

Constitution of Property Council of New Zealand Incorporated

Adopted 1 November 2024

CONTENTS

PART ONE – INTRODUCTORY RULES	1
1. NAME AND REGISTERED OFFICE	1
2. DEFINITIONS AND INTERPRETATION	1
3. PURPOSES OF PCNZ	3
4. POWERS	4
PART TWO - MEMBERSHIP	4
5. MEMBERS	4
6. CLASSES OF MEMBERSHIP	5
7. INDUSTRY LEADERS	6
8. CESSATION OF MEMBERSHIP	6
PART THREE – GENERAL MEETINGS.....	7
9. GENERAL MEETINGS	7
10. PROCEDURE AT GENERAL MEETINGS	8
11. APPOINTMENT OF PROXIES	9
12. RESOLUTION IN LIEU OF GENERAL MEETING	10
PART FOUR - MANAGEMENT	10
13. BOARD.....	10
14. BYLAWS	12
15. NATIONAL AND REGIONAL COMMITTEES	12
16. INDEMNITY AND INSURANCE	13
17. INTERESTS OF DIRECTORS.....	14
PART FIVE – ADMINISTRATIVE AND OTHER MATTERS	15
18. RECORDS	15
19. DISPUTE RESOLUTION	16
20. METHOD OF CONTRACTING	17
21. FINANCE	18
22. LIQUIDATION, WINDING UP AND DISTRIBUTION OF SURPLUS ASSETS	18
23. SURPLUS ASSETS	18
24. AMENDMENTS TO THE CONSTITUTION	18

CONSTITUTION
OF
PROPERTY COUNCIL OF NEW ZEALAND INCORPORATED
PART ONE – INTRODUCTORY RULES

1. NAME AND REGISTERED OFFICE

- 1.1 **Name:** The name of the society is Property Council of New Zealand Incorporated ("**PCNZ**").
- 1.2 **Registered office:** The registered office of PCNZ shall be at such place in New Zealand as the Board may determine from time to time.

2. DEFINITIONS AND INTERPRETATION

- 2.1 **Definitions:** In this Constitution, unless the context otherwise requires:

"**Act**" means the Incorporated Societies Act 2022.

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

"**Board**" means PCNZ's Board of Directors, as established by clause 13.1, being PCNZ's governing body and the body referred to as the "committee" in section 5 of the Act.

"**Board Chair**" means a Director who has been elected by the Board to serve as chairperson of the Board under clause 13.3.

"**Business Day**" means any day other than a Saturday, Sunday or statutory public holiday in Auckland.

"**Bylaws**" means the bylaws of PCNZ, as constituted or amended from time to time by the Board under clause 14.1.

"**Chair**" means the Director or Member's Representative elected to act as chairperson of a General Meeting in accordance with clause 10.6.

"**Circulation Date**" has the meaning given to it in clause 12.2.

"**Class**" means a class of membership to PCNZ as determined by the Board under clause 6.1

"**Committee**" means a committee established by the Board under clause 15.1.

"**Complaint**" has the meaning given to it by clause 19.1.

"**Constitution**" means this constitution, as amended from time to time.

"Contact Person" means a person appointed by the Board as the contact person for the Society under clause 13.14.

"Director" means a director of PCNZ, appointed under clause 13.4, being the role referred to as "officer" in section 5 of the Act.

"Dispute" has the meaning given to it by clause 19.3.

"Disputes Panel" means the panel established by the Board under clause 19.3.

"Eligible Person" has the meaning given to it in clause 13.9.

"Financial Member" is a Member who has not been deemed an Unfinancial Member.

"General Meeting" means either an Annual General Meeting or a Special General Meeting of PCNZ.

"Indemnified Person" has the meaning given to it under clause 16.

"Industry Leader" means a Member who the Board has admitted to the Industry Leaders Class.

"Interested" means, in respect of a Director, a Director who has an interest in a matter under the Act, and **"Interest"** has a corresponding meaning.

"Member" means an organisation properly admitted as a member of PCNZ under this Constitution and in accordance with the Bylaws, who has not ceased to be a Member.

"Member's Representative" means a representative of a Member appointed under clause 5.8.

"Notice" means notice delivered to the Members by PCNZ using each Member's contact information provided to PCNZ in accordance with this Constitution and the Bylaws.

"Ordinary Resolution" means a resolution that is approved by a simple majority of the votes of those Members entitled to vote and voting on the question.

"PCNZ" means Property Council of New Zealand Incorporated.

"Proxy" means either a Member or the Returning Officer (as the case may be) appointed by another Member to be a proxy for that appointing Member at a General Meeting.

"Proxy Form" means a form published by the Board under clause 11.1 to enable Members to appoint a Proxy.

"Returning Officer" means a person appointed by the Board as the returning officer under clause 10.8.

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

"Subclass" means a subclass of membership of a Class, as determined by the Board under clause 6.2.

"Unfinancial Member" has the meaning given to it in clause 5.7.

2.2 **Interpretation:** In this Constitution, unless the context otherwise requires or specifically states otherwise:

- (a) the table of contents, headings and descriptions relating to sections of the Act, are inserted for convenience only and shall be ignored in construing this Constitution;
- (b) the singular includes the plural and vice versa;
- (c) reference to a statute or other law includes regulations, rules, orders and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of adoption of this Constitution);
- (d) "written" and "in writing" include any means of reproducing words, figures and symbols in a tangible and visible form;
- (e) words and expressions defined or explained in the Act (unless expressly defined or explained in this Constitution) have the same meaning in this Constitution;
- (f) any word or expression cognate with a definition in this Constitution has a meaning corresponding or construed to that definition; and
- (g) references to clauses and sub-clauses are references to clauses and sub-clauses in this Constitution, unless stated otherwise.

2.3 **Constitution not to prevail over Act:** This Constitution has no effect to the extent that it contravenes the Act, or is inconsistent with it, provided that if there is any conflict between:

- (a) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; or
- (b) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,

the provision, word or expression in this Constitution prevails.

2.4 **Constitution to prevail over Bylaws:** If there is any conflict between this Constitution and the Bylaws, the Constitution shall prevail. If there should be any inconsistency between the Constitution and the Bylaws, the Bylaws shall be amended accordingly.

3. PURPOSES OF PCNZ

3.1 **Purposes:** The primary purposes of PCNZ are to:

- (a) be a champion and leader of the property industry;
- (b) showcase the property industry's contribution to the community and the New Zealand economy and build awareness of PCNZ's purpose and offering to Members, the wider industry and the public;

- (c) deliver timely, relevant, valuable and informative communications that position PCNZ as an industry leader;
- (d) undertake a national and regional advocacy agenda that is high impact and aims to influence the Government and other decision makers to make decisions or policy that support and foster a thriving property industry;
- (e) inform, educate and foster mutually beneficial relationships between our Members and the wider industry;
- (f) celebrate the property industry through awards and recognition programmes;
- (g) initiate and undertake research relating to the property industry;
- (h) work and collaborate with other industry groups or organisations that assist in promoting the purposes of PCNZ; and
- (i) do all things reasonably incidental or conducive to attaining the above purposes.

3.2 **No financial gain:** It is not a purpose of PCNZ to operate for the financial gain of its Members.

4. **POWERS**

4.1 **Powers:** PCNZ has all the rights, powers and privileges conferred onto it by the Act and by law, including the power to borrow money and incur debt.

4.2 **Furtherance of purposes:** PCNZ may only exercise its powers to achieve or further its purposes.

4.3 **Actions permitted by the Act:** PCNZ may undertake an action that results in a financial benefit being provided to a Member only if the Act provides that in undertaking that action PCNZ does not have a purpose of financial gain and PCNZ is not being carried on for the financial gain of any of its Members.

PART TWO - MEMBERSHIP

5. **MEMBERS**

5.1 **Number of Members:** PCNZ must maintain the minimum number of Members required by the Act. The maximum number of Members is unlimited.

5.2 **Admission of Members:** The Board must provide the process for how a Member is admitted to PCNZ in the Bylaws. A Member will not be admitted to PCNZ unless they have provided written consent to become a Member.

5.3 **Obligations and rights of Members:** Every Member:

- (a) must comply with this Constitution and the Bylaws;

- (b) must promote the interests and purposes of PCNZ and shall do nothing to bring PCNZ into disrepute;
- (c) must provide PCNZ with that Member's name and contact details (such as the Member's registered address and address for service, email address and telephone number) and any other details required by the Act or the Bylaws and promptly advise PCNZ in writing of any changes to those details; and
- (d) may only exercise the rights of membership (including attending and, where applicable, voting at General Meetings) if all subscriptions, levies and any other fees have been paid to PCNZ by the relevant due date.

5.4 **Other obligations and rights:** The Bylaws may provide any further rights or obligations of membership to PCNZ.

5.5 **Annual subscriptions:** The Board shall determine the annual subscription amount for membership to PCNZ. The Board may set a separate annual subscription amount for each Class or Subclass of membership to PCNZ.

5.6 **Other fees or levies:** From time to time the Board may:

- (a) impose additional levies on a Class or Subclass of Members; or
- (b) charge fees in connection with a Member's involvement with specific PCNZ events or activities.

5.7 **Non-payment of subscriptions, fees or levies:** If a Member fails to pay any subscription, fee or levy imposed against it by the relevant due date, they shall be deemed unfinancial ("**Unfinancial Member**") for the purposes of clauses 9.3, 10 and 24.2 until such time as the relevant amount has been paid in full. Unfinancial Members shall have no voting rights and shall not be counted when determining the quorum at a General Meeting. Any Member which is not an Unfinancial Member shall be deemed a Financial Member.

5.8 **Nomination of Representatives:** Each Member must, by written notice to PCNZ, nominate an officer, partner, director or employee of that Member to be its representative in respect of its membership to PCNZ ("**Member's Representative**"). A Member may nominate a new Member's Representative at any time by providing written notice to PCNZ.

6. CLASSES OF MEMBERSHIP

6.1 **Classes:** The Board may divide the Members into two or more Classes. The Board must specify the name of each Class and any rights, obligations, incidentals or criteria of membership to each Class in the Bylaws.

6.2 **Subclasses:** The Board may divide a Class of membership into two or more Subclasses. The Board must specify the rights, obligations, incidentals or criteria of membership to each Subclass in the Bylaws.

6.3 **Membership to a Class or Subclass:** Each Member may only belong to one Class and Subclass. The Board may make a determination as to which Class or Subclass of membership a particular Member belongs.

7. INDUSTRY LEADERS

7.1 Industry Leaders Class: Notwithstanding clause 6.1, there shall be an Industry Leaders Class. An Industry Leader must:

- (a) own or manage a significant or substantial property portfolio; or
- (b) undertake significant or substantial investment, development or construction activities in the New Zealand property sector; or
- (c) provide services to the New Zealand property industry on a substantial or significant scale, and

meet any other criteria prescribed by the Bylaws, in each case as determined by the Board.

7.2 Admission as an Industry Leader: An organisation may not be admitted as an Industry Leader unless the Board, being reasonably satisfied that the organisation meets all eligibility criteria in clause 7.1, and any additional criteria prescribed by the Bylaws, approves that organisation's admission as an Industry Leader.

7.3 Minimum number of Members: There must always be at least one Member admitted to the Industry Leaders Class.

8. CESSATION OF MEMBERSHIP

8.1 Cessation: A Member ceases to be a Member:

- (a) immediately on liquidation, dissolution or de-registration;
- (b) by resignation by written notice to PCNZ;
- (c) on termination of a Member's membership following a dispute resolution process under this Constitution; or
- (d) by resolution of the Board, providing that the Board may only remove a Member if that Member:
 - (i) no longer meets any applicable membership eligibility criteria;
 - (ii) has failed to pay any subscription, fee, levy or charge by its due date and has not remedied that failure within 10 Business Days of receiving notice from PCNZ to do so;
 - (iii) has acted in contravention of the Constitution or Bylaws; or
 - (iv) may otherwise be removed in accordance with the Constitution or Bylaws.

8.2 Effective date of cessation: A Member ceases to be a Member in accordance with clause 8.1 with effect from (as applicable) –

- (a) the date of the Member's liquidation, dissolution or de-registration;

- (b) the date of receipt and acceptance of the Member's notice of resignation by the Board (or any subsequent date stated in the notice of resignation);
- (c) the date of termination of the Member's membership under this Constitution or the Bylaws; or
- (d) the date specified in a resolution of the Board removing a Member, provided that the Board promptly notifies that Member in writing that its membership has been terminated.

8.3 **Obligations on resignation or termination:** A Member who ceases to be a Member under this Constitution:

- (a) remains liable to pay all subscriptions, levies or fees imposed upon the Member before the date of their resignation or termination;
- (b) shall return to PCNZ all material or property provided to them, their Member's Representative or their related parties; and
- (c) shall cease to be entitled to any membership rights stipulated by this Constitution or the Bylaws.

PART THREE – GENERAL MEETINGS

9. GENERAL MEETINGS

9.1 **Annual General Meetings:** An Annual General Meeting must be held once a year in September on a date and at a location determined by the Board and consistent with any requirements in the Act.

9.2 **Annual General Meeting business:**

- (a) The business of the Annual General Meeting must include:
 - (i) confirmation of the minutes of the previous General Meeting;
 - (ii) receipt of PCNZ's annual report and the audited financial statements for PCNZ's previous accounting period; and
 - (iii) consideration of any motions validly proposed by the Board or a Member.
- (b) The Board must, at each Annual General Meeting, present the following information:
 - (i) an annual report on the affairs of PCNZ during the most recently completed accounting period;
 - (ii) the audited annual financial statements for that period;

- (iii) notice of any disclosures of conflicts of interest made by Directors during that period (including details of the nature and extent of the interest and any monetary value of the interest if it can be quantified); and
 - (iv) any other matters required by the Act.
- (c) The Board must ensure that minutes are kept of all proceedings at all Annual General Meetings.

9.3 **Special General Meetings:** The Board may resolve to call a Special General Meeting at any time, at a date and location fixed by the Board. The Board must call a Special General Meeting within 45 days of receiving a written request signed by the lesser of 5 per cent of current Financial Members or 25 Financial Members.

9.4 **Special General Meetings' business:** The Board resolution or Members' request to call a Special General Meeting must state the business that the Special General Meeting is to deal with. A Special General Meeting shall only consider and deal with the business specified in the Board resolution or Members' request.

10. PROCEDURE AT GENERAL MEETINGS

10.1 **Notice:** The Board shall give all Members at least 30 days' Notice of any General Meeting and the business to be conducted at the General Meeting. The General Meeting and its business will not be invalidated simply because one or more Members did not receive the Notice.

10.2 **Quorum:** No General Meeting may be held unless at least four Financial Members and one Industry Leader attends by Member's Representative or by Proxy. This will constitute a quorum. If within half an hour after the time appointed for a meeting a quorum is not present the meeting shall be adjourned to a day, time and place determined by the Board, and if at such adjourned meeting a quorum is not present, those Financial Members present by Member's Representative or Proxy shall be deemed to constitute a sufficient quorum.

10.3 **Voting etc:**

- (a) All Financial Members may attend, speak and vote at General Meetings:
 - (i) in person, through their Member's Representative; or
 - (ii) by a validly appointed Proxy.
- (b) The method of voting may be by voices or hands as determined by the Chair.
- (c) Unless otherwise required by this Constitution, all motions at a General Meeting shall be decided by Ordinary Resolution.
- (d) The Chair, with assistance from the Returning Officer (as required), shall determine whether any motion has passed.

10.4 **Motions at General Meetings:**

- (a) The Board may put forward motions for the Members to vote on at a General Meeting, which shall be notified to the Members with the Notice of the General Meeting.
 - (b) Members may request that a motion be voted on ("**Member's Motion**") at a General Meeting by providing notice to the Board at least 20 days before that meeting. The Board must provide notice of any Member's Motions received at least 15 days before the meeting is to be held.
- 10.5 **Method of holding the General Meeting:** General Meetings may be held at one or more venues using any real-time audio, audio and visual, or electronic communication that gives each Member (including their Member's Representative or Proxy) reasonable opportunity to participate.
- 10.6 **Chair:** All General Meetings shall be chaired by a Director appointed by the Board. If all Directors are absent from the meeting, the meeting shall elect a Member's Representative of an Industry Leader to chair the meeting. The Chair has no vote except to the extent the Chair is appointed as a Member's Representative or Proxy of a Member.
- 10.7 **Powers of the Chair:** The Chair may:
- (a) with consent of the General Meeting, adjourn the General Meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place;
 - (b) direct that any person not entitled to be present at the meeting, obstructing the business of the meeting, behaving in a disorderly manner, being abusive or failing to abide by the directions of the Chair be removed from the General Meeting;
 - (c) in the absence of a quorum or in the case of emergency, adjourn the meeting or declare it closed.
- 10.8 **Returning Officer:** Prior to a General Meeting occurring, the Board shall appoint a Returning Officer. The role of the Returning Officer is to:
- (a) receive completed Proxy Forms and determine whether a Proxy has been validly appointed by a Member; and
 - (b) be available to be appointed as a Proxy by the Members, and vote in accordance with all received instructions.
- 11. APPOINTMENT OF PROXIES**
- 11.1 **Proxy Form:** The Board must publish a Proxy Form to enable Members to appoint a Proxy in relation to any General Meeting at least 15 days before the General Meeting. The Proxy Form must enable the Member to instruct their Proxy to vote for, against or abstain on any motion.
- 11.2 **Eligibility of Proxies:** Only another Member or the Returning Officer may be appointed as a Proxy. Where a Member is appointed as a Proxy, only that Member's Representative may exercise the voting rights.

- 11.3 **No-Discretionary votes:** If a Member has appointed the Returning Officer as its Proxy and the Member has not instructed the Returning Officer how to vote on a particular motion, the Returning Officer must abstain from voting on that motion.
- 11.4 **Receipt by Returning Officer:** Members shall deliver completed Proxy Forms to the Returning Officer, who shall determine whether a Proxy has been validly appointed by the Member. Proxy Forms must be received at least two days before the General Meeting.
- 12. RESOLUTION IN LIEU OF GENERAL MEETING**
- 12.1 **Resolution in lieu of General Meeting:** PCNZ may exercise any powers that would be exercised at a General Meeting by a written resolution approved by no less than 75% of the current Financial Members who together have at least 75% of the eligible voting rights at a General Meeting. Any such resolution may consist of several documents (including electronic communication such as by email) in similar form, each signed or approved by one or more Members (whose approval may be given by electronic communication, including email).
- 12.2 **Proposed resolution to be circulated to Members:** PCNZ must ensure:
- (a) the proposed resolution is dated with the date that it is first circulated to a Financial Member for the purpose of signing (the "**Circulation Date**");
 - (b) the proposed resolution is sent to every current Member, as far as is reasonably practical, on the Circulation Date; and
 - (c) that the proposed resolution will lapse if it is not approved in accordance with clause 12.1 within three months of the Circulation Date, and a statement to this effect is contained in the notice circulating the resolution.
- 12.3 **Society to send passed resolution:** Within five Business Days after a resolution has passed in accordance with clauses 12.1 and 12.2, PCNZ must send a copy of the resolution to each Member who did not approve the resolution.

PART FOUR - MANAGEMENT

13. BOARD

- 13.1 **Establishment:** PCNZ shall be managed by the Board, who shall exercise all powers of PCNZ in between General Meetings.
- 13.2 **Composition:** The Board shall consist of a minimum of five and a maximum of seven Directors.
- 13.3 **Board Chair:** Subject to the Bylaws, the Board must appoint one Director to serve as chairperson of the Board ("**Board Chair**"). In the event of an equality of votes, the outgoing Board Chair shall have a casting vote.
- 13.4 **Appointment:** Each year in September, the Industry Leaders Class must appoint a number of Eligible Persons as Directors, providing that, after taking into account any retiring

Directors, there shall be no more than seven Directors serving in office on 1 November that year. Any retiring Directors are eligible to be re-appointed as Directors.

- 13.5 **Term:** Each appointed Director shall assume office on 1 November of the year of their appointment and shall serve a term of two years.
- 13.6 **Removal:** Subject to the Bylaws, a Director shall be removed from office immediately if they:
- (a) are no longer an Eligible Person under clause 13.9;
 - (b) provide written notice to the Board of their resignation;
 - (c) are removed by resolution of the Board; or
 - (d) are no longer able to perform the functions of their office.
- 13.7 **Casual Vacancies:** If at any time there are fewer than seven Directors, the Board may, at any time, appoint an eligible person as a Director. Any Directors appointed under this clause 13.7 must retire on 31 October following the date they were appointed.
- 13.8 **Too few Directors:** If at any time there are fewer than five Directors, the Board may only act:
- (a) to appoint Directors under clause 13.7;
 - (b) to convene a Special General Meeting; or
 - (c) to reasonably respond to any emergency and take steps reasonably necessary to comply with the Act or this Constitution, including finalising accounts.
- 13.9 **Eligible Persons:** A Director must be:
- (a) a natural person who is at least 18 years of age;
 - (b) not disqualified from being an officer of an incorporated society under the Act; and
 - (c) a Member or a senior officer, senior employee, partner or director ("**Senior Officer**") of a Member,
- (an "**Eligible Person**").
- No person may be appointed as a Director while a Senior Officer of the Member, which that person represents, is already a Director.
- 13.10 **Quorum:** A quorum of the Board is a majority of currently appointed Directors. No business may be transacted at a Board meeting if quorum is not present.
- 13.11 **Conduct of PCNZ's affairs:** The Board will be responsible for the conduct of PCNZ's affairs and have all the powers necessary for managing, and for directing and supervising the management of, the operation and affairs of PCNZ.
- 13.12 **Exercise of powers:** The powers of the Board are exercisable by:

- (a) resolution passed at a meeting of the Board at which quorum is present; or
 - (b) written resolution signed by a majority of Directors.
- 13.13 **Delegation of powers:** The Board may delegate to a Committee, a Director, an employee of PCNZ, or to any other person, any one or more of its powers.
- 13.14 **Contact person:** The Board must appoint one to three person(s) who are ordinarily resident in New Zealand to act as PCNZ's contact person(s).
- 13.15 **Board meeting procedure:**
- (a) At least five Business Days' prior written notice of all Board meetings must be given to each Director. This notice requirement may, however, be waived for any Board meeting or meetings if all Directors agree to the waiver.
 - (b) The Board Chair will ordinarily chair each Board meeting unless otherwise decided by the Board.
 - (c) A resolution of the Board must be passed by a majority of the votes of the Directors present and entitled to vote unless this Constitution provides otherwise. Each Director will have one vote.
 - (d) Minutes must be kept of all proceedings at Board meetings.
 - (e) Except as otherwise provided for by this Constitution, the Board may regulate its own procedure.
- 13.16 **Bylaws:** Subject to this Constitution, the Bylaws may further provide for the appointment, eligibility and removal of Directors, composition of the Board, appointment of the Board Chair or Contact Person(s) and any Board meeting procedures.

14. BYLAWS

- 14.1 **Bylaws:** The Board, from time to time, may make and amend the Bylaws, and policies for the conduct and control of PCNZ's activities and code of conduct applicable to Members, providing that any Bylaws, policies or codes are not inconsistent with the Act or this Constitution.
- 14.2 **Bylaws to be binding:** The Bylaws shall be binding on all Members, Member's Representatives, Directors, Interns, officers and employees of PCNZ.

15. NATIONAL AND REGIONAL COMMITTEES

- 15.1 **Establishment:** The Board may establish one or more Committees on the basis of geographic area, subject matter, or any other basis that the Board determines.
- 15.2 **Disestablishment:** The Board may disestablish a Committee at any time.
- 15.3 **Charter:** Each Committee must adopt, and the Board must approve, a charter which sets out its operating procedures, including:

- (a) the purpose and functions of the Committee;
 - (b) the appointment and removal of Committee members; and
 - (c) the meeting procedures, including quorum and selection of and powers of the chairperson of the Committee meetings.
- 15.4 **Membership:** Notwithstanding clause 15.3, the Board may appoint or remove Committee members by resolution.
- 15.5 **Reporting:** Each Committee shall report to, and be under the supervision of, the Board.
- 15.6 **Powers:** No Committee shall:
- (a) commit PCNZ to any financial expenditure or bind PCNZ to any legal obligation without express approval of the Board; or
 - (b) further delegate any of its powers, unless permitted by the Bylaws.
- 15.7 **Other obligations and rights:** The Bylaws may further provide for the appointment, eligibility and removal of Committee members, composition of the Committees, appointment of the chair person of the Committee meetings and any Committee meeting procedures.

16. INDEMNITY AND INSURANCE

- 16.1 **Indemnities:** Subject to clause 16.2, every Director, Member, officer and employee of PCNZ (each an "**Indemnified Person**") will be indemnified by PCNZ:
- (a) for any costs incurred by the Indemnified Person in any proceeding that relates to liability for any act or omission in the Indemnified Person's capacity as a Director, officer, employee of PCNZ or Member in which judgment is given in the Indemnified Person's favour, or in which the Indemnified Person is acquitted, or which is discontinued;
 - (b) in respect of liability to any person other than PCNZ for any act or omission in their capacity as a Director, officer or employee of PCNZ, or its capacity as a Member, and costs incurred by the Indemnified Person in defending or settling any claim or proceeding relating to any such liability; and
 - (c) in respect of a Director only, any liability (other than a criminal liability) that arises due to a failure to comply with a duty imposed on the Director in their capacity as an officer under the Act or the common law, and costs incurred by the Director for any claim or proceeding relating to that liability,

and this indemnity shall continue in force, despite any subsequent revocation or amendment of this clause, in relation to any liability which arises out of any act or omission by an Indemnified Person prior to the date of such revocation or amendment, but may be further subject to any limitations contained in any deed or agreement from time to time in force between PCNZ and the Indemnified Person relating to indemnities.

- 16.2 **Exceptions:** An indemnity conferred by clause 16.1(b) shall not apply in respect of:
- (a) any criminal liability; or

- (b) a liability that arises out of a failure to act in good faith and in what the Director, Member, officer or employee believes to be the best interests of PCNZ when acting in their capacity as a Director, officer or an employee of PCNZ or its capacity as a Member.

An indemnity conferred by clause 16.1, shall not apply in respect of any liability or costs in respect of which an indemnity is prohibited by any legislation or law.

16.3 **Insurance:** Notwithstanding any other provision of this clause 16, PCNZ may, with the prior approval of the Board, effect insurance for a Director, Member, officer or employee of PCNZ, in respect of:

- (a) liability, not being criminal liability, for any act or omission in such capacity;
- (b) costs incurred by them in defending or settling any claim or proceeding relating to any such liability as described at clause 16.3(a); or
- (c) costs incurred by them or it in defending any criminal proceedings that have been brought against the Director, Member, officer or employee in relation to any act or omission in their capacity as a Director, officer or employee, or in its capacity as a Member, and in which they are acquitted.

16.4 **Definitions:** In this clause 16:

- (a) "Director" includes a former Director;
- (b) "officer" means an officer as that term is defined under the Act, and includes former officers; and
- (c) other words given extended meanings in the Act have those extended meanings.

17. INTERESTS OF DIRECTORS

17.1 **Disclosure of Interests:** A Director shall comply with the Act (relating to disclosure of interest of directors) but failure to comply with that section does not affect the operation of clause 17.2.

17.2 **Personal involvement of Directors:** Notwithstanding any rule of law or equity to the contrary, but subject to the Act (relating to avoidance of transactions in which a Director is Interested) and section 36(4)(a) of the Financial Reporting Act 2013 (prohibiting a director from acting as auditor of a specified entity), a Director may:

- (a) contract with PCNZ in any capacity;
- (b) be a party to any transaction with PCNZ;
- (c) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which PCNZ is a party or in which it is otherwise directly or indirectly interested or involved;
- (d) become a director or other officer of, or otherwise Interested in, any corporation promoted by PCNZ or in which the PCNZ may be directly or indirectly Interested; and

(e) retain any remuneration, profit or benefits in relation to any of the foregoing,
and no contract or arrangement of any kind referred to in this clause may be avoided by reason of a Director's Interest.

17.3 **Interested Directors may not vote:** A Director who is Interested in a transaction entered into, or to be entered into, by PCNZ may not:

(a) vote on any matter relating to the transaction; or

(b) sign a document relating to the transaction on behalf of the PCNZ; however,

a Director who is Interested in a transaction may attend a meeting of the Board at which any matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum.

17.4 **Board to call Special General Meeting:** If, in respect of a matter, 50% or more Directors are prevented from voting under clause 17.3, the Board must call a Special General Meeting to determine that matter.

PART FIVE – ADMINISTRATIVE AND OTHER MATTERS

18. RECORDS

18.1 **Register of Members:** The Board shall keep an up-to-date register of Members, recording for each Member its name, contact details and any other information required by this Constitution, the Bylaws or prescribed by the Act.

18.2 **Register of interests:** The Board shall at all times maintain an up-to-date register of Interests disclosed by Directors, as required by the Act.

18.3 **Access to information:**

(a) A Member may at any time make a written request to PCNZ for information held by PCNZ. The request must specify the information sought in sufficient detail to enable it to be identified.

(b) PCNZ must, within a reasonable time of receiving such a request:

(i) provide the information;

(ii) agree to provide the information within a specified period;

(iii) agree to provide the information within a specified period if the Member pays a reasonable charge to PCNZ (which must be specified and explained) to meet the cost of providing the information; or

(iv) refuse to provide the information, specifying the reasons for refusal.

(c) PCNZ may refuse to provide any information on any grounds set out in the Act, or if (in PCNZ's reasonable opinion) disclosure would result in a breach of PCNZ's legal obligations to third parties or at law.

- (d) Nothing in this Constitution limits the information privacy principles of the Privacy Act 2020.

18.4 **Withdrawal of access to information request:** If PCNZ requires the Member to pay a charge for the information under clause 18.3(b), the Member may withdraw the request, and must be treated as having done so unless, within 10 Business Days after receiving notification of the charge, the Member informs PCNZ:

- (a) that the Member will pay the charge; or
- (b) that the Member considers the charge to be unreasonable.

19. DISPUTE RESOLUTION

19.1 **Raising disputes:** Any Member may raise a grievance or complaint against another Member (or its Member's Representative or agents), the Board or PCNZ, in respect of that Member's involvement in PCNZ activities by notice in writing to the Board ("**Complaint**"). For the avoidance of doubt, this clause 19 does not entitle a Member to raise a grievance or complaint against another Member (or its Member's Representative or agents) where such grievance or complaint relates to a contractual dispute or other matter between Members to which PCNZ is not a party or which is not related to PCNZ activities.

19.2 **Disciplinary proceedings:** The Board may initiate a disciplinary procedure against a Member regarding alleged misconduct or contravention of the Constitution or the Bylaws.

19.3 **Disputes Panel:** Upon receipt of a Complaint from a Member or following the initiation of a disciplinary procedure (each a "**Dispute**"), the Board shall appoint three persons to form a Disputes Panel to hear the matter and propose a resolution to the Board. No person may be appointed to the Disputes Panel if they would be subject to a conflict of interest in deciding the matter.

19.4 **Dispute procedure:** The Disputes Panel must conduct the hearing and determination of the Dispute in accordance with the Act, including conducting the hearing in accordance with the principles of natural justice and any minimum requirements imposed by the Act.

19.5 **Board to approve outcome:**

- (a) After receiving the proposed resolution from the Disputes Panel, the Board shall determine whether to approve the resolution or not.
- (b) If there are reasonable grounds to believe that a Director may not be impartial or able to consider the matter without a predetermined view, that Director must be excluded from voting on the proposed resolution, however, they may be included among the Directors present at the meeting for the purposes of a quorum.
- (c) If a majority of Directors are excluded from voting on a proposed resolution under clause 19.5(b) the Board must either:
 - (i) call a Special General Meeting for the purposes of voting to approve or reject the proposed resolution; or

- (ii) delegate the decision to approve the recommendation to a Committee or any other person under clause 19.6.
 - (d) The decision of the Board or a General Meeting to approve or reject a recommendation from the Disputes Panel is final and will not be subject to the review under this clause 19.
- 19.6 **Board may delegate approval of outcome:** The Board may delegate the approval of any resolution proposed by the Disputes Panel to a Committee, or any other person. The decision to approve or reject a recommendation will be final and binding as if made by the Board under clause 19.5, provided that the Board may not delegate to any person or group of people if there are reasonable grounds to believe that a decision maker may not be impartial or able to consider the matter without a predetermined view.
- 19.7 **Other remedies:** Nothing in this Constitution shall affect a person's right to pursue alternate dispute resolution remedies, including litigation, arbitration or mediation.
- 19.8 **Decision not to progress matter:** The Board may decide to not proceed with Complaint if:
- (a) the matter is trivial;
 - (b) the matter does not appear to disclose any misconduct or damage to that Member's rights or interests;
 - (c) the complaint or grievance is without foundation or there is no apparent evidence to support it; or
 - (d) the conduct, incident or issue has already been dealt with and investigated on behalf of PCNZ,
- and that decision shall be final and binding on the parties.
- 19.9 **Bylaws:** The Bylaws may further provide for the dispute resolution process.
- 20. METHOD OF CONTRACTING**
- 20.1 **Deeds:** A deed which is to be entered into by PCNZ may be signed on behalf of PCNZ, by:
- (a) two or more Directors; or
 - (b) a Director, or any person authorised by the Board, whose signature must be witnessed; or
 - (c) one or more attorneys appointed by PCNZ.
- 20.2 **Other written contracts:** An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by PCNZ, may be signed on behalf of PCNZ by a person acting under the express or implied authority of PCNZ.
- 20.3 **Other obligations:** Any other obligation or contract may be entered into on behalf of PCNZ in writing or orally by a person acting under the express or implied authority of PCNZ.

21. FINANCE

- 21.1 **Balance date:** The balance date and end of financial year of PCNZ shall be 31 March each year.
- 21.2 **Financial records:** The Board shall cause to be maintained proper financial records, including producing annual financial statements.
- 21.3 **Auditor:** The Board must appoint a qualified auditor to audit the annual financial statements.

22. LIQUIDATION, WINDING UP AND DISTRIBUTION OF SURPLUS ASSETS

- 22.1 **Removal from the register:** If PCNZ has ceased operating, discharged its debts and liabilities to its known creditors and distributed its surplus assets in accordance with this Constitution, the Board may apply to the Registrar of Incorporated Societies to remove PCNZ from the register.
- 22.2 **Obligations during liquidation etc:** If PCNZ is placed into liquidation, receivership or statutory management, each Member's liability to PCNZ will be limited to the balance of any annual subscription, fee or levy unpaid at the time the order for the appointment of a liquidator, receiver or statutory manager is made.

23. SURPLUS ASSETS

- 23.1 **Distribution of assets:** If PCNZ is wound up, liquidated or removed from the Register of Incorporated Societies, or a resolution to do so is passed by the Members at a General Meeting, no distribution shall be made to any Members but shall be distributed to a not-for-profit entity that has a similar purpose to PCNZ, as determined by the Board at the time of dissolution.
- 23.2 **Charitable distribution:** If clause 23.1 cannot be given effect to, the Members may resolve to distribute any surplus assets to any New Zealand registered charity.

24. AMENDMENTS TO THE CONSTITUTION

- 24.1 **Amendment at General Meeting:** PCNZ may amend or replace this Constitution at a General Meeting by Ordinary Resolution, provided that such majority of votes includes the votes of two thirds of Industry Leaders present and voting, with such Members and Industry Leaders in each case being represented by a Member's Representative or Proxy.
- 24.2 **Proposed motions to amend the Constitution:** Any proposed motion to amend or replace this Constitution must:
- (a) be signed on behalf of the lesser of 5 per cent of current Financial Members or 25 Financial Members and given in writing; or
 - (b) be approved by the Board.

- 24.3 **Accompanying information:** Any motion to amend the Constitution must be accompanied by a written explanation for the reasons for the proposal, and any recommendations the Board has.
- 24.4 **Minor technical amendments:** The Board may, by unanimous resolution, amend this Constitution if the amendment has no more than a minor effect, corrects errors or makes similar technical amendments:
- (a) The Board must provide written notice to every Financial Member of PCNZ stating the text of the amendment and that the Financial Member has a right to object to the amendment.
 - (b) If no objection is received within 20 Business Days after the date the notice is served, the Board may make the amendment.
- 24.5 **Updates to the Act:** If, following replacement or amendment of the Act, this Constitution is no longer consistent with the Act, the Board may, by unanimous resolution, amend this Constitution to the extent required to make it consistent with the Act.