BODY CORPORATE OPERATIONAL RULES OF BODY CORPORATE NUMBER 394768

The body corporate operational rules set out in Schedule 1 to the Unit Titles Regulations 2011 are revoked and the rules set out in Schedule 1 below (**operational rules**) substituted in their place.

The contents of Schedule 2 below (**guidance notes**) are included for guidance only to key provisions of the Unit Titles Act 2010 (**Act**) and the Unit Titles Regulations 2011 (**regulations**) relating to the practical functioning of the body corporate. The guidance notes paraphrase the relevant provisions and are intended as a point of first reference only. The guidance notes do not in any way modify or extinguish the terms of either the Act or the regulations. Reference should always be made to the Act and the regulations themselves to assess the full text of relevant provisions and any changes made since the guidance notes were written.

Schedule 3 below contains definitions of terms used in the operational rules and the guidance notes.

SCHEDULE 1 – OPERATIONAL RULES

1 INTERPRETATION

In these operational rules, unless the context otherwise requires:

1.1 **Gender**: words importing one gender will include the other genders.

1.2 **Plural and Singular**: words importing the singular or plural will include the plural and singular respectively.

1.3 **Headings**: clause and other headings are inserted for ease of reference only and will not affect the interpretation of these operational rules.

1.4 **Negative Obligation** any obligation not to do anything will be deemed to include an obligation not to suffer, permit or cause that thing to be done.

2 RULES

2.1 **Purposes**: An owner will not use any unit for any purpose:

2.1.1 Other than for its local authority zoned and approved use; or

2.1.2 Which may contravene the fire regulations, or the rules, regulations, ordinances or bylaws of any authority having jurisdiction over the building or the services supplied to the building; or

2.1.3 Which may be illegal or injurious to the reputation of the owners, or which may interfere with the peaceful enjoyment of any owner or of any other unit or the common property, or which may interfere with the efficient management of the building.

2.2 **Obstruction of Common Property**: Subject to rule 2.20 where an area in the common property is designated as a carpark, the common property will not be obstructed by any owner or used for any purpose other than reasonable ingress and egress to and from units without prior consent of the Body Corporate.

2.3 **Aerials etc**: Aerials or satellite dishes may be affixed to the roof providing they are affixed in a way and position to ensure minimal visual impact outside the unit. If the body corporate considers that the rights or interests of the owner of any unit are being adversely affected by any aerial or satellite dish, then the body corporate may require such aerial or satellite dish to be removed or relocated.

2.4 **Heat Pumps, Air-conditioning Units etc:** An owner or their occupier will not without first obtaining the Body Corporate's approval affix or mount heat pumps or air-conditioning units to the roof or exterior facades of the Body Corporate units. If approved heat pumps or air-conditioning units must be affixed in a way and position to ensure minimal visual impact and are preferably wall or balustrade mounted however in any event cannot be mounted in such away that their mounting and positioning penetrate through either hard (iron) or soft (butanol) roofing membranes. For avoidance of doubt if heat pumps can only be mounted on a horizontal roof plane, they cannot be mounted on planks laid in roof trays but must be mounted on specific non penetrating "monkey toe" mounting feet. If the body corporate considers that the rights or interests of the owner of any unit are being adversely affected by any heat pump or air-conditioning unit, then the body corporate may require such a heat pump or air-conditioning unit to be removed or relocated. If a heat pump or air-conditioning unit is installed, the relevant unit owner will at all times comply with the maintenance and operating instructions for such equipment and will ensure that any equipment protective devices are in the proper operational position.

2.5 **Windows**: All windows will be kept clean and if broken or cracked will be promptly replaced by the owner of the unit (at the expense of the owner) with fresh glass of the same quality and weight.

2.6 **External Blinds/Awnings**: An owner will not erect external blinds or awnings, unless the colour and design of those blinds is approved by the body corporate. In giving such approval the body corporate will ensure as far as practicable that the curtains or blinds used in all units present a uniform and orderly appearance when viewed from outside the units. The owner will as often as the need will arise (in the opinion of the body corporate) replace at the owner's own cost any blinds in the unit.

2.7 **Use of Plumbing etc**: The toilets, wash basins, sinks, dishwashers, wastemasters and any other apparatus or equipment attached to the water supply and drainage system, and all supply and waste pipes and drains, will only be used for the purpose for which they were constructed. The responsibility for any damage or loss caused or cost of repair incurred or caused by misuse or negligence will be borne by the owner of the unit in which the misuse or negligence occurred.

2.8 **Notice of Defects**: An owner, on becoming aware of any defect or damage to any part of the building or defilement to the exterior of the building or the common property or the failure or defect of any of the building's services, will notify the body corporate immediately. The body corporate has authority to make such repairs or renovations as the body corporate considers necessary for the safety and preservation of the building (or, in an emergency, such repairs or renovations as the body corporate considers necessary). The body corporate will be entitled to recover the costs of the repairs or renovations from an owner if the act or neglect of an owner necessitated the repairs or renovations.

2.9 **Cleaning**: An owner will ensure that the owner's unit is kept clean at all times and that rubbish is regularly collected from the unit and not allowed to accumulate. All rubbish will be disposed of in bins or receptacles for removal on the usual days by the local authority or by independent contractors.

2.10 **Rubbish:** An owner will not allow litter or rubbish to accumulate on any unit or on the common property, and the cost of removing any litter or rubbish from or the cleaning of any part of the common property will, where there is a breach of this rule, be borne by the owner responsible.

2.11 **Throwing of objects from Units:** An owner will not throw or allow to fall or permit or suffer to be thrown or to fall any paper rubbish refuse cigarette butts or other substances or liquids whatsoever ("waste material") out of the windows or doors or from the balcony of a unit or from the roof of the building. Any damage or costs incurred in removing any waste material or for the cleaning or repair of the building resulting from a breach of this rule will be borne by the owner of the unit responsible for such action.

2.12 **Not to void insurance**

An owner shall not carry on or allow in a unit or in the building any trade or occupation or allow to be done any act or thing which:

2.12.1 shall make void or voidable any policy of insurance taken out by the Body Corporate;

2.12.2 may render any increased or extra premium payable for any policy of insurance taken out by the Body Corporate except where in circumstances in which any increased or extra premium is payable, the owner shall have first obtained the consent of the Body Corporate.

2.13 **Noise**: An owner or his servants, tenants, invitees and licensees will not make or permit to be made any objectionable noise in the building or upon the land or interfere in any way with the peaceable enjoyment of other owners or occupiers of units or those having business with them or of any person lawfully using the common property.

2.14 **Fire Drills**: The body corporate may require the owners to perform fire drills, and observe all necessary and proper emergency evacuation procedures, and the owners will co-operate with the body corporate in observing and performing such rules and regulations.

2.15 **Signage:** An owner or their occupier will not without first obtaining the Body Corporate's approval, fix, suspend or paint on any unit, building or the common property any sign or signboard other than a temporary for sale sign which may only be erected at the driveway or walkway entrance. Should an owner erect any sign in breach of this provision without first obtaining he Body Corporate's approval, then the body corporate may arrange for its removal at the expense in all things of the relevant owner.

2.16 **Common Property Structures:** An owner will not mark, paint, drive nails or screws or the like in to, or otherwise damage or deface any structure that forms part of the common property without the prior approval in writing of the body corporate.

2.17 **Security**: An owner will keep that owner's unit secure and all doors and windows locked and fastened whenever the unit is unoccupied.

2.18 **Leasing**: Where a unit is occupied by a person other than its owner, the owner will in respect of such lease, tenancy, licence or other right of occupation:

2.18.1 notify the body corporate, in writing, of the name and telephone number of all tenants, licensees and occupiers from time to time of the owner's unit; and

2.18.2 ensure that any tenant, licensee or occupier of the owner's unit has received a copy of the operational rules.

2.19 **Emergency Contact**: A owner will advise the body corporate of the owner's private address and telephone number or, if the owner is not a natural person, of the private address and telephone number of the person nominated by the owner as the owner's representative in dealings with the body corporate, and will promptly inform the body corporate of any change in such address or telephone number.

2.20 **Carparks**:

2.20.1 An Owner will:

2.20.1.1 **Use**: use any carpark only for the purpose of parking cars and will not park more than one car in any carpark;

2.20.1.2 **Position**: ensure that all cars parked will be parked completely within the marked lines (if any) of the carpark;

2.20.1.3 **Spillage of Oil**: not spill oil or any other harmful substance on or in any carpark or any part of the common property;

2.20.1.4 **Comply with Rules**: comply with any reasonable rules, regulations and procedures made by the body corporate as to the marking and identification of cars used by any persons entitled to park cars in the carparks, the procedures to be followed as to the driving and parking of cars in the carparks or as to any other matter which the body corporate may reasonably consider necessary for the control, safe use and enjoyment of the carparks; and

2.20.1.5 **Manoeuvring**: ensure that the manoeuvring of motor vehicles is conducted in a safe and responsible manner so as not to cause undue interference to other.

2.21 **External Appearance**: An owner will not alter the colour scheme or appearance of the exterior of a unit.

2.22 **Auctions, sales and garage sales:** An owner will not permit any auction, sale, garage sale or such like activity to be conducted on, or to take place in, a unit, in the building or on the land.

2.23 **Instruction of Body Corporate contractors:** Other than in the case of an emergency, an owner will not directly instruct any contractors or workmen employed by the body corporate.

2.24 **Paved and Sealed Areas**: An owner will not alter any paved or sealed areas without first obtaining the consent in writing of the body corporate;

2.25 **Animals:** An owner will not keep any animals, birds or pets in the owner's unit or on the common property.

2.26 **Occupiers etc**: The duties and obligations imposed on an owner by these operational rules must be observed not only the owner but also by the occupiers of the owner's unit and their respective guests, employees, agents, workers, children, invitees, licensees and tenants.

SCHEDULE 2 – GUIDANCE NOTES

References to section and regulation numbers are references to the relevant provisions of the Act and regulations respectively.

3 OWNERSHIP INTEREST AND UTILITY INTEREST

3.1 **Interests to be assigned:** Every principal unit and every accessory unit must be assigned an ownership interest and a utility interest. *(ss38 and 39).*

3.2 **Fixing of ownership interest:** The ownership interest is fixed by a registered valuer on the basis of the relative value of the unit in relation to each of the other units and shown on any documentation required to be lodged with the unit plan. *(s38(2)(a)).*

3.3 **Use of ownership interest:** The ownership interest is used to determine a range of matters, including:

3.3.1 the voting rights of an owner when a poll is requested under section 99;

3.3.2 the share of an owner in the underlying fee simple in the land on the cancellation of the unit plan;

3.3.3 the extent of the obligation of an owner in respect of contributions levied by the body corporate under section 121 in respect of any capital improvement fund (and the owner's rights in relation to a distribution of any surplus money in that fund under section 131).

(s38(3)).

3.4 **Fixing of utility interest**: The utility interest is the same as the ownership interest unless otherwise shown on any documentation required to be lodged when the unit plan deposited or as reassessed under section 41. *(s39(2)).*

3.5 **Use of utility interest:** The utility interest is used to determine a range of matters including the extent of the obligation of an owner in respect of contributions levied by the body corporate under section 121 in respect of the long-term maintenance fund, the optional contingency fund and the operating account (and the owner's rights in relation to a distribution of any surplus money in those funds/that account or of personal property of the body corporate under section 131). *(s39(3)).*

3.6 **Reassessment of interests:**

3.6.1 The ownership interest or utility interest may be reassessed for each unit if the body corporate so decides by special resolution. *(s41(1))*.

3.6.2 A decision by the body corporate to reassess the ownership interest or the utility interest may only be made if at least 36 months have passed since the unit plan was deposited or the relevant interest was last reassessed. *(s41(3))*.

3.6.3 Any reassessment of:

3.6.3.1 the ownership interest must be made by a registered valuer on the basis of the relative values of units to one another;

3.6.3.2 the utility interest may be made by the body corporate on a fair and equitable basis, having regard to the relevant benefits and the costs to units.

(s41(5)).

3.6.4 If, as a result of a reassessment, a utility interest is to be assigned other than on the basis of the relative value of units, the body corporate must approve the method of apportionment by special resolution. Sections 212 to 216 (which provide for an objection process) apply to any such resolution. *(s41(6) and (7)).*

4 DEALINGS WITH COMMON PROPERTY

4.1 **Lease, licence or sale of part:** The body corporate may grant a lease or licence over, or sell, part of the common property if it so decides by special resolution. The section 212 to 216 objection process applies to any such resolution. *(s56(1), (3) and (4)).*

4.2 **Distribution of proceeds:** Unless the body corporate resolves otherwise, any proceeds obtained by the body corporate as a result of any such lease, licence or sale must be distributed to unit owners in accordance with their respective ownership interests. *(s56(6) and (7)).*

4.3 **Additions to common property:** Subject to meeting certain conditions, an interest in land outside the land underlying the unit title development may be acquired by the body corporate and included in the common property if the body corporate so decides by special resolution. The section 212 to 216 objection process applies to any such resolution. *(s58).*

5 MANAGEMENT STRUCTURES AND ARRANGEMENTS

5.1 **Members of the body corporate:** The members of the body corporate are the owners of all the units in the unit plan. *(s76(1)).*

5.2 **Core things the body corporate may do:** The body corporate may:

5.2.1 do anything authorised by the Act or any other act of parliament;

5.2.2 otherwise do anything a natural person of full age and capacity may do,

provided that the body corporate may only act for the purpose of performing its duties or exercising its powers. *(ss77 and 78).*

5.3 **Rights of owners:** An owner of a principal unit:

5.3.1 is entitled as a body corporate member to exercise a vote in respect of his or her unit subject to section 96 (relating to eligibility to vote) and any other requirements in the regulations;

5.3.2 is entitled to have quiet enjoyment of his or her unit without interruption by other unit owners or occupiers, or the body corporate, except as authorised by the Act or the regulations;

5.3.3 may make alterations, additions, or improvements to his or her unit (subject to certain provisions noted in clause 5.4 below regarding notice to and approval from the body corporate), so long as these are within the unit boundary and do not materially affect any other unit or common property;

5.3.4 has the right to have any dispute resolved in the manner set out in subpart 1 of Part 4 of the Act (Disputes);

5.3.5 has the right to enforce the operational rules;

5.3.6 has the right to attend the general meetings of the body corporate.

(s79).

5.4 **Responsibilities of owners:** An owner of a principal unit:

5.4.1 Must permit the body corporate to enter the unit at any time in an emergency and at all reasonable hours (upon reasonable notice) for any of the following purposes:

5.4.1.1 to view the condition of the unit to check compliance with obligations under the Act;

5.4.1.2 to maintain, repair, or renew any common property, any infrastructure for services and utilities that serve more than 1 unit and/or any building elements that affect more than 1 unit or the common property;

5.4.1.3 to check that the operational rules are being complied with.

5.4.2 must do all things necessary to give effect to decisions of the body corporate *(note: this provision does not affect an owner's right to apply for minority relief under section 210 or to object to a designated resolution under sections 210 to 216)*;

5.4.3 must consult with his or her mortgagee (if required) before exercising a vote under section 97 or section 98 (poll voting);

5.4.4 must comply with all laws and legal requirements relating to the use, occupation or enjoyment of the unit;

5.4.5 must carry out all work ordered by a territorial authority or public body in respect of the unit without delay;

5.4.6 must pay all rates, taxes, charges, body corporate levies and other outgoings payable in respect of the unit;

5.4.7 must repair and maintain the unit and keep it in good order to alleviate the potential for damage or harm to the common property, any building element, any infrastructure, or any other unit in the building;

5.4.8 must notify the body corporate of his or her intention to carry out any additions or structural alterations before the commencement of any work;

5.4.9 must not make any additions or structural alterations to the unit that materially affect any other unit or the common property without the written consent of the body corporate;

5.4.10 must comply with the operational rules;

5.4.11 must not do anything that adversely impacts any body corporate insurance policy.

(s80(1) and (4)).

5.5 **Responsibilities of absent owner who leases or licences unit:** An owner who leases or licenses their unit, and who is absent from New Zealand for longer than 3 consecutive weeks, must:

5.5.1 appoint a person in New Zealand to act as his or her agent.

5.5.2 advise the body corporate of the agent's name, address for service, and contact details.

(s81).

5.6 **Register of owners:** The body corporate is required to maintain a register of all unit owners in accordance with the regulations. An owner must notify the body corporate in writing of any changes to the information held in the register that relates to his or her unit. Where an owner transfers his or her unit to any other person the owner remains liable (as between the owner and the body corporate) for contributions levied under section 121 until the body corporate is notified in writing of the transfer. Until that time the transferee is only entitled to exercise the voting rights for the unit at a general meeting with the consent of the other owners present at the meeting. *(s85).*

5.7 **Owners to sign documents giving effect to resolutions:** The body corporate is entitled to serve notice on an owner requiring the owner to sign any document needed to carry out a resolution either passed by the body corporate or confirmed by the court following an objection being made. If the owner fails to sign the document within 10 working days of being served with the notice (or refuses to sign) the body corporate may sign the document on behalf of the owner. *(s86)*.

5.8 **Body corporate meetings are general meetings:** All meetings of the body corporate are general meetings (either annual or extraordinary). *(s88)*.

5.9 **Requirement for AGM:** The first AGM of the body corporate must be held within 6 months of the date of deposit of the unit plan or settlement of the first unit sale (whichever is later). A chairperson is required to be nominated and elected at the first AGM in accordance with the regulations. Subsequent AGMs must be held once every calendar year and within 15 months of the last AGM. *(s89)*.

5.10 **Calling general meetings:** An AGM must be called by the chairperson in accordance with the regulations. The chairperson is required to call an extraordinary general meeting of the body corporate if presented with a notice requesting one (to consider and decide motions proposed in the notice) signed by or for the owners of at least 25% of the principal units. An extraordinary general meeting may also be called at any other time by the chairperson or the body corporate committee in accordance with the regulations. *(s90).*

5.11 **Quorum for general meetings:** At a general meeting of the body corporate, those entitled to exercise the voting power for at least 25% of the principal units (or their proxies) constitute a quorum. If the body corporate contains 2 or more members a quorum is at least 2 members. *(s95)*.

5.12 **Eligibility to vote at general meetings:**

5.12.1 To be eligible to vote at a general meeting of the body corporate (an **eligible voter**) a person needs to be over the age of 16 years and be entered on the register of owners as either an owner or owner's representative. *(s96(1))*.

5.12.2 An eligible voter may not vote unless all levies and other amounts payable to the body corporate in respect of his or her unit have been paid up to date. If an owner disputes that an amount is payable to the body corporate he or she may make payment for the sole purpose of exercising an entitlement to vote without prejudicing the right to dispute the payment. *(s96(3) and (6))*.

5.12.3 If an owner's unit is subject to a registered mortgage and the mortgage requires it, that owner must obtain the mortgagee's consent before exercising a vote. *(s96(5)*.

5.12.4 A mortgagee may exercise a vote on behalf of an owner in accordance with either the Property Law Act 2007 or any enabling provision in the mortgage, provided it has given the body corporate written notice of its intention to do. *(s96(7) and (8))*.

5.13 **Counting of votes for resolutions:** For motions to be decided by resolution (subject to a request for a poll) at a general meeting of the body corporate:

5.13.1 one vote only may be exercised for each principal unit;

5.13.2 to pass an ordinary resolution, a majority of the eligible voters who vote on the resolution must vote in favour;

5.13.3 to pass a special resolution, at least 75% of the eligible voters who vote on the resolution must vote in favour.
(ss97 and 98).

5.14 **Request for poll:** Any eligible voter who voted on a motion passed by resolution may request a poll, provided that the request is made in person at the relevant meeting. *(s99)*.

5.15 **Counting of poll votes:** Where a poll is properly requested in respect of a motion:

5.15.1 one vote only may be exercised for each principal unit and only those who initially voted on the motion are entitled to vote;

5.15.2 for the motion to pass by ordinary resolution, at least 50% of the ownership interest represented by those voting must vote in favour;

5.15.3 for the motion to pass by special resolution, at least 75% of the ownership interest represented by those voting must vote in favour.

The result of any poll is the resolution of the general meeting. *(s100).*

5.16 **Deciding matters at general meetings:** Any matters at a general meeting of the body corporate relating to an exercise of a duty or power listed in section 108(2) as not being capable of delegation to the body corporate committee, or which has not been delegated, must be decided by special resolution. Except as otherwise provided in the Act, all other matters to be decided at a general meeting must be decided by ordinary resolution. *(s101(1) and (2))*.

5.17 **Matters not on the agenda:** Unless all the eligible voters are present, matters not on the agenda for a general meeting may be discussed but not voted on (save to include them on the agenda for a subsequent general meeting). *(s101(3))*.

5.18 **Resolutions to be in writing:** Every resolution of the body corporate must be recorded in writing. *(s101(4))*.

5.19 **Voting by proxy:** An eligible voter may exercise the right to vote by proxy appointed by notice in writing signed by the eligible voter. A proxy for an eligible voter is entitled to attend and be heard at a body corporate meeting as if the proxy were the eligible voter. *(s102(1) to (3))*.

5.20 **Postal votes:** An eligible voter (or his or her proxy) may exercise the right to vote at a body corporate meeting by casting a postal vote in the prescribed form. A postal vote must be sent to the chairperson or to the person authorised by the chairperson to receive and count postal votes. *(s103)*.

5.21 **Resolutions without a general meeting:** A resolution may be validly passed by written resolution without a general meeting provided that notice of the resolution is given to eligible voters in accordance with the regulations and the resolution is signed:

5.21.1 for an ordinary resolution, by at least 50% of eligible voters;

5.21.2 for a special resolution, by at least 75% of eligible voters. *(s104)*.

5.22 **Delegation of powers and duties to body corporate committee:** The body corporate may (by special resolution and written notice) delegate to the body corporate committee any of its duties or powers save for this general power of delegation and those set out in:

5.22.1 section 41 (which provides for the reassessment of ownership interests and utility interests);

5.22.2 section 105(3) (which requires the body corporate to comply with the operational rules); and

5.22.3 section 136(4) (which relates to the application of insurance monies in or towards reinstatement of the development).

Any delegation may be revoked likewise by special resolution and written notice to the body corporate committee.
(ss108 and 111).

5.23 **No further delegation by the committee:** The body corporate committee must not further delegate any of its delegated duties or powers. *(s109(2))*.

5.24 **Effect of delegation on body corporate:** No delegation impacts the performance of any duty or the exercise of any power by a body corporate. The body corporate remains responsible for the actions of the body corporate committee acting under delegation. *(s110)*.

5.25 **Requirement to form body corporate committee:** The body corporate, by virtue of having more than 10 principal units, must form a body corporate committee unless it decides by special resolution not to form one. *(s112)*.

5.26 **Steps to form committee at first AGM:** At its first AGM the body corporate must:

5.26.1 decide by ordinary resolution the number of members the body corporate committee will have and the number of members required to constitute a quorum; and

5.26.2 elect the members of the body corporate committee. *(reg. 24(2)).*

5.27 **Nomination by committee candidate not being a natural person:** If a candidate for election as a committee member is not a natural person, the candidate must nominate a director to act as a committee member on the candidate's behalf. *(reg. 24(4))*.

5.28 **Qualification as committee member:** A committee member must be either the owner of a principal unit or a director who has been nominated as noted in clause 5.27 above. *(reg. 24(6)).*

5.29 **Tenure of office as committee member:** Unless a committee member resigns or is removed from office by ordinary resolution of the body corporate, he or she holds office from the close of the general meeting at which he or she is elected until the close of the next AGM. *(reg. 24(7))*.

5.30 **Committee members eligible for re-election:** A committee member is eligible for re-election. *(reg. 24(8))*.

5.31 **Removal/ voluntary resignation of committee members:** A committee member may be removed from office by ordinary resolution of the body corporate at an extraordinary general meeting and may give written notice of resignation to the body corporate at any time. *(reg. 25(1) and (2))*.

5.32 **Circumstances requiring resignation as committee member:** A committee member is required to give a written notice of resignation if an agreement for sale of the committee member's unit has become unconditional and, as a result of that sale, the committee member will no longer be the owner of a principal unit in the unit title development. *(reg. 25(3))*.

5.33 **Deciding matters at committee meetings:** Any matters at a meeting of a body corporate committee must be decided by a simple majority of votes. *(s113).*

5.34 **Committee to report to body corporate:** A body corporate committee must report to the body corporate at each AGM (and at such other times as the body corporate decides by ordinary resolution) on the exercise of the duties or powers delegated to it under section 108(1). *(s114 and reg. 28)*

6 PROVISIONS RELATING TO OPERATIONAL RULES

6.1 **Body corporate operational rules:** The body corporate operational rules are the rules prescribed by the regulations unless amended by ordinary resolution at a general meeting and notified to the Registrar *(as they have been for the body corporate in this case)*. *(s105(1) and (2) and s106(3))*.

6.2 **Changes to operational rules:** Any change to the operational rules:

6.2.1 must relate to either the regulation of the body corporate or the control, management, administration, use, or enjoyment of the principal units, accessory units or common property;

6.2.2 may only confer or impose powers or duties on the body corporate that are incidental to the powers and duties conferred or imposed under the Act;

6.2.3 that is inconsistent with the Act or any other enactment or rule of law is invalid.

(s106(1), (2) and (4)).

6.3 **Parties bound by operational rules:** The operational rules are binding on:

6.3.1 the body corporate;

6.3.2 owners (including any occupier of a principal unit); and

6.3.3 any mortgagee in possession of a principal unit.

(S105(3)).

7 FINANCIAL AND PROPERTY MANAGEMENT

7.1 **Operating account:** The body corporate is required to run an operating account for the purpose of meeting various expenses including those relating to the provision of services, management expenses, compliance costs and routine maintenance costs. *(s115)*.

7.2 **Long-term maintenance plan and fund:** The body corporate must have a long-term maintenance plan (covering at least a 10-year period) and a dedicated fund to support that plan. Approval of the body corporate (by special resolution) is required for expenditure on any 1 maintenance item if the cost exceeds the amount budgeted for that item in the long-term maintenance plan by more than 10%. *(ss116 and 117)*.

7.3 **Optional contingency fund**: The body corporate may establish 1 or more contingency funds to provide for unbudgeted expenditure. *(s118)***.**

7.4 **Optional capital improvement fund:** The body corporate may establish a capital improvement fund to provide for spending on additions or upgrades to the unit title development outside of the long-term maintenance plan. *(s119)*.

7.5 **Contributions to be levied on owners:** The body corporate may determine from time to time the amounts to be raised for each fund and impose levies on the owners to maintain those funds. In the case of any capital improvement fund, levies must be calculated in proportion to each owner's ownership interest. For any other fund, and the operating account, levies are to be calculated with reference to utility interests. *(s121)*.

7.6 **Recovery of levies:** The body corporate must fix the due date for payments of levies. Unpaid levies, together with any reasonable collection costs, are recoverable as a debt due to the body corporate by the unit owner (as at either the levy due date or the date proceedings are issued). *(s124)*.

7.7 **Recovery of metered charges:** Charges for metered services recorded on a meter installed and maintained by the body corporate are recoverable from an owner as if they were levies. The body corporate is not entitled to collect a margin on the cost of usage charged by the service provider. *(s125)*.

7.8 **Recovery of money expended for repairs and other work:** Where the body corporate does authorised repair or other work which substantially benefits 1 or more units more than the others, the body corporate may recover the expenses incurred as a debt due from the owners of the relevant units. Expenditure which benefits a particular unit by a distinct and ascertainable amount is to be apportioned to that unit. Any balance expenditure is apportioned to the remaining units which benefit in accordance with their utility interests (unless the court considers that this would be inequitable and directs that an alternative allocation method be used). The unit owner at the time the expense was incurred and the owner as at the date proceedings are issued are jointly and severally liable for the relevant debt. *(s126)*.

7.9 **Recovery of money expended where owner or invitees at fault:** Where the body corporate does authorised repair or other work rendered necessary by any wilful or negligent act or omission on the part of an owner (or his or her tenant, lessee, licensee, or invitee) or by any breach of the Act, the regulations or the operational rules by one of those parties, the body corporate may recover the expenses incurred, together with any reasonable collection costs, as a debt due from the relevant owner (as at either the date the expense was incurred or the date proceedings are issued). *(s127).*

7.10 **Interest on money owing to body corporate:** Interest accrues on overdue amounts owing to the body corporate at a rate not greater than 10% per annum. *(s128)*.

7.11 **Spending, borrowing, and investing money:** The body corporate may spend or borrow money and invest money in any investment authorised by law for the investment of trust funds. The body corporate is not permitted to grant any mortgage, charge or encumbrance over the common property. *(s130)*.

7.12 **Distribution of surplus money or property:** The body corporate may distribute surplus money or personal property to owners in the same proportions in which the money was raised (or the money which was used to pay for the property was raised, as appropriate). *(s131)*.

7.13 **Financial statements:** The body corporate is required to keep accurate accounting records. The financial statements for the body corporate must be in the form and contain the matters prescribed by the regulations. Unless resolved otherwise in respect of a given year by special resolution at the AGM, the body corporate must do one of the following within 2 months after the end of each financial year:

7.13.1 submit its financial statements to an independent auditor for auditing;

7.13.2 submit its financial statements to an accountant for review; or

7.13.3 engage an accountant to undertake specific verification procedures as determined by the body corporate by special resolution at a general meeting.

A copy of the financial statements for the most recent financial year must accompany the notice of the AGM. *(s132)*.

7.14 **Insurance:**

7.14.1 **Body corporate to insure all buildings, etc:**

7.14.1.1 The body corporate must insure all buildings and other improvements on the land to their full insurable value and take out any other insurance required by law. The body corporate may take out any additional insurance it considers practical. *(s135)*.

7.14.1.2 Notwithstanding the above:

(a) indemnity cover is permitted if full replacement cover is not available in the market. *(s137(2)(a))*.

(b) if the units are stand-alone units the body corporate may require each owner to insure the improvements within the relevant unit boundaries by special resolution at a general meeting. The body corporate would remain responsible for insuring improvements within the common property boundaries. *(s137(2)(b)).*

7.14.1.3 In any event, an owner is not precluded from taking out an insurance policy against destruction of or damage to the owner's unit if they so wish. *(s137(1)(a))*.

7.14.2 **Application of body corporate insurance monies:**

7.14.2.1 Money paid out by the insurer under the body corporate insurance policy must be applied to reinstatement of the unit title development unless the body corporate decides otherwise by special resolution at a general meeting. The section 212 to 216 objection process applies to any such resolution. *(s136(4) and (5))*.

7.14.2.2 If money is applied to reinstatement, then a mortgagee is not entitled to demand that any part of the money be applied to repayment of the relevant mortgage debt. *(s136(6))*.

7.14.2.3 The above does impact upon the rights of any person in respect of body corporate insurance proceeds under section 74 (scheme following destruction or damage) or subpart 2 of Part 4 of the Act (cancellation of unit plans). *(s136(7))*.

7.15 **Body corporate duties of repair and maintenance:**

7.15.1 **Body corporate obligations:** The body corporate must manage, maintain and keep in a good state of repair the common property and any assets owned by the body corporate or designed for use in connection with the common property. In addition, the body corporate must maintain, repair or renew all building elements and infrastructure serving more than 1 unit. *(s138(1) and (2))*.

7.15.2 **Access to units:** The body corporate may access any unit at all reasonable hours to enable it to carry out requisite repairs and maintenance. *(s138(3))*.

7.15.3 **Recovery of money expended on principal unit:** Any costs incurred by the body corporate for repairs to building elements and infrastructure contained in a principal unit are recoverable as a debt due to the body corporate by the unit owner (as at either the date the expense was incurred or the date proceedings are issued). *(s138(4))*.

8 DISCLOSURE OF INFORMATION ON SALE

8.1 An owner proposing to sell his or her unit is required to provide the buyer with:

8.1.1 **Pre-contract**: A “pre-contract disclosure statement” containing the information prescribed in regulation 33 (which includes general information regarding body corporate levies payable and proposed maintenance for the coming year, the balance of funds held by the body corporate and whether there are applicable leaky building proceedings) before signing an agreement for sale and purchase; *(s146)*

8.1.2 **Pre-settlement**: A “pre-settlement disclosure statement” containing the information prescribed in regulation 34 (which includes more specific details around levy payments, metered charges and any other legal proceedings the body corporate might be involved in) at least five working days before the scheduled settlement date for the sale. A certificate from the body corporate certifying that the information contained in this statement is correct must also be included. The body corporate is entitled to withhold such a certificate if there are overdue payments in respect of the unit; *(s147)*

8.1.3 **Upon request**: An ”additional disclosure statement” containing the information prescribed in regulation 35 (which includes general body corporate information such as regular expenses, insurance policy details, current third party contracts and a summary of the long-term maintenance plan) within five working days of the buyer requesting such a statement <u>provided that</u> the request is made before the end of either the fifth working day after the sale agreement is signed by both parties or the tenth working day before settlement (whichever is earlier). *(s148)*

8.2 **No contracting out of disclosure requirements**: Owners are not permitted to "contract out" of the requirement to provide these disclosure statements to a prospective buyer. Any provision in an agreement which attempts to negate the disclosure requirements is of no effect. *(s145)*.

9 DISPUTES

9.1 **Parties**: Parties to a dispute relating to the unit title development may include, amongst others, an owner or occupier of a principal unit, a prospective buyer, the body corporate, the developer or the body corporate itself. *(s171(2)).*

9.2 **Three tier system**: The Act provides for a three-tier system for determining disputes, depending on the monetary value of any order being sought and the subject matter of the dispute.

9.2.1 **Tenancy Tribunal**: Disputes with a monetary value not exceeding $50,000 and which do not relate to either the application of insurance money under section 136(4) (refer paragraph 7.14.2.1 above) or the title of land are heard by a Tenancy Tribunal constituted under the Residential Tenancies Act 1986. Disputes relating to the title of land include those around cancellation of a unit plan. *(s171(4) and (5))*.

9.2.2 **District Court**: Disputes relating to the application of insurance money for amounts not exceeding $50,000 and otherwise with a monetary value greater than $50,000 but not more than $200,000 not relating to the title of land are referred to a District Court. *(s172)*.

9.2.3 **High Court**: Disputes with a monetary value exceeding $200,000 or which relate to the title of land are referred to the High Court. *(s173)*.

10 CANCELLATION OF UNIT PLAN

10.1 **Cancellation on application by the body corporate:** The body corporate may apply to the Registrar for the cancellation of the unit plan relating to the unit title development. *(s177)*.

10.1.1 **Pre-requisites:**

10.1.1.1 Application for cancellation of the unit plan requires prior body corporate approval by special resolution and must be accompanied by a certificate from a registered valuer reassessing the ownership interests of all units. The section 212 to 216 objection process applies to the required resolution. *(s177(3), (4) and (7)).*

10.1.1.2 Before making the application the body corporate must also serve a copy of the draft application on every owner and every person who has an interest (including a caveat) noted on the register in respect of any unit or the common property. *(s177(5))*.

10.1.2 **Effects of cancellation:** On cancellation of the unit plan:

10.1.2.1 **Underlying estates vest in owners**: the underlying estates in all units and the common property merge and vest in unit owners in proportion to their re-assessed ownership interests; *(s180(2)(a))*

10.1.2.2 **Body corporate property distributed**: the body corporate is dissolved and, unless otherwise determined by special resolution:

(a) surplus money in any fund maintained by the body corporate is distributed among owners on the same basis that levies for those funds were being collected immediately prior to cancellation;

(b) all other property and money (including insurance money received by the body corporate) is distributed among owners according to their re-assessed ownership interests.

(s185(1) and (2)).

10.2 **Cancellation by the High Court:** The body corporate, after a special resolution to do so, or one or more owners may apply to the High Court for the cancellation of the unit plan. *(s187(1))*.

10.2.1 **Notice of application:** The applicant must serve notice of any such application on each owner, every person who has an interest (including a caveat) noted on the register in respect of any unit or the common property, any insurer of improvements on the land and the Registrar. Those persons have the right to be heard in respect of the application. *(s187(2) and s188(1))*.

10.2.2 **Grounds for cancellation: The** High Court may authorise that the unit plan be cancelled if it is satisfied that cancellation is just and equitable having regard to the rights and interests of any creditor of the body corporate and every person having an interest in any unit or any part of the underlying land. *(s188(2)(a))*.

10.2.3 **Directions relating to cancellation:** If the High Court authorises the cancellation of the unit plan, it has a broad power to give related directions including for the payment of money by or to the body corporate or in respect of the distribution of body corporate assets. *(s188(3))*.

10.2.4 **Cancellation following High Court decision:** If the High Court has made a declaration under section 188 authorising the cancellation of the unit plan (and provided that all related conditions and directions have been complied with), any original applicant (or their successor in title) has a 6 month window from the date of the High Court declaration to apply to the Registrar for cancellation of the plan. *(s189(1) and (2))*.

11 SCHEME FOLLOWING DESTRUCTION OR DAMAGE WHERE UNIT PLAN NOT CANCELLED

11.1 **High Court authority to settle a scheme**: If any building or other improvement on the land is damaged or destroyed, but the unit plan is not cancelled, the High Court may settle a scheme on the application of the body corporate, any unit owner or a registered mortgagee of a unit. Any person claiming an estate or interest in respect of a unit or the common property and any insurer of improvements on the land has the right to appear and be heard on any such application. *(s74(1), (2) and (6))*.

11.2 **Ambit of scheme:** A scheme under section 74(2) may include provisions either for reinstatement or for the transfer of units to the body corporate to form part of the common property. *(s74(3))*

11.3 **Related directions** The High Court has a broad power to make orders for giving effect to the scheme, including orders directing the application of any insurance money, payment of money by or to the body corporate, the deposit of an appropriate new unit plan or imposing other terms and conditions that the High Court thinks fit. *(s74(7))*.

12 SECTION 210-216 OBJECTION PROCESS

Note for the purposes of the following paragraphs that "appropriate decision maker" means the Tribunal or the court that, if the matter were a dispute under sections 171 to 176, would have jurisdiction over that dispute. (s5).

12.1 **Minority relief where resolution required:** In any case where the Act requires a resolution and the resolution is passed, any person who voted against may apply to the appropriate decision-maker for relief within 28 days of the passing of the resolution on the grounds that the effect of the resolution would be unjust or inequitable for the minority. *(s210)*.

12.2 **Majority relief where special resolution required:** In any case where the Act requires a special resolution and the resolution is not passed but 65% of eligible voters have voted in favour, any eligible voter who voted in favour may apply to the appropriate decision-maker to have the resolution confirmed as passed on the grounds that not having it confirmed would be unjust or inequitable on the majority. The appropriate decision-maker has a broad power to make an order confirming the resolution subject to such terms and conditions that it considers to be just and equitable. *(s211(1) and (2))*.

12.3 **Relief in respect of designated resolutions:** The Act provides a separate process for relief in respect of a class of particularly sensitive resolutions termed "designated resolutions".

12.3.1 **Designated resolutions defined:** For the purposes of the following paragraphs, "designated resolution" means, amongst others, a resolution relating to:

12.3.1.1 approving the method of apportionment of a utility interest under section 41(6).

12.3.1.2 sales, leases, or licences of common property under section 56;

12.3.1.3 additions to common property under section 58;

12.3.1.4 application of insurance money for purposes other than reinstatement of the unit title development under section 136(4); and

12.3.1.5 cancellation of unit plans under section 177.

(s212).

12.3.2 **Notices of designated resolutions:** After passing a designated resolution, the body corporate must serve notice in the prescribed form on every owner, every person who has an interest (including a caveat) noted on the register in respect of any unit or, if the resolution is to cancel the unit title development, in respect of the common property. Notice must also be served on any person who is the grantee of an unregistered lease or licence over any part of the common property. *(s213(1))*.

12.3.3 **28 day objection period**: Any person served with notice of a designated resolution may within 28 days of service ("28 day objection period") notify the body corporate in writing (in the prescribed form, if any) of his or her objection to the designated resolution ("notice of objection"). *(s213(3))*.

12.3.3.1 **Intention to apply for relief**: The notice of objection must state that the person objecting intends to apply to the appropriate decision-maker for relief. *(s214(1))*.

12.3.3.2 **Withdrawal of any earlier application**: If the person objecting has previously made an application for relief under section 210 or has filed an application on a matter relating to the resolution under the dispute provisions in sections 171 to 176, he or she must withdraw that application before giving a notice of objection. *(s213(3) and (5))*.

12.3.3.3 **Subsequent application**: A person who has given a notice of objection must also then file an application for relief in the prescribed form with the appropriate decision-maker within the 28 day objection period. If application for relief is not lodged within that timeframe then the original notice of objection is of no effect. *(s214(2) and (3))*.

12.3.4 **Hearing if objection/ application for relief made:** The appropriate decision-maker must hear the objection as soon as practicable and may make any order it considers just and equitable (subject to any terms or conditions it thinks fit) including an order:

12.3.4.1 confirming or overturning the resolution;

12.3.4.2 requiring that compensation be paid to or by the person making the objection;

12.3.4.3 that repairs to the unit title development be carried out or that a deficiency in the performance of any services be rectified by doing work specified in the order;

(s215).

12.3.5 **Certificate relating to designated resolutions:** For any designated resolution which the body corporate wishes to carry out through the Registrar the body corporate must lodge a certificate stating that:

12.3.5.1 the designated resolution has been passed; and

12.3.5.2 notice has been served on all persons required; and

12.3.5.3 either:

(a) no objection was made; or

(b) an objection was made but the objecting party failed to subsequently file application for relief with the appropriate decision maker within the 28 day objection period; or

(c) the designated resolution has been confirmed by the appropriate decision-maker (subject to terms and conditions if applicable) after hearing any objection.

(s216).

SCHEDULE 3 – DEFINITIONS

13 Definitions:

In the operational rules and the guidance notes, unless the context otherwise requires:

accessory unit means a unit that is designed for use with any principal unit (including, without limitation, a garden, garage, car parking space, storage space, swimming pool, laundry, stairway, or passage) and that is shown on a unit plan as an accessory unit.

appropriate decision-maker means the Tribunal or the court that, if the matter were a dispute under subpart 1 of Part 4 of the Act (sections 171 to 176), would have jurisdiction over that dispute in accordance with that subpart.

Act means the Unit Titles Act 2010 and includes any statutory modification or re-enactment of that Act and, where the context permits or requires, the regulations.

body corporate means body corporate number 394768 and, where applicable,includes the agents of the body corporate.

body corporate committee means a committee established by the body corporate under section 112 of the Act.

building means the building and all other improvements on the land.

building elements includes the external and internal components of any part of a building or land on the unit plan that are necessary to the structural integrity of the building, the exterior aesthetics of the building, or the health and safety of persons who occupy or use the building.

carpark means an accessory unit or an area in the common property designated as a carpark, and "carparks" has a corresponding meaning.

common property means those parts of the land described as common property on the unit plan.

infrastructure includes pipes, wires, ducts, conduits, gutters, watercourses, cables, channels, flues, conducting, or transmission equipment necessary for the provision of water, sewerage, drainage, stormwater removal, gas, electricity, oil, shelter, protection from fire, security, rubbish collection, air, telephone connection, Internet access, radio reception, television reception, or any other services or utilities to or from a unit or to or from the common property.

land means the land which is the subject of the unit plan.

operational rules means the rules set out in Schedule 1 above and any amendments made to them from time to time in accordance with section 105(2) of the Act.

owner, in relation to any unit:

(a) means the person for the time being registered as proprietor of the unit;

(b) in sections 105, 124, 126, 127 and 163 of the Act, includes a person in actual occupation of a unit under a binding and unconditional agreement for sale and purchase; and

(c) for the purposes of clause 2 of the operational rules, includes any occupier of a unit.

ownership interest means the interest assigned to a unit in accordance with section 38 of the Act.

principal unit means a unit that is designed for its local authority zoned and approved use (whether in conjunction with any accessory unit or not) and that is shown on the unit plan as a principal unit and which either:

(a) contains a building or part of a building or is contained in a building; or

(b) is a car park.

registered valuer means a registered valuer within the meaning of the Valuers Act 1948.

Registrar means the Registrar-General of Land as defined in the Land Transfer Act 1952.

regulations means regulations in force under the Act.

unit means a principal unit on the unit plan, and:

(a) unless the context otherwise requires, includes all accessory units attached to that principal unit; and

(b) in relation to any owner or occupier, means the principal unit and accessory unit(s) owned or occupied by that owner or occupier.

unit plan means unit plan number 394768.

unit title development means the individual units and the common property comprising a stratum estate.

utility interest means the interest assigned to a unit under sections 39 and 40 of the Act.