Working Days** before the **General Meeting** at which the resolution is to be considered and accompanied by a written explanation of the reasons for the proposal.

Any amendment approved by a **General Meeting** shall be notified to the Auckland Council through the Manager of **the Gardens**.

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

If the **Society** is registered as a charity under the Charities Act 2005 the amendment shall also be notified to Charities Services as required by section 40 of that Act.

12. Other

12.1 Bylaws.

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

Changes to the **Bylaws** initiated by the **Committee** require a three fourths majority decision of the **Committee**. All changes must be notified to **Members**.

Bylaws may be reviewed by **Members** at a **General Meeting** provided the **Notice** has been given with the **Notice** of the **General Meeting**. Any changes made must be approved by a simple majority of **Members** at the **General Meeting**.

13. General

A copy of the **Constitution** and any bylaws for the conduct of the **Society** shall always be available for inspection by **Members** upon request directed to the **Secretary**.

14. Interpretation of Constitution

Should any matter arise which has not been provided for in this **Constitution** or should any question occur as to its interpretation, the **Committee** shall consider the same and its determination on the matter of omission or interpretation shall be final and binding on all **Members**.

BYLAWS

These will need to be all checked for consistency with new **Constitution** once that is ratified

Policies and procedures have been developed for

- The library
- The Buchanan Award –
- Research and Special Projects
- Dingley Bequest to be written
- McLeavy Award
- Staff award – to be determined
- Visiting Artist Programme
- Memorial seats
- Sub-committees This is now covered in the constitution so remove
- Performance Review Sub-committee
- Risk Management Sub-committee
- Proposals requiring funding
- Purchasing
- Credit card use
- Financial Risk
- Copyright
- Communication
- Privacy
- Treasurer's role
- Secretary's role – to be spelt out
- Health and Safety