

### Item 3.5 Constitutional Changes

**Summary:** For Mainstreet Whanganui to apply for reregistration under the new Incorporated Societies Act 2022, the society is required to adopt and delete some of the current rules. The changes are in red. It is the recommendation of the Board and General Manager that the rules/constitutional and additions for organisational increase performance. And that the Members approve these adoptions at the 2023 Annual General Meeting. More information on reregistration can be accessed at [Law changes for incorporated societies | Incorporated Societies \(companiesoffice.govt.nz\)](https://www.companiesoffice.govt.nz)

Des Warahi  
General Manager

#### **THE INCORPORATED SOCIETIES ACT 1908 replaced with 2022 RULES OF MAINSTREET WHANGANUI INCORPORATED**

1. **Name:** The name of the Society shall be “Mainstreet Whanganui Incorporated”. (hereinafter referred to as “the Association”).

2. **Location and Boundary**

The Mainstreet Boundary extends from the intersection of Victoria Avenue and Taupo Quay to the intersection of Victoria Avenue and Ingestre Street – please also see map in Appendix 1.

3. **Objects:**

The objects for which the Association is established are:

- a. To promote and encourage the revitalisation of the town centre of Whanganui as a place for its citizens and visitors to shop, work and enjoy its surroundings while carrying out all the functions of being a community.
- b. To advertise, beautify and develop the city to attract trade, tourists, visitors and increase its population.
- c. To create, increase, expand or develop amenities for the use of the public.
- d. To assist retailers and commercial property owners in improving their premises and to make the centre an attractive place to carry out their activity for themselves, their customers, and their clients.

- e. To identify the physical assets and heritage of the town centre and to encourage the development of a place of significant character as a town centre rooted in its historical identity and to co-ordinate such development in a homogeneous way to preserve the character of the town centre as a place for the enjoyment and for the benefit of all its citizens.
- f. To undertake the promotional activity of all kinds and to publicise the town centre as a preferred place for the community to shop, to be entertained, and to carry out their daily work.
- g. To assist in the promotion and strengthening of existing businesses and create new opportunities for growth and improvement.
- h. To market the town centre as a place to be for visitors and locals alike through the promotion of special events and retail promotion.
- i. To do all such things as are conducive and incidental to the attaining of the objects of the Association or any of them.

**4. Members:**

- a. The Association shall consist of an unlimited number of members.
- b. Any person or body corporate who is a ratepayer on the Whanganui District Council rating list and who is liable for the special levy by the Whanganui District Council (the Central Business District (CBD) Services Rate) from time to time in the Central Business District as part of that rate and any person or organisation who operates a business in the area covered by the special levy shall be deemed members of the Association and entitled to all benefits of membership.
- c. Any person or body corporate not being liable for the special levy as described in the preceding clause and having duly completed a form of enrolment for membership of the Association and having subsequently been accepted by the Board for membership and having paid the subscription for the then current year as fixed by the Board shall then become a member of the Association.
- d. No person who is an employee of the Association shall be eligible for the membership while so employed provided however that such restriction shall not apply to an employee who is deemed to be a member pursuant to Clause (b) hereof.
- e. A member shall cease to be a member of the Association in any of the following events:
  - i. If, having paid the then current years and all previous subscriptions the member shall by notice in writing to the Association resign from membership,
  - ii. Having failed to pay the subscription six months after the date appointed for payment thereof the member's name shall be removed from the Association's register of members with the authority and resolution of the Board,
  - iii. If a member is expelled from membership by resolution of the Board.

PROVIDED HOWEVER that this clause shall not apply in respect of a member who shall be deemed a member pursuant to Clause b hereof.

- f. Each member shall pay to the Association such subscription as may from time to time be determined by the Board. Subscriptions shall be payable in advance and shall be due and payable on the 1<sup>st</sup> day of August in each year.
- g) **To be added: Mainstreet Whanganui Dispute Resolution Procedure/ Resolving disputes**

**What does natural justice mean? - Natural justice means you must be treated fairly, and decisions affecting your rights are made using fair processes.  
Mainstreet Whanganui's **procedures under the new Act****

### **1. How a complaint is made**

A member or an officer may make a complaint by giving to the board (or a complaints subcommittee) a notice in writing that —

- a. states that the member or officer is starting a procedure for resolving a dispute in accordance with the society's constitution; and
  - b. sets out the allegation to which the dispute relates and whom the allegation is against; and
  - c. sets out any other information reasonably required by the society.
2. The society 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 the society is starting a procedure for resolving a dispute in accordance with the society's constitution; and
  - b. sets out the allegation to which the dispute relates.
3. The information given under subclause 1b. or 2b. must be enough to ensure that a person against whom an allegation is made is fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response.
4. A complaint may be made in any other reasonable manner permitted by the society's constitution.

### **1. Person who makes a complaint has the right to be heard**

- 1. 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.

2. If the society makes a complaint —
  - a. the society 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 the society.
3. Without limiting the way, the member, officer, or society 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 society's written statement or submissions (if any) are considered by the decision maker.

#### **4. Person who is subject of a complaint has the right to be heard**

1. This clause applies if a complaint involves an allegation that a member, an officer, or the society (the respondent) —
  - a. has engaged in misconduct; or
  - b. has breached, or is likely to breach, a duty under the society's constitution or bylaws or the Incorporated Societies Act 2022; or
  - c. has damaged the rights or interests of a member or the rights or interests of members generally.
2. The respondent has a right to be heard before the complaint is resolved or any outcome is determined.
3. If the respondent is the society, an officer may exercise the right on behalf of the society.
4. Without limiting the way, 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.

## **5. Investigating and determining a dispute**

1. The society 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.
2. Disputes must be dealt with under the constitution in a fair, efficient, and effective manner.

## **6. Society may decide not to proceed further with a complaint**

Despite the clause 'Investigating and determining dispute' above, the society 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 the society has materially breached, or is likely to materially breach, a duty under the society's constitution or bylaws or the Incorporated Societies Act 2022;
  - iii. that a member's rights or interests or members' rights or interests generally have been materially damaged;
- c. the complaint appears to be 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.

## **7. Society may refer a complaint**

1. The society 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.
2. The society may, with the consent of all parties to a complaint, refer the complaint to any type of consensual dispute resolution (for example, mediation, facilitation, or a tikanga-based practice).

## **8. Decision makers**

A person may not act as a decision-maker in relation to a complaint if 2 or more members of the committee 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.

## **5. Register of Members:**

The Association shall keep a register of its members containing the names, addresses (including email) and occupations of those members and the date at which they became members. The Association shall from time to time, when required by the Registrar to do so under Section 22 of the said Act, send to him a list of the names, addresses (including email) and occupations of its members accompanied by a Statutory Declaration verifying that list and made by the Chairperson or Secretary of the Association.

Members' consent to be added Members will need to give consent to become a member of a society under the new Act. Consent can be made through the filling in an application form Existing members (those who joined before a society reregisters under the new Act) will not be required to confirm their consent. A society is already required to keep a register of its members. The register must contain a member's name, last known contact details, and the date their membership started.

## **6. Registered Office:**

In accordance with Section 18 of the said Act the Association shall have a registered office (which shall be at Whanganui) and to which all communications may be addressed and notice of the situation of that office and of any change therein shall be given to the Registrar as provided by that Section.

## **7. Alteration of Rules:**

Subject to Section 21 of the Act these rules or any of them may be altered, added to, or rescinded by resolution passed by a majority of members in attendance at an Annual General or Special General Meeting of which notice specifying the intention to propose the resolution has been duly given, provided that the Annual General Meeting or Special General Meeting must achieve quorum in accordance with Rule 12 of these rules.

## 8. General Meetings:

- a. A General Meeting of the Association shall be held once in every calendar year at such time, **to must be held within 6 months of the society financial year end to remove 15 months after the holding of the last preceding general meeting)** at a place as the Board may determine. The abovementioned general meeting shall be called “Annual General Meetings”. All other General Meetings shall be called “Special General Meetings”.
- b. Special General Meetings of the members may be convened at any time by the Secretary or by the Chairperson under the direction of the Board and shall be convened on the requisition of not less than four members of the Board or not less than ten members of the Association.
- c. Fourteen (14) days’ notice of any Annual General Meeting or Special General Meeting shall be given to members and such notice shall specify the general nature of any business intended to be transacted at such meeting.
- d. At every Annual General Meeting, or Special General Meeting the chair shall be taken by the Chairperson if present or in his / her absence by the Vice Chairperson, failing which the Chairperson shall be nominated from members of the Board by the persons present at the meeting.
- e. Voting at Annual General Meetings or Special General Meetings shall be taken as the Chairperson shall direct but any member present may demand a poll which shall be immediately taken in a manner determined by the Chairperson and the result declared by the Chairperson. In case of equality of votes the Chairperson shall have a second or casting vote.
- f. The business of the Annual General Meeting shall be:
  - i. To receive the Annual Report of the Board.
  - ii. To receive the duly audited Annual Financial Statements of Income and Expenditure and Assets and Liabilities of the Association.
  - iii. To elect a Chairperson who shall be a member of the Board.
  - iv. To elect a Board who shall govern the activities of the organisation. The number to be elected to the Board shall be, **shall not be less than three inclusive of Board Chair and no more than ten. To remove the subcommittee chairs as the board doesn’t have subcommittees but can appoint and remove subcommittee as they are required.**
  - v. To appoint an Auditor.
  - vi. To consider such other business as shall be placed on the agenda by the Chairperson of the meeting.

**9. Power to Co-Opt:**

- a. The Chairperson shall have the power to co-opt members to the Board for such period and such terms as they think fit, provided that the general balance of the Board Committee shall be maintained.
- b. Members of the Sub-Committees shall be appointed by the Board. There is no maximum or minimum number of subcommittee members.

**10. Election of Offices:**

- a. No person shall be elected to office under Rule 8 hereof unless that person is present at the Annual Meeting at which he or she is to be elected or has previously signified in writing his or her willingness to accept nomination.
- b. Only persons who are members by virtue of Rule 4(b) hereof or are financial members of the Association or duly appointed representatives of organisations which are financial members of the Association shall be eligible to be members of the Board except that persons co-opted to the Board or a sub-committee because of their expertise need not comply with this requirement but the period of co-option is restricted to and shall end at the next Annual General Meeting.
- c. Each Board member shall be appointed for a period of two years.
- d. At the Annual General Meeting each year, the Board members required to retire at that meeting by these rules must retire from office but shall be eligible for re-election at that meeting.
- e. To maintain organisational memory and understanding, Board membership shall be staggered such that as close as possible to 50% of the Board shall retire and new Board members be elected (or re-elected) to fill the vacant Board positions at a particular Annual General Meeting.
- f. The Board members to retire at an Annual General Meeting pursuant to the clause above, will be those who have been longest in office since they were last elected or deemed elected. Persons who became Board members on the same day must retire in the order the Board resolves.
- g. The Board will appoint an Independent Returning Officer (IRO) to administer the election processes.

**11. Representation of Members at Meetings:**

- a. Each financial member of the Association at the meeting shall be entitled to one (1) vote.
- b. All voting is to be overseen and managed by an Independent Returning Officer (IRO).
- c. Any corporate or incorporate members of the Association shall be entitled to appoint one (1) representative who is a current financial member of Mainstreet to attend general meetings of the Association and advise the IRO of the name of such representative in writing.



- d. No person shall be eligible to vote at any meeting either in person or by proxy unless he or she shall be a financial member. A member shall be deemed to be a financial member except where the subscription of such financial member shall be more than three months in arrears.
- e. Votes may be recorded personally by ballot or by proxy. The form of proxy must be in the hands of the IRO at the office of the Association FIVE (5) days before the meeting at which it is proposed to be used. An instrument appointing a proxy shall be signed by the member making the appointment and if such member shall be a corporate or incorporate body or organisation such instrument shall be signed for and on behalf by any two of them the Chairperson, General Manager, Secretary or director or other official officer of the organisation and shall be in the following form or such other form as the Board shall approve:

I/We  
 Being a member of MAINSTREET WHANGANUI  
 INCORPORATED  
 Hereby appoint

As my/our proxy to vote for me/us and on my/our behalf at the  
 Annual/Special/General Meeting of the Association to be held  
 on the     day of 20     or at any adjournment thereof.

Date:

.....  
 Signature (designation)

.....  
 Signature (designation)

- f. Proxy votes are to be managed in accordance with the Representation Policy 2019.

**12. Quorum:**

The quorum at the Annual, Special and General Meetings of the Association shall consist of twenty (20) members either personally present or represented by proxy.

**13. Indemnity of Officers:**

No officer of the Association shall be personally liable for the acts, receipts, neglects or defaults of his or her action or the action of any other officer of the Association or for any loss occasioned by any error of judgement or oversight on his or her part or for any loss, damage or misfortune whatever which shall happen in the execution of the duties of his or her office or in relation thereto unless the same happens to be due to his or her own wilful default or dishonestly.

#### **14. Meetings of the Board and Sub-Committees:**

- a. The Board may meet for the despatch of business, adjourn, or otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes, the Chairperson shall have a second or casting vote. Any two members of the Board may, and the Secretary, on the requisition of any two such members shall at any time summon a meeting of the Board.
- b. Committee meetings may be held via video or telephone conference, or other formats as the Committee may decide.
- c. The quorum necessary for the transaction of business of the Board shall be to change to a majority of current board members but no less than 3 in number.
- d. The continuing members of the Board may act notwithstanding any vacancy in their body but if and so long as their number is reduced below the number fixed as the necessary quorum the continuing members of the Board may act for the purpose of summoning a General Meeting of the Association but for no other purpose.
- e. The Chairperson subject as hereinafter appears shall preside as Chairperson at every meeting of the Board.
- f. If there is no Chairperson or if at any meeting, he/she is not present within ten (10) minutes after the time appointed for holding the meeting or is unwilling to act as Chairperson, the Vice Chairperson shall be Chairperson.
- g. If the Vice Chairperson is not present within ten (10) minutes after the time appointed for holding the meeting or is unwilling to act as Chairperson, the members of the Board Committee present shall choose some other one of their number to be Chairperson.
- h. The Board may delegate any of its powers to committees consisting of such member or members of its body as it thinks fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Board including the power to co-opt members to such Committees.
- i. Unless the Chairperson has been previously appointed by the Board, a committee may elect a chairperson of its meetings; if no Chairperson is elected, or if at any meeting the Chairperson is not present within ten (10) minutes after the time appointed for holding the same, the members present may choose one of their number to be Chairperson of the meeting. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the Chairperson shall have a second or casting vote.

- j. All acts done by any meeting of the Board or of a committee or sub-committee of the Board or by any person acting as a member of that Board shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such member or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a member of the Board or committee or sub-committee of the Board.
- k. To be added officers of the board should include all board members, as well as the General Manager, although the General Manager has speaking rights but doesn't have voting rights.

### **15. Powers of the Board:**

The management of the business of the Association shall be vested in the Board and the Board may exercise all such powers and do all such acts and things as the Association by its rules or otherwise authorised to exercise and do and are not hereby or by statute directed or required to be exercised or done by the Association in General Meeting but subject nevertheless to the provisions of the Act and of these rules and to any regulations not being inconsistent with these rules from time to time made by the Association in General Meeting; provided that no such relationships shall invalidate any prior act of the Board which would have been valid if such regulations has not been made.

- a) Officers' duties – Six broadly expressed duties modelled on directors' duties in the Companies Act 1993 to:

1. Act in good faith and in the best interests of the society
2. Exercise powers for proper purposes only
3. Comply with the Act and the constitution
4. Exercise reasonable care and diligence
5. Not create a substantial risk of serious loss to creditors
6. Not incur an obligation the officer doesn't reasonably believe the society can perform.

### **16. Common Seal:**

The Secretary shall have custody of the common seal of the Association and such seal shall not be affixed to any instrument except by the authority of resolution of the Board and in the presence of a member of the Board and the Secretary or such other person as the Board may appoint for that purpose; and that member of the Board and the Secretary or other person as aforesaid shall sign every instrument to which the seal of the Association is so affixed in their presence.

## **17. Secretary:**

The Secretary shall:

- a. Notify members of the Association of each meeting of the Association, members of the Board and of committees or sub-committees of the Board or the committee to which they shall belong and shall give all such notices as may be required by these rules.
- b. Keep a register of members hereinbefore mentioned.
- c. Keep a record of all proceedings of meetings and of attendance of officers and members of the Association at such meetings.
- d. Do such other acts in relation to the affairs of the Association as from time to time the Management Committee or Chairperson of the meeting may require.

## **18. Independent Returning Officer**

The Independent Returning Officer shall:

- a. Oversee and manage all voting activity and votes undertaken at Annual and / or Special General Meetings.
- b. Notify each person when elected of their election to membership or an office of the Association.
- c. Keep a record of the number of members voting at the election of candidates for membership and of the result of such voting.
- d. Notify the members of the results of elections.

## **19. Cheques – that section be removed as cheque are no longer used.**

All cheques shall be signed or endorsed in such a manner as the Board shall from time to time direct. These procedures and controls are documented in Mainstreet's Financial Policy Suite ( cheques are not accepted by banks not received or payment made, the recommendation is to remove section).

## **20. Electronic Transactions**

All electronic transactions shall be approved in such a manner as the Board shall from time to time direct. These procedures and controls are documented in Mainstreet's Financial Policy Suite.

## **21. Books and Financial Statements:**

- a. The Association shall keep proper books of account in which shall be kept full, true, and complete accounts of the affairs, assets, and transactions of the Association.
- b. At the close of each financial year and at such other times as the Board may elect, an income and expenditure account and statement of assets and liabilities

of the Association shall be prepared and shall be examined, and the correctness thereof ascertained by a reviewer or auditor appointed at the Annual General Meeting of the Association.

- c. The Association **must file within 6 months of the society's financial year end (remove shall deliver annually** to the Registrar (pursuant to Section 23 of the said Act) in such form and at such times as he requires a statement containing the following particulars:
  - i. The income and expenditure of the Association during the Association's last financial year,
  - ii. The assets and liabilities of the Association at the close of each year,
  - iii. All mortgages, charges and securities of any description affecting any of the property of the Association at the close of the said year.

The said statement shall be accompanied by a certificate signed by the Secretary or in his absence some other officer of the Association authorised by the Board to the effect that the statement has been submitted to and approved by the members of the Association at a General Meeting.

## **22. Auditor:**

- a. The remuneration of the auditor shall be fixed by the Board.
- b. If any vacancy occurs in the office of any auditor appointed by the Association, the Board shall appoint another auditor to carry on the duties of the auditor until the next Annual General Meeting.
- c. Every auditor shall be supplied with a copy of the accounts and statements aforesaid, and it shall be his duty thoroughly to examine the same in detail with the books, accounts and vouchers relating thereto.
- d. Every auditor shall have a list delivered to him of all books kept by the Association and at all reasonable times to have access to the books and documents of the Association and he may, in investigating such accounts, examine the Board or any other officers of the Association who shall at times render all assistance to such auditor.
- e. The auditor shall make a report to the members upon the accounts and statements as aforesaid and in every such report he shall state whether in his opinion the same is or are full and fair accounts and statements containing the particulars required by the rules of the Association and properly drawn up so as to exhibit a true and correct view of the Association's affairs and such report shall be read together with the report of the Board at the Annual General Meeting.

## **23. Notices**

- a. Every notice given to any member pursuant to any of these rules shall be deemed to be sufficiently given to and served on him or her if posted, in the ordinary course of mail or delivered by hand or sent electronically (provided the member has agreed to receive notice electronically) at the member's address appearing in the Association's Register of Members.
- b. The loss, delay, or non-delivery of any notice sent or delivered to any member of the Association or of the Board whether through the post or otherwise shall not invalidate or prejudice any resolution passed or election made, or other things done by the Association or Board.
- c. In respect of the means of service specified in clause 24(b), a notice is deemed to have been served: -
  - i. In the case of posting by mail, on the fourth working day following the date of posting to the address appearing in the Association's Register of Members.
  - ii. In the case of delivery by hand one (1) working day following the date of said delivery to the address appearing in the Association's Register of Members.
  - iii. In the case of email, on the second working day following the date of sending the email to the email address appearing in the Association's Register of Members.

## **24. Winding Up:**

- a. The Association may be wound up voluntarily if the Association at the General Meeting of its members passes a resolution requiring the Association to be wound up and the resolution is confirmed at a subsequent General Meeting called together for that purpose and held not earlier than thirty (30) days after the date on which the resolutions so to be confirmed were passed.
- b. If, upon the winding up or dissolution of the Association there remains, after the satisfaction of all costs and its debts and liabilities, any property assets whatsoever shall not be paid to or distributed among the members of the Association but shall be given or transferred to surplus assets **can be given to any party**, some other institution or institutions having objects similar to the objects of the Association which shall prohibit the distribution of its or their income and property among its or their members to the extent at least as great as is imposed on this Association such institution or institutions to be determined by the members of the Association at or before the time of the dissolution or in default thereof by a judge of the High Court of New Zealand or in the absence of any institution then to the local District Council having authority under the Local Government Act 2002 or as the Judge may determine.

## 25. General:

- a. No member or a person associated with a member of the organisation shall derive any income, benefit, or advantage from the organisation where they can materially influence the payment of the income, benefit, or advantage. Except where that income, benefit or advantages derived from:
  - i. Professional services to the organisation rendered in the course of business charged at no greater rate than current market rates.
  - ii. Interest on money lent at no greater rate than current market rates.
- b. No addition to or alteration or revision of the rules shall be approved if it affects the pecuniary profit clause or the winding up clause.

### APPENDIX 1 MAINSTREET WHANGANUI REMIT AREA

