

RULES OF ENTERPRISE WHANGAMATA INCORPORATED

1. NAME

- 1.1 The name of the society is “**Enterprise Whangamata Incorporated**” which is referred to in these Rules as “Enterprise Whangamata”.

2. INTERPRETATION

- 2.1 In these Rules, unless the context indicates otherwise:

“Act” means the Incorporated Societies Act 2022.

“Annual General Meeting” means the annual general meeting of Enterprise Whangamata convened and conducted in accordance with these Rules.

“Board” means the committee of Members for the time being elected to administer and manage the affairs of Enterprise Whangamata pursuant to these Rules.

“Body Corporate” means registered companies, incorporated societies, government and local authorities and registered charitable trusts.

“Business” means all business entities of a lawful and continuing nature including (but without limitation) retail, wholesale, manufacturing, trade, commercial, industrial, service, tourism and professional operations, and business activities carried out by charitable, social or similar organisations, in every case whether incorporated or not.

“Business Day” means any day of the week other than Saturday, Sunday or other New Zealand Public Holiday as observed at the place where the Registered Office of Enterprise Whangamata is situated and which commences at 9am and terminates at 5pm.

“Bylaws” means the bylaws of Enterprise Whangamata as added or amended to from time to time.

“Chairperson” means the chairperson elected in accordance with Rule 12.

“Contact Person” means a natural person who is at least 18 years of age, ordinarily resident in New Zealand, and who is appointed by the Board pursuant to Rule 7.7 of these Rules for the purpose of receiving communications from the Registrar under the Act. The Contact Person must not be disqualified from being an officer of an incorporated society, and their name and contact details must be provided to the Registrar and kept up to date.

“Financial Statement” has the same meaning as prescribed by the Act.

“General Meeting” means an Annual General Meeting and a Special General Meeting.

“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.

“Matter” means:

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

“Meeting” means any Annual General Meeting, any Special General Meeting, and any Board Meeting.

“Member” means a member of Enterprise Whangamata accepted to membership in accordance with Rule 6 and 7.

“Membership Fee” means the membership fee prescribed by the Board from time to time in accordance with Rule 8.

“Money or Other Assets” means any real or personal property or interest therein, owned or controlled to any extent by Enterprise Whangamata.

“Objects” means the objects of Enterprise Whangamata as outlined in Rule 4.

“Officer” means an officer of Enterprise Whangamata being a natural person who is:

- a member of the Board, or
- occupying a position in Enterprise Whangamata that allows them to exercise significant influence over the management or administration of Enterprise Whangamata.

“Powers” means the powers of Enterprise Whangamata as outlined in Rule 5.

“Register of Members” means the register of Members kept by the Secretary in accordance with Rule 7.6.

“Registrar” means the person holding office from time to time of Registrar of Incorporated Societies in terms of the Act.

“Rules” means these rules, including any Bylaws, as originally framed as the constitution of Enterprise Whangamata, or as from time to time altered by resolution of Enterprise Whangamata.

“Secretary” means the secretary elected in accordance with Rule 13.

“Special General Meeting” means any special general meeting of Enterprise Whangamata convened and conducted in accordance with these Rules.

“Term” means the period of time from one Annual General Meeting to the next Annual General Meeting.

“Treasurer” means the treasurer elected in accordance with Rule 14.

“Whangamata District” means the geographic area defined by Thames Coromandel District Council under Whangamata Community Board which includes the town of Whangamata and the outlying coastal and rural areas of Onemana, Opoutere and Ohui.

2.2 A reference to the singular includes the plural and vice versa.

2.3 Headings are for reference only and do not form part of these Rules.

3. OFFICE

3.1 The registered office of Enterprise Whangamata will be at such place as determined by the Board and until the Board determines otherwise will be at c/- Whangamata Public Relations Inc. trading as Whangamata i-Site Visitor Centre, 616 Port Road, P O Box 215, Whangamata 3260.

4. OBJECTS

4.1 The objects of Enterprise Whangamata are:

- (a) To advocate, assist and advance the interests of the Business community participating in Business in the Whangamata District;
- (b) To promote and assist the development of the Whangamata District as being an attractive, friendly, vibrant, innovative, unique all year destination with the aim of attracting visitors, tourists, new residents, and

Business interests to the Whangamata District;

- (c) To assist, promote and encourage Business or any other enterprise which may contribute to the economic, social, and cultural wealth of the Whangamata District community in a way that maintains and celebrates the Whangamata District's unique appeal;
- (d) To develop and celebrate a strong and active Business community network that ensures businesses are well informed, provides the opportunity to discuss issues impacting on Business, secures when appropriate unity of action in relation to such issues, redress and remove any grievances in connection with the Business community, and other matters that may affect businesses;
- (e) To promote positive relationships and collaboration amongst Members and other organisations connected with any matter relating to the Business community in the Whangamata District;
- (f) To represent and promote the interests of Members in relation to legislation, regulations, bylaws and other matters affecting Business and the development of the Whangamata District where those activities or interests are concerned with those Objects of Enterprise Whangamata from time to time and may be likely to advance the Objects of Enterprise Whangamata;
- (g) To promote, foster and participate in any other organisations whether incorporated or not whose objects are similar to those of Enterprise Whangamata and may be likely to advance the Objects of Enterprise Whangamata.

5. POWERS

5.1 The powers of Enterprise Whangamata will be:

- (a) To purchase, lease, hire or otherwise acquire any real or personal property and any rights or privileges and to hold, sell, improve, manage, develop, exchange, lease, dispose or otherwise deal with all or any part of the property and rights of Enterprise Whangamata;
- (b) To control and raise money, to borrow, guarantee, invest, loan or advance monies and to secure the payment of such by way of mortgage, or charge over all or part of its real and personal property on such terms and conditions as the Board considers to be in the best interests of Enterprise Whangamata PROVIDED THAT Enterprise Whangamata will not lend money at less than commercial rates, having regard to the nature and term of the loan, to any person (as defined in the Income Tax Act 1994):

- (i) who is a Member;
 - (ii) who is a shareholder or director of any company by which any business of Enterprise Whangamata is carried on;
 - (iii) who is a settlor or trustee of a trust that is a shareholder of any company by which the business of Enterprise Whangamata is carried on;
 - (iv) if the person, company, settlor, trustee, shareholder, or director referred to in any of paragraphs (b)(i) to (iii) of this Rule are Associated Persons as defined in the Income Tax Act 1994.
- (c) To build construct, maintain, equip, and alter any premises, building or facilities and carry out any works Enterprise Whangamata considers necessary or desirable for the advancement or improvement of such buildings, premises, or facilities;
- (d) To determine, raise and receive money, in exchange for services, subscriptions, grants, donations, fees, levies, sponsorship, local or central government agencies funding or otherwise;
- (e) To determine regulations, bylaws, policies and procedures for the governance and management of Enterprise Whangamata;
- (f) To give such security for the discharge of liabilities incurred by Enterprise Whangamata;
- (g) To contract, engage, employ, and pay persons or organisations for any duties relating to the Objects of Enterprise Whangamata;
- (h) To contract, engage, or employ and pay experts to advise Enterprise Whangamata on any matters relating to the Objects of Enterprise Whangamata;
- (i) To terminate any contract, engagement, contract of employment or other arrangement between Enterprise Whangamata and other Bodies Corporate, persons, or any other organisations;
- (j) To print, publish and communicate any information in any media for the promotion of Enterprise Whangamata;
- (k) To be a member of, affiliate or be associated in any other way with an organisation that has objects similar, in whole or part, to the Objects of Enterprise

Whangamata;

- (l) Organise networking events for Members and the promotion of Enterprise Whangamata;
- (m) To establish, maintain and have an interest in corporate or other entities to carry on or conduct all or any part of the affairs of Enterprise Whangamata and for that purpose to utilise any assets of or held on behalf of Enterprise Whangamata;
- (n) To produce, develop, create, licence, and otherwise exploit, use, and protect the intellectual property of Enterprise Whangamata;
- (o) To purchase or otherwise acquire all or any part of property, assets, or liabilities of any one or more companies, institutions, incorporated societies, or organizations whose objects are similar in whole or part, to the Objects of Enterprise Whangamata, or to which Enterprise Whangamata is authorised to amalgamate or generally for any purpose designed to benefit Enterprise Whangamata;
- (p) To do any other acts or things which further the Objects of Enterprise Whangamata, provided that the Powers will not limit the rights and powers of Enterprise Whangamata as an incorporated society under the Act.

6. MEMBERSHIP

- 6.1 Any person or Body Corporate engaged in Business and who conducts such Business in the Whangamata District on a consistent and ongoing basis shall be eligible for membership.
- 6.2 Enterprise Whangamata shall maintain at least 10 Members as required by section 13 of the Act, but the maximum number of Members shall be unlimited.
- 6.3 Where a Body Corporate that organisation will act through its duly appointed representative.
- 6.4 All Members shall promote the interests and Objects of Enterprise Whangamata and shall do nothing to bring Enterprise Whangamata into disrepute.
- 6.5 A Member is only entitled to exercise the rights of membership (including attending and voting at General Meetings, accessing or using the Society's premises, facilities, equipment and other property, and participating in Enterprise Whangamata activities) if all subscriptions and any other fees have been paid to Enterprise Whangamata by their respective due dates. As required by section 27 of the Act, no Member or Life Member is liable for an obligation of

Enterprise Whangamata by reason only of being a Member, except for any fees, subscriptions or other payments set out in these Rules.

7. MEMBERSHIP APPLICATION

7.1 Each application for membership must be submitted in writing to the Secretary on the form approved by the Board, which may be provided and completed either in paper format or electronically, including via online forms. The application must include the name of the applicant, the nature of their business, contact details (specifically, a physical or email address and a telephone number), together with any other information as may be required by the Board. In the case of a Body Corporate the names of the person whom it authorises to represent it must be stated. Every applicant for membership must consent in writing to becoming a **Member**.

7.2 Acceptance as a Member will be subject to:

- (a) The discretion of the Board. The Board will not be obliged to give reasons for non-acceptance of any prospective Member; and
- (b) Payment by the applicant of the Membership Fee or any other subscription or levy as the Board may determine from time to time.

7.3 A Body Corporate Member:

- (a) May by written notice alter the person or persons who are named as representative of that Body Corporate for the purposes of these Rules;
- (b) Will be entitled to one vote per Body Corporate membership only; and
- (c) Will be entitled to all advantages and privileges of membership.

7.4 Membership Categories:

- (a) Full Member

A Body Corporate which, or a person who, has been duly accepted for membership by the Board in accordance with Rule 7.1 to 7.3.

- (b) Honorary Member

Honorary members may be elected by resolution of a General Meeting passed by a two thirds majority of those Members present. An Honorary Member is any person or Body Corporate acknowledged as providing or having

provided important services to Enterprise Whangamata. This may include Mayors, Chairpersons, Presidents, Managers, Officers in Charge and any other persons holding senior positions in any Municipality, Board, Authorisation, Authority, Department of State, or other Local, Regional, National or International body and such other persons as Enterprise Whangamata may from time to time approve. Any Member may nominate a person for consideration for Honorary Membership. An Honorary Member will have no membership rights, privileges, or duties.

(c) Life Membership

A Life Member is any person or Body Corporate honoured for exceptional longstanding service to Enterprise Whangamata elected as a Life Member by resolution of a General Meeting passed by a two thirds majority of those Members present. Any Member may nominate a person for consideration for Life Membership. Life Members have all the rights, privileges, and duties of a Full Member (including the right to vote) but do not have to pay fees, subscriptions, or levies.

(d) Community Organisation Member

A Community Organisation Member is a local community service organisation operating on a not-for-profit basis, whose continued existence depends on receiving charitable donations, grants, or other funding. Any Member may nominate a person for consideration for Community Organisation Member. A Community Organisation Member will have no membership rights, privileges or duties and do not have to pay fees, subscriptions, or levies.

- 7.5 No Member whose subscription for the preceding or current year is unpaid at the date of any General Meeting shall be entitled to attend or vote at that meeting nor shall any Member or representative of such Member be eligible to hold any office or to be elected to any office in Enterprise Whangamata at that meeting.
- 7.6 Enterprise Whangamata will maintain an up-to-date register of its Members.
- 7.7 Enterprise Whangamata must have at least one Contact Person who is at least 18 years old, ordinarily resident in New Zealand, and is an Officer. The Board shall appoint the Contact Person and advise the Registrar of any changes as required by the Act. Any change in that contact person or that person's name or contact details shall be advised to the Registrar of Incorporated Societies within 20 Business Days of that change occurring, or Enterprise Whangamata becoming aware of the change.

8.0 MEMBERSHIP SUBSCRIPTIONS AND LEVIES

- 8.1 Membership Fees are to be determined by the Board who may establish differing levels of annual subscriptions or the amount of any periodic payments if the Board decides that it is payable by instalments, for different types of Members.
- 8.2 The Board may by resolution impose a levy or levies on Members in different classes of membership in any calendar year up to a maximum totalling 50% of the annual subscription for that year for each class of Member.

9.0 CESSATION OF MEMBERSHIP

- 9.1 Membership may cease in the following events:

- (a) on death (or if a body corporate on liquidation or deregistration, or if a partnership on dissolution of the partnership);
- (b) on termination of a Member's membership following a dispute resolution process under this Constitution;
- (c) the Member's Membership Fee, levy or other fee remains unpaid after 6 months from the date the Membership Fee, levy or other fee was set;
- (d) a Member's resignation is received in writing by the Secretary. A Member's resignation which is accepted shall be effective immediately on receipt by the Secretary of that Member's written notice but will not relieve the Member from payment of their Membership Fees, levies or other fees then owing. Resigning Members must return all property or other assets of Enterprise Whangamata immediately on submission of the Member's notice of resignation;
- (e) Termination in accordance with Rule 9.2 and 9.3;

with effect from (as applicable):

- (f) the date of receipt of the Member's notice of resignation by the Board (or any subsequent date stated in the notice of resignation); or
- (g) the date of termination of the Member's membership under this Constitution; or
- (h) the date of death of the Member (or if a body corporate from the date of its liquidation or deregistration, or if a partnership from the date of its dissolution); or
- (i) the date specified in a resolution of the Board and when a Member's membership has been terminated the

Board shall promptly notify the former Member in writing.

9.2 The Board shall have the power to terminate the membership of any Member in the following circumstances:

- (a) False or inaccurate statements made in the Member's application for membership;
- (b) Breach of any of the Rules, or Bylaws of Enterprise Whangamata; or
- (c) By any act considered by the Board, after having undertaken due inquiry, as unbecoming, in conflict with or prejudicial to the Objects of Enterprise Whangamata.

9.3 The Board's decision to terminate a Member's membership must be communicated by written notice ("the Board's Notice") to the Member. The Board's Notice must state:

- (a) The circumstances in which the Member's membership has been terminated;
- (b) What the Member must do in order to remedy the situation, or state that the Member must write to the Board giving reasons why the Board should not terminate the Member's membership;
- (c) That if, within 14 days of the Member receiving the Board's Notice, the Board is not satisfied, the Board may in its absolute discretion immediately terminate the Member's membership;
- (d) If the Board terminates the Member's membership, the Member will have the right to appeal against such termination by presenting their case, either in writing or verbally, to a Special General Meeting called for such purpose, and the decision, by two third's majority, of the Special General Meeting shall be final.

9.4 Any former Member who has resigned may apply for re-admission in the same way as a new applicant, but if the former Member's membership was terminated by the Board in accordance with Rule 9.2 and 9.3, the applicant shall not be re-admitted without the prior approval of the Board by two thirds majority vote.

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

- (a) remains liable to pay all subscriptions and other fees to the next Balance Date;

- (b) shall cease to hold himself or herself out as a Member;
and
- (c) shall return all material provided to Members by
Enterprise Whangamata (including any membership
certificate, badges, handbooks, and manuals); and
- (d) shall cease to be entitled to any of the rights of a
Member.

10. BOARD

10.1 Enterprise Whangamata will be governed by the Board
which:

- (a) Will control, administer, and manage the affairs of
Enterprise Whangamata;
- (b) Has all of the Powers of Enterprise Whangamata, to act
and do all things that appear to the Board as necessary
or expedient to achieve the Objects of Enterprise
Whangamata subject to such authority, powers and
discretions as may by these Rules be vested in the
Board;
- (c) Will be accountable to the Members for the
implementation of the policies of Enterprise
Whangamata as approved by any General Meeting;
- (d) Will meet at least once every two months (but need
meet only once in the December to February period) at
such times and places and in such a manner as it may
determine and otherwise where and as convened by the
Chairperson or Secretary;
- (e) shall act in good faith and in what he or she believes to
be the best interests of Enterprise Whangamata and its
Purposes;
- (f) must exercise all powers for a proper purpose;
- (g) must not act, or agree to Enterprise Whangamata
acting, in a manner that contravenes the Act or this
Constitution;
- (h) 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;

- (i) must not agree to the activities of Enterprise Whangamata being carried on in a manner likely to create a substantial risk of serious loss to the Enterprise Whangamata or to Enterprise Whangamata's creditors, or cause or allow the activities of Enterprise Whangamata to be carried on in a manner likely to create a substantial risk of serious loss to Enterprise Whangamata or to Enterprise Whangamata's creditors, and
- (j) must not agree to Enterprise Whangamata incurring an obligation unless he or she believes at that time on reasonable grounds that Enterprise Whangamata will be able to perform the obligation when it is required to do so.

10.2 The Board will consist of no more than ten Officers who are Full Members and who are elected at the Annual General Meeting. The Board will appoint the following officers in accordance with Rule 10.3:

- (a) Treasurer;
- (b) Secretary; and
- (c) Chairperson.

10.3 The election of Officers will take place as follows:

- (a) Written nominations for nominees, accompanied by the written consent of each nominee, will be received by the Secretary not less than 28 days before the date of the Annual General Meeting;
- (b) Not less than 14 days before the date of the Annual General Meeting the Secretary will post to all Members the details of all nominees and such information (not exceeding one side of an A4 sheet of paper) as may be supplied to the Secretary by or on behalf of each nominee in support of the nomination;
- (c) If there are insufficient valid nominations received under Rule 10.3(a) further nominations may be received from the floor at the Annual General Meeting;
- (d) The Secretary and some other Member (who is not a nominee) designated by the chairperson of the Annual General Meeting will act as scrutineers for the counting of the votes and destruction of voting papers;
- (e) In the event of any vote being tied the tie will be resolved by the incoming Board.
- (f) Every Officer must be a natural person who is qualified under section 47 of the Act, has consented in writing to

be an officer of Enterprise Whangamata and certifies that they are not disqualified from being appointed or holding office as an officer under sections 47-48 of the Act.

10.4 Subject to the Rules, each Officer of the Board will hold office from the end of the Annual General Meeting at which they are appointed until the end of the next Annual General Meeting and be eligible for re-election to the Board.

10.5 Any Officer of the Board may be removed by a resolution of a General Meeting, and which is passed by a two-thirds majority of those Members present.

10.6 A quorum of the Board will be a majority of the Officers then in Office, except for when the total number of Officers is seven, the quorum will be any five Officers.

10.7 The Board may co-opt any person to the Board for a specific purpose, or for a limited period, or generally until the next Annual General Meeting.

10.8 The Board may appoint subcommittees consisting of such persons (whether Members or not) and for such purposes as it thinks fit. Unless otherwise resolved by the Board:

- (a) The quorum of every subcommittee is half the members of the subcommittee;
- (b) No subcommittee has the power to co-opt additional members;
- (c) No subcommittee may commit Enterprise Whangamata to any financial expenditure without the express authority of the Board;
- (d) No subcommittee may delegate any of its powers;
- (e) Any subcommittee may act by resolution approved by not less than two-thirds of the members of the subcommittee.

10.9 An Officer or member of a subcommittee who is an Interested Member in respect of any Matter being considered by Enterprise Whangamata, must disclose details of the nature and extent of the interest (including any monetary value of the interest if it can be quantified):

- (a) to the Board and / or subcommittee, and
- (b) in an Interests Register kept by the Board.

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

An Officer or member of a subcommittee who is an Interested Member regarding a Matter:

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

However, an Officer or member of a subcommittee 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 Special General Meeting must be called to consider and determine the Matter, unless all non-interested Officers agree otherwise.

Where 50 per cent or more of the members of a subcommittee are prevented from voting on a Matter because they are interested in that Matter, the Board shall consider and determine the Matter.

11. INDEMNITY FOR BOARD

- 11.1 No Officer of the Board shall be liable for the acts or defaults of any other Officer, or any loss occasioned thereby, unless occasioned by their wilful default or by their wilful acquiescence.
- 11.2 The Officers shall be indemnified by Enterprise Whangamata 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.

12. CHAIRPERSON

- 12.1 The Chairperson will be elected by the Board from amongst its numbers immediately following the Annual General Meeting. The Chairperson will preside over all Meetings.
- 12.2 The Chairperson will hold office until the first meeting of the Board after the next Annual General Meeting unless the

Board chooses to replace the Chairperson between Annual General Meetings.

12.3 If the Chairperson is unable to attend any Meeting, then a Chairperson nominated by the meeting will chair that Meeting.

12.4 The Chairperson's role is to:

- (a) Ensure that the Rules are followed;
- (b) Convene Meetings;
- (c) Chair Meetings, deciding who may speak and when;
- (d) Oversee the operation of Enterprise Whangamata;
- (e) Give a report on the operation of Enterprise Whangamata at each Annual General Meeting; and
- (f) Advise the Registrar of any changes or alterations to the Rules.

13. SECRETARY

13.1 The Secretary will be elected by the Board from amongst its numbers immediately following the Annual General Meeting.

13.2 The Secretary's role is to:

- (a) Record the minutes of Meetings and all such minutes when confirmed by the next such Meeting and signed by the chairperson of that Meeting will be prima facie evidence that the Meeting was duly called and will prima facie be a true and accurate record of what occurred at that Meeting;
- (b) Keep the Register of Members;
- (c) Hold the records, documents, and correspondence of Enterprise Whangamata in a safe and secure manner;
- (d) Receive and reply to correspondence as required by the Board;
- (e) Ensure the common seal of Enterprise Whangamata is held in a safe and secure manner;
- (f) Give all notices as Enterprise Whangamata in Meetings or as the Board may instruct or which Enterprise Whangamata may be required to give to Members in the manner provided in these Rules.

14. TREASURER

14.1 The Treasurer will be elected by the Board from amongst its numbers immediately following the Annual General Meeting.

14.2 The Treasurer's role is to:

- (a) Collect and receive all fees, subscriptions, levies, and other monies payable to Enterprise Whangamata and issue receipts. All payments must be banked within two Business Days of receipt;
- (b) Open and operate a current bank account in the name of Enterprise Whangamata;
- (c) Make such deposits and investments in the name of Enterprise Whangamata as the Board may determine from time to time;
- (d) Pay all accounts and make all advances authorised for payment by the Board. All accounts paid or for payment must be submitted to the Board for approval of payment;
- (e) Keep a true and accurate record in Enterprise Whangamata's account book, so that Enterprise Whangamata's financial situation can be clearly understood at any point in time;
- (f) Give a financial report and statement of accounts (including an Income and Expenditure Account and Balance Sheet) together with a budget for the next financial year at each Annual General Meeting, and more often if the Board so determines;
- (g) Forward the annual financial statements of Enterprise Whangamata to the Registrar upon approval by the Members at the Annual General Meeting.

15. VACANCIES

15.1 In accordance with section 47 of the Act, an Officers position on the Board becomes vacant if the Officer:

- (a) Dies;
- (b) Becomes ineligible to hold office by reason of cessation of membership in accordance with Rule 9.1 or termination in accordance with Rule 9.2;
- (c) Becomes bankrupt;
- (d) Commits a criminal offence punishable by a term of imprisonment;

- (e) Resigns in writing; or
- (f) Is absent for three consecutive meetings of the Board, unless leave of absence has been granted by the Board; or
- (g) Becomes disqualified under section 47(3) of the Act from being appointed or holding office as an officer of a society.

15.2 If the position of Chairperson becomes vacant then the Board shall appoint one of the remaining Officers in that position.

15.3 In the event of a vacancy on the Board, the Board may at its discretion appoint a Member that the Board considers has the necessary skills and attributes to fill the vacancy. Any Member so appointed to the Board will, subject to the Rules, hold office until the next Annual General Meeting.

15.4 Each Officer will within one calendar month of vacating office in accordance with Rule 15.1 deliver to that Officer's successor, or if none to the Secretary all books, papers and other property or assets of Enterprise Whangamata in the possession of that former Officer.

16. AUDITOR

16.1 If Enterprise Whangamata is a large society within the meaning of section 102 of the Act (or any regulations made under that Act), it must ensure that its financial statements are audited by a qualified auditor in accordance with that section. If *Enterprise Whangamata* is not a large society, the Board may determine, having regard to cost and complexity, whether a full audit is desirable or a review engagement is sufficient for any financial year. The Board may resolve to appoint a qualified auditor to perform an audit or a qualified reviewer to carry out a review engagement, being a lesser form of assurance, in accordance with applicable review standards. The auditor or reviewer must be:

- (a) independent and appointed by the Board, unless otherwise determined by the Members at a General Meeting;
- (b) a qualified auditor within the meaning of section 6 of the Financial Reporting Act 2013; or
- (c) a qualified reviewer with appropriate experience and competence to conduct a financial review under accepted standards.

The auditor or reviewer is entitled to access all financial records of Enterprise Whangamata and may require any Officer to provide information necessary for the audit or

review. The auditor or reviewer must report the outcome of the audit or review to the Board and/or to the Members at the Annual General Meeting.

17. CONDUCT OF GENERAL MEETINGS:

17.1 Annual General Meeting:

- (a) The Annual General Meeting of Enterprise Whangamata must be held within four months of the end of the Financial Year.
- (b) The quorum at the Annual General Meeting will be at least 50% of Members or 10 Members, whichever is lower. If, at the end of 15 minutes after the time appointed in the notice for the opening of the Annual General Meeting, there is no quorum present the Annual General Meeting will stand adjourned for one week. If at such Annual General Meeting there is no quorum those Members present will be sufficient quorum to discharge the business of the Annual General Meeting.
- (c) The agenda for an Annual General Meeting will be:
 - (i) Opening of meeting;
 - (ii) Apologies;
 - (iii) Confirmation of minutes of previous Annual General Meeting;
 - (iv) Presentation of Annual Report;
 - (v) Adoption of Annual Report;
 - (vi) Presentation of Financial Statements;
 - (vii) Election of Board;
 - (viii) Notice/s of motion;
 - (ix) Approval of budget for the next financial year;
 - (x) Urgent general business; and
 - (xi) Closure.

17.2 Special General Meetings

- (a) Special General Meetings may be called by the Board or on the written request of at least a quarter of the Members.
- (b) A quorum at the Special General Meeting will be at least 50% of Members or 10 Members, whichever is lower.

17.3 The Secretary will give all Members at least 14 days written notice of:

- (a) The business to be conducted at any Meeting;
- (b) A copy of the Annual Report and Statement of Accounts, if the meeting is an Annual General Meeting;

(c) Any Member's Motions or Board Motions and the Board's recommendations regarding those Motions;

(d) The business for which the Special General Meeting has been called. No other business will be dealt with at that Special General Meeting.

17.4 If the Secretary has sent notice to all Members in good faith, the Meeting and its business will not be invalidated simply because one or more Members did not receive the notice

17.5 All General Meetings will be chaired by the Chairperson. If the Chairperson is absent the Members present will elect another Officer to chair that General Meeting and any such chairperson will have a deliberative and casting vote.

18. VOTING

18.1 Voting powers at the Annual General Meeting and Special General Meetings are as follows:

(a) The Chairperson will be entitled to a deliberate vote and, in the event of a tied vote the Chairperson will exercise a casting vote;

(b) Each Member present will have one vote.

18.2 No proxy will be allowed at any General Meeting.

18.3 On any given motion at a General Meeting, the Chairperson will in good faith determine whether to vote by:

(a) Voices;

(b) Show of Hands; or

(c) Secret Ballot.

However, if five or more Members present demand a secret ballot before a vote by voices or show of hands has begun, voting must be completed by secret ballot.

18.4 Enterprise Whangamata may pass a written resolution in lieu of a General Meeting, and a written resolution is as valid for the purposes of the Act and this Constitution as if it had been passed at a General Meeting if it is approved by Members who are entitled to vote on the resolution. A written resolution may consist of 1 or more documents in similar form (including letters, electronic mail, or other similar means of communication) each proposed by or on behalf of 1 or more Members. A Member may give their approval to a written resolution by signing the resolution or giving approval to the resolution in any other manner permitted by the Constitution (for example, by electronic

means).

18.5 General Meetings may be held at one or more venues by Members present in person and/or using any real-time audio, audio and visual, or electronic communication that gives each Member a reasonable opportunity to participate.

19. MOTIONS AT GENERAL MEETINGS

19.1 Any Member may request that a motion be voted on (“Member’s Motion”) at a General Meeting by giving written notice to the Secretary at least 5 days before that Meeting. The Member may also provide information in support of the Member’s Motion (“Members Information”). The Board may in its absolute discretion decide whether or not Enterprise Whangamata will vote on the motion. However, if the Member’s Motion is signed by at least a quarter of all Members:

- (a) It must be voted on at the General Meeting called for by the Member;
- (b) The Secretary must give copies of the Members Information to all Members at least 14 days before the General Meeting called for by the Member.

19.2 The Board may also decide to put forward motions for Enterprise Whangamata to vote on (“Board Motions”). The Secretary must give copies of the Board Motions to all Members at least 14 days before the General Meeting called for by the Board.

20. CONDUCT OF BOARD MEETINGS

20.1 The Chairperson will chair Board meetings. If the Chairperson is absent the Members present will elect another Officer to chair that meeting.

20.2 Decisions of the Board will be by resolution approved by not less than two thirds of the Officers present.

20.3 The Chairperson or person acting as Chairperson has a casting vote only.

20.4 Only Officers present at a Board meeting may vote at that meeting.

20.5 Subject to these Rules, the Board may regulate its own meeting practices.

20.6 Enterprise Whangamata, through the Secretary, must keep minutes of all Board Meetings and General Meetings.

21. FINANCE:

21.1 Financial Statements will be submitted to the Annual General Meeting.

22. FINANCIAL YEAR

22.1 The financial year of Enterprise Whangamata will commence on 1 April of every year and ends on 31 March of the following year.

23. COMMON SEAL

23.1 Enterprise Whangamata will have a common seal. A document will be executed on behalf of Enterprise Whangamata pursuant to a resolution of the Board if:

- (a) The common seal is attached to the document;
- (b) The document is signed by any two of the Chairperson, Treasurer or Secretary;
- (c) Where the document is not required by statute to be executed under common seal, by any two of the Chairperson, Treasurer or Secretary.

23.2 The common seal of Enterprise Whangamata will be kept in the registered office of Enterprise Whangamata.

23.3 The signatories to Enterprise Whangamata's bank account(s) will be the Treasurer and any one of the Chairperson or Secretary.

24. NO PECUNIARY GAIN

24.1 No private pecuniary profit will be made by any Member except that:

- (a) Subject to the discretion of the Board any Member may receive full reimbursement for all expenses by that Member in connection with the Objects of Enterprise Whangamata;
- (b) Any Member may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by the Member, or by any firm or entity of which that Member is an employee, shareholder or director in connection with the Objects of Enterprise Whangamata however no Officer will be remunerated for the services provided as a result of their appointment as an officer of the Board.

24.2 All Money or Other Assets of Enterprise Whangamata will apply solely to the promotion of the Objects of Enterprise Whangamata and no part of that Money or Other Assets will

be paid or otherwise distributed, directly, or indirectly, to Members.

24.3 Any transactions between Enterprise Whangamata and any Member will be at arm's length and in accordance with prevailing commercial terms on which Enterprise Whangamata would deal with third parties not associated with Enterprise Whangamata, and any payments made in respect of such transactions will be limited to:

- (a) A fair and reasonable reward for services performed;
- (b) Reimbursement of expenses that in the Board's sole discretion have been properly incurred;
- (c) Usual professional, business, or trade charges; and
- (d) Interest at no more or less than current commercial rates.

No Member, or any person associated with a Member, may participate in, or materially influence any decision made by Board in respect of the payment to or on behalf of that Member or associated person of any income, benefit, or advantage.

25. ALTERATIONS TO THE RULES AND BYLAWS:

25.1 No alteration, repeal or addition shall be made to these Rules except at a General Meeting, called for that purpose and notice of all motions to alter, repeal or add to the Rules, including the reasons for the proposal, and any recommendations of the Board in respect thereof, will be given to Members 10 Business Days prior to the Annual General Meeting, or seven days prior to a Special General Meeting called for such purpose.

25.2 Alterations to the Bylaws can be made at Board Meetings only provided notice of the proposed alteration/s has/have been duly notified to the Board.

25.3 Such motions, or any part thereof, will be of no effect unless passed by a two thirds majority resolution of those present and entitled to vote at the General Meeting or Board meeting, as the case may be.

26. WINDING UP

26.1 If Enterprise Whangamata is wound up, any surplus assets remaining after satisfaction of its debts and liabilities and the costs, charges and expenses of winding up, must be distributed to one or more not-for-profit entities that have purposes similar to those of Enterprise Whangamata, as determined by a resolution of the Members. No distribution may be made to any Member or former Member unless at

the Member is a not-for-profit entity with similar purposes.

26.2 On winding up or dissolution, any surplus assets of Enterprise Whangamata, after payment of all costs, debts, and liabilities, shall be distributed to another not-for-profit entity or entities with similar purposes, as determined in accordance with clause 26.1. No distribution shall be made to any Members.

26.3 Enterprise Whangamata may be liquidated in accordance with the provisions of Part 5 of the Act. The Board shall give at least 10 Business Days written Notice to all Members of the proposed resolution to put Enterprise Whangamata into liquidation. The Board 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 sections 228 and 229 of the Act. Any resolution to put Enterprise Whangamata into liquidation must be passed by a 75% majority of all Members present and voting.

27. INSURANCE

27.1 Enterprise Whangamata will affect and maintain full and current insurance on all its assets.

28. SERVICE OF NOTICES

28.1 For the purposes of these Rules, a notice may be served by or on behalf of Enterprise Whangamata upon any Member either personally or by sending it by post or email to the Member at the Member's address as shown in the Register of Members.

28.2 Notice will be deemed to have been served on the Member at the time at which the letter would have been delivered in the ordinary course of postal delivery.

29. DISPUTE RESOLUTION

29.1 A dispute is a disagreement or conflict involving Enterprise Whangamata and/or its Members in relation to specific allegations set out below.

29.2 The disagreement or conflict may be between any of the following persons:

- (a) 2 or more Members;
- (b) 1 or more Members and Enterprise Whangamata;
- (c) 1 or more Members and 1 or more Officers;
- (d) 2 or more Officers;

- (e) 1 or more Officers and Enterprise Whangamata; or
- (f) 1 or more Members or Officers and Enterprise Whangamata.

29.3 The disagreement or conflict relates to any of the following allegations:

- (a) a Member or an Officer has engaged in misconduct;
- (b) a Member or an Officer has breached, or is likely to breach, a duty under Enterprise Whangamata's Constitution or bylaws or the Act;
- (c) Enterprise Whangamata has breached, or is likely to breach, a duty under Enterprise Whangamata's Constitution or bylaws or the Act;
- (d) a Member's rights or interests as a Member have been damaged or Member's rights or interests have been damaged.

29.4 A Member or an Officer may make a complaint by giving to the Board (or a complaints subcommittee formed by the Board) a notice in writing that:

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

29.5 Enterprise Whangamata may make a complaint involving an allegation against a Member or an Officer by giving to the Member or Officer a notice in writing that:

- (a) states that Enterprise Whangamata is starting a procedure for resolving a dispute in accordance with the Enterprise Whangamata's Constitution; and
- (b) sets out the allegation to which the dispute relates.

29.6 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.

29.7 All Members (including the Board) are obliged to cooperate to resolve disputes efficiently, fairly, and with minimum disruption to Enterprise Whangamata's activities.

29.8 The complainant raising a dispute, and the Board, must consider and discuss whether a dispute may best be resolved through informal discussions, mediation, or arbitration. Where mediation or arbitration is agreed on, the parties will sign a suitable mediation or arbitration agreement.

29.9 Enterprise Whangamata may make a complaint involving an allegation or allegations against a Member or an Officer by giving to the Member or Officer a notice in writing that:

(a) states that Enterprise Whangamata is starting a procedure for resolving a dispute in accordance with Enterprise Whangamata's Constitution; and

(b) sets out the allegation to which the dispute relates.

29.10 The information given under Rules 29.4(b) or 29.4(c) must be sufficient to ensure that a person against whom an allegation is made is fairly advised of the allegation or allegations concerning them, with sufficient details given to enable that person to prepare a response.

29.11 A complaint may be made in any other reasonable manner permitted by the Enterprise Whangamata's Constitution.

29.12 A Member or an Officer who makes a complaint has a right to be heard before the complaint is resolved or any outcome is determined.

29.13 If Enterprise Whangamata makes a complaint:

(a) Enterprise Whangamata has a right to be heard before the complaint is resolved or any outcome is determined; and

(b) an Officer may exercise that right on behalf of Enterprise Whangamata.

29.14 Without limiting the manner in which the Member, Officer, or Enterprise Whangamata may be given the right to be heard, they must be taken to have been given the right if:

(a) they have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and

(b) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and

- (c) an oral hearing (if any) is held before the decision maker; and
- (d) the Member's, Officer's, or Enterprise Whangamata's written or verbal statement or submissions (if any) are considered by the decision maker.

29.15 This clause applies if a complaint involves an allegation that a Member, an Officer, or Enterprise Whangamata (the 'respondent'):

- (a) has engaged in misconduct; or
- (b) has breached, or is likely to breach, a duty under Enterprise Whangamata's Constitution or bylaws or this Act; or
- (c) has damaged the rights or interests of a Member or the rights or interests of Members generally.

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

29.17 If the respondent is Enterprise Whangamata, an Officer may exercise the right on behalf of Enterprise Whangamata.

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

- (a) the respondent is fairly advised of all allegations concerning the respondent, with sufficient details and time given to enable the respondent to prepare a response; and
- (b) the respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
- (c) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
- (d) an oral hearing (if any) is held before the decision maker; and
- (e) the respondent's written statement or submissions (if any) are considered by the decision maker.

29.19 Enterprise Whangamata must, as soon as is reasonably practicable after receiving or becoming aware of a complaint made in accordance with its Constitution, ensure

that the dispute is investigated and determined.

29.20 Disputes must be dealt with under the Constitution in a fair, efficient, and effective manner and in accordance with the provisions of the Act.

29.21 Despite the provisions of this clause 29, Enterprise Whangamata may decide not to proceed further with a complaint if:

- (a) the complaint is trivial; or
- (b) the complaint does not appear to disclose or involve any allegation of the following kind:
 - (i) that a Member or an Officer has engaged in material misconduct;
 - (ii) that a Member, an Officer, or Enterprise Whangamata has materially breached, or is likely to materially breach, a duty under Enterprise Whangamata's Constitution or bylaws or the Act;
 - (iii) that a Member's rights or interests or Members' rights or interests have been materially damaged;
- (c) the complaint is without foundation or there is no apparent evidence to support it; or
- (d) the person who makes the complaint has an insignificant interest in the matter; or
- (e) the conduct, incident, event, or issue giving rise to the complaint has already been investigated and dealt with under the Constitution; or
- (f) there has been an undue delay in making the complaint.

29.22 Enterprise Whangamata may refer a complaint to:

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

29.23 A person may not act as a decision maker in relation to complaint if 2 or more members of the Board or a complaints subcommittee consider that there are reasonable grounds to believe that the person may not be:

- (a) impartial; or
- (b) able to consider the matter without a predetermined view.