



WYUNA
P R E S E R V E

CONSTITUTION

March 2014

**CONSTITUTION OF WYUNA PRESERVE RESIDENTS ASSOCIATION
INCORPORATED**

TABLE OF CONTENTS

| | | |
|------------|--|-----------|
| 1. | NAME | 1 |
| 2. | DEFINITIONS AND INTERPRETATION | 1 |
| 3. | OBJECTS | 5 |
| 4. | MEMBERSHIP | 5 |
| 5. | USE OF COMMUNAL FACILITIES | 7 |
| 6. | COMPUTATION AND PAYMENT OF LEVIES | 8 |
| 7. | OBLIGATIONS OF MEMBERS | 9 |
| 8. | BREACH OF OBLIGATIONS | 10 |
| 9. | POWERS AND OBLIGATIONS OF THE SOCIETY | 11 |
| 10. | LIMITATIONS OF THE SOCIETY | 12 |
| 11. | COMMITTEE | 13 |
| 12. | MANAGER | 15 |
| 13. | GENERAL MEETINGS | 15 |
| 14. | VOTING | 16 |
| 15. | GENERAL | 18 |
| | SCHEDULE 1 | 20 |
| | <i>Society Bylaws</i> | <i>20</i> |
| | SCHEDULE 2 | 21 |
| | <i>First Members</i> | <i>21</i> |
| | SCHEDULE 3 | 22 |
| | <i>Access & Recreation Plan</i> | <i>22</i> |

NB: Table of Contents – Refer page numbers at bottom of page

INTRODUCTION

1. NAME

1.1 **Name of Society:** The name of the Society shall be Wyuna Preserve Residents Association Incorporated.

2. DEFINITIONS AND INTERPRETATION

2.1 **Definitions:** In these rules, unless the context otherwise requires:

"**Act**" means the Incorporated Societies Act 1908.

"**Authority**" means any local body government or other authority having jurisdiction or authority over or in respect of any part of Wyuna Preserve or its use.

"**Bank**" means a bank registered under the Reserve Bank of New Zealand Act 1989.

"**Bylaws**" means bylaws made by the Society from time to time under rule 9.1.

"**Capital Improvements**" means structural repairs to, and the replacement or renewal of, the Communal Facilities.

"**Committee**" means the committee members from time to time elected to manage the affairs of the Society pursuant to this Constitution.

"**Communal Facilities**" means all land, natural features, buildings, plant, equipment, facilities, and amenities including any Infrastructure, Utilities, private roads, private ways, trails and walkways within Wyuna Preserve owned, leased, licensed or otherwise held, levied or operated in whole or in part by the Society (and includes the benefit of any licence in favour of the Society in relation to the Recreation Area and the Trekking Area, and any improvements constructed on that servient land that are owned by the Society) from time to time including those facilities from time to time transferred to the Society by the Developer, by any other company which is directly or indirectly controlled by the Developer or by any company of which the Developer is a subsidiary (whether directly or indirectly).

"**Consents**" means all resource consents and all other consents and authorities reasonably required to subdivide and develop the Wyuna Preserve land in order to create a separate certificate of title for the Developed Properties.

"**Constitution**" means this Constitution as amended or added to, including all schedules to this Constitution.

"**Controlling Member**" means the Joint Venture or any assignee and/or successor in title, whether in whole or in part of Wyuna Preserve that continues carrying out such development and that the Joint Venture nominates as a Controlling Member.

"**Default Interest Rate**" means five per cent above the 90 day bill rate disclosed on Reuters screen page BKBM (or its successor's page) at 11.00am on the due date for payment.

"**Design Guidelines**" means the design guidelines that form a part of the Bylaws and have been approved by the Queenstown Lakes District Council.

"**Developed Property**" means a property within Wyuna Preserve:

- a. for which a separate title (including, without limitation, a unit title or a certificate of title for an estate in fee simple) has issued; and
- b. which either:
 - i. is a bare lot available for immediate development as a residential property, or any other use permitted within Wyuna Preserve including, in each case, a lot on which development/construction has commenced; or
 - ii. has been fully developed as a residential property or any other use permitted within Wyuna Preserve; and
- c. includes a bare section available for development which is owned by the Developer.

"Developer" means the Joint Venture promoting and carrying out the development (including maintenance) of Wyuna Preserve, including:

- a. any entity related to the Joint Venture or either Joint Venture partner that undertakes any part of the development or maintenance of the development at Wyuna Preserve; and/or
- b. any assignee and/or successor in title whether in whole or in part or parts of Wyuna Preserve, that continues promoting and carrying out such development, and is nominated by the Joint Venture.

"District Plan" means the Queenstown-Lakes District Plan.

"Expense Year" means each 12 month period commencing on 1 April and ending on 31 March, or such other 12 month period as the Committee from time to time sets.

"GST" means goods and services tax charged under the Goods and Services Tax Act 1985.

"Infrastructure" means those physical components relating to the provision of services and access to (but not within) the boundary of each Developed Property including water supply plant and pipelines, gas (if any), electricity and telecommunications & computer media conduits, and roading.

"Invitee" means any invitee of or any visitor to an Owner or Occupier.

"Joint Venture" means the unincorporated joint venture between Cabo Limited and Pisidia Holdings Limited.

"Manager" means the manager or management company/ies of the Society (if any), appointed under rule 12.1. Where no manager/s have been appointed, any reference to the "Manager" in this Constitution shall be deemed to be, where appropriate, a reference to the Committee, subject to rule 11.11.

"Member" means each person who shall from time to time be a member of the Society under rules 4.1 to 4.10.

"Member's Proportion" means in relation to a Developed Property a proportion equal to:

$$\frac{1}{\text{Total Membership}}$$

"Membership" means a membership of the Society.

"Occupier" means any person occupying any Developed Property under any lease, licence or other occupancy right and shall include the Owner and all members of an Owner's family where that Developed Property comprises a residential property and, for the purposes of clauses 8.1 and 9.1, includes all staff of the Owner.

"Operating Expenses" means the total sum of all rates, taxes, costs and expenses of the Society properly or reasonably assessed or assessable, paid or payable or otherwise incurred in respect of the Communal Facilities and the operation of the Society (including, without limitation, the management fees and expenses, as defined in the agreement referred to in clause 12.1), and will include, but not be limited to the following:

- a. all rates levied by any Authority which are at any time levied upon the Communal Facilities or upon the Society in respect of the Society's interest in the Communal Facilities or paid or payable by the Society as a result of the receipt of any money under the Constitution;
- b. all premiums and costs payable by the Society in respect of all policies of insurance effected on the Communal Facilities for sums insured up to their full replacement value or, at the option of the Society, to their full value on an indemnity covered basis against loss, damage or destruction by such risks as the Society may deem necessary or desirable, including consequential loss and public risk liability;
- c. the cost of operating, supplying, servicing, maintaining, inspecting, testing, and repairing all services and Utilities from time to time provided to Owners or generally at Wyuna Preserve, including (without limitation) watering equipment and systems, any water features, communications, equipment and systems (including without limitation, telephone, cable television and satellite television equipment and systems), fire fighting and protection equipment and systems, emergency or other alarm services or systems, security and monitoring services and systems, electrical and plumbing services, waste and rubbish compression and disposal systems and the plant and equipment required for any of such or other services and systems;

- d. all charges for lighting and power, and all other forms of energy incurred by the Society in connection with the Communal Facilities, and other services or requirements furnished or supplied to the Communal Facilities for the general benefit or purposes of the Communal Facilities, including maintenance costs of lighting and power systems and equipment;
- e. all sanitation costs in respect of Wyuna Preserve, including the costs of the removal and disposal of all waste and garbage (which shall not include sewage) from all properties contained in Wyuna Preserve;
- f. all costs for the provision, at intervals deemed appropriate by the Society, of security services to the Communal Facilities or Wyuna Preserve;
- g. all costs of repairs, maintenance, renovations and landscaping of the Communal Facilities;
- h. all costs and expenditure (including the cost of attaining a necessary report) payable incurred or suffered by the Society in complying with the Society's obligations under the Building Act 2004;
- i. any other items of expense which the Society considers reasonably necessary to incur for the good management and appearance of the Communal Facilities;
- j. all costs of managing, controlling, and administering the Communal Facilities, when such costs consist of wages, allowances or other emoluments paid to persons employed by or contracted to the Society;
- k. all wages, allowances and other emoluments paid or allowed to employees engaged for any of the foregoing purposes together with all taxes and levies thereon;
- l. all costs associated with the maintenance of the landscaping or pasture of Communal Facilities required under the Consents and any consent notice registered on the certificate(s) of title for the Communal Facilities;
- m. all costs associated with any improvements constructed in the Recreation Area, and any maintenance and repair costs associated with the Recreation Area and/or the Trekking Area;

but will exclude:

- n. any costs payable in respect of Capital Improvements; and
- o. any costs for which a fixed levy is payable per Member or type of Member.

"Owner" means each person registered as a proprietor (whether individually or with others) of a Developed Property.

"Owner's Title" means the certificate of title issued for an Owner's Developed Property.

"Quarter" means, respectively, the period of three calendar months between 1 April to 30 June, 1 July to 30 September, 1 October to 31 December or 1 January to 31 March in any year, and **"Quarterly"** shall have an equivalent meaning where the context permits.

"Recreation Area" means that area adjacent to Wyuna Preserve (as marked on the plan attached as Schedule 3) for which the Society will be granted a licence by the landowner for the use of that area for recreational purposes.

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

"Service Lines" means underground power cables, underground telephone and electronic data and computer media services, underground gas supply lines (if any) and underground water supply lines.

"Society" means Wyuna Preserve Residents Association Incorporated.

"Special Resolution" means a resolution of the Society in general meeting passed by a majority of not less than 75% of such Members (which, for the purposes of this definition, includes the Controlling Member (if any)) as, being entitled to do so, vote in person or by proxy at such general meeting.

"90% Resolution" means a resolution of the Society in general meeting passed by a majority of not less than 90% of such Members (which, for the purposes of this definition, includes the Controlling Member (if any)) as, being entitled to do so, vote in person or by proxy at such general meeting.

"Total Membership" means an amount equal to the number of Developed Properties.

"Trekking Area" means that track area surrounding Wyuna Preserve (as marked on the plan attached as Schedule 3) for which the Society will be granted a licence by the landowner for the use of that area for walking and horse trekking purposes.

"Users of the Member's Developed Property" means any users of the Member's Developed Property, including any mortgagee in possession of that Member's Developed Property, the Occupiers of such Member's Developed Property, the Invitees of such Occupier, the Invitees of such Member and the purchaser of such Member's Developed Property.

"Utilities" means the following utilities and services:

- a. Sealed and metal vehicle access over all roading within Wyuna Preserve, including roading connecting to the adjoining Queenstown-Glenorchy Road;
- b. Service Lines connecting all Developed Properties and Communal Facilities within Wyuna Preserve, to appropriate supply networks, which may supply Wyuna Preserve.
- c. Domestic and irrigation water systems (including storage tanks, treatment facilities, reticulation, etc) connecting all Developed Properties and Communal Facilities within Wyuna Preserve to water supply systems sourced from the water bore that supplies Wyuna Preserve with water;

and in each case includes the supply of services and utilities as applicable, and any other services (such as by way of example only rubbish collection services) that may be required at Wyuna Preserve.

"Working Day" means a day of the week other than:

- a. Saturday, Sunday, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, Labour Day and Waitangi Day;
- b. A day in the period commencing the 25th day of December in any year and ending with the 2nd day of January in the following year;
- c. If the first day of January in any year falls on a Friday, the following Monday;
- d. If the first day of January in any year falls on a Saturday or Sunday, the following Monday and Tuesday.

"Wyuna Preserve" means the residential development and common land and facilities arising from the subdivision and development undertaken by the Developer, at Glenorchy, New Zealand (located adjacent to the Queenstown Glenorchy Road), previously contained in Certificate of Title 356841 being Lot 4 DP386150, and as consented under Subdivision Consent RM020552 (and its variations, if any), including but not limited to the dwellings, roading, open spaces, pasture land and revegetation land and all other associated infrastructure on the site, and includes any additional land or facilities subsequently acquired by the Society for the benefit of the Owners.

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

- a. words denoting the singular shall include the plural and vice versa;
- b. one gender shall include the other genders;
- c. words denoting persons shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or any statutory body in each case whether or not having separate legal identity;
- d. any covenant, obligation or agreement on the part of two or more persons shall bind those persons jointly and severally;
- e. reference to anything of a particular nature following upon a general statement shall not in any way derogate from, or limit the application of the general statement, unless the particular context requires such derogation or limitation;
- f. any reference to "month" or "monthly" shall mean, respectively, calendar month or calendar monthly;
- g. references to rules are references to rules in this Constitution;

- h. the table of contents, the section headings and clause headings have been inserted for convenience and a quick guide to the provisions of this Constitution and shall not form part of this Constitution or affect its interpretation in any way;
- i. reference to any statute, regulation, ordinance or bylaw shall be deemed to extend to all statutes, regulations, ordinances or bylaws amending, consolidating or replacing the same.

3. OBJECTS

- 3.1 **General:** The Society is formed to promote the following objects for the benefit of Members and/or Wyuna Preserve:
 - a. The promulgation and enforcement of Bylaws and covenants benefiting Members and/or Wyuna Preserve generally.
 - b. The creation and implementation of appropriate Design Guidelines and control mechanisms in respect of each Developed Property.
 - c. The proper supply, operation, maintenance, repair, renovation and replacement of the Communal Facilities (whether owned directly or indirectly, leased or licensed by the Society or not)
 - d. Providing and maintaining services, Utilities and benefits (including access to the Recreation Area and Trekking Area) to Members, and ensuring that Owners create and maintain the proper landscaping of any landscaped area on any Developed Property, in accordance with the Bylaws and consent notices or covenants registered on the certificate(s) of title for the Developed Properties.
 - e. The ownership and continued ownership, leasing or licensing of any Communal Facilities owned (directly or indirectly) by, or leased or licensed to the Society (but, for avoiding doubt, not any Utilities that are not owned by, or leased or licensed to, or in respect of which the Society has entered into a formal management agreement for the benefit of, the Society).
 - f. The full and proper use of the Communal Facilities by Members and, where appropriate, authorised members of the public.
 - g. The promulgation and enforcement of Bylaws and covenants to ensure that obligations regarding the management of any water bodies, wetlands, natural features, including compliance with all relevant laws and requirements of government departments (including the Overseas Investment Office and Land Information New Zealand) are upheld.
 - h. Providing communication between Members, and any utilities company formed for the supply of Utilities to Wyuna Preserve and facilitating the installation and maintenance of Service Lines and the supply of Utilities to Wyuna Preserve.
 - i. The levying of Members for the purpose of meeting the objects set out in this rule 3.1.
- 3.2 **Pecuniary gain not to be an object:** The Society does not have as an object the pecuniary gain of Members, and (subject to rule 15.1) no Member shall be entitled to receive any dividend out of any levy, fee, donation or other income or funds of the Society.
- 3.3 **Members may contract:** A Member may enter any agreement or understanding with the Society for the supply of any goods or services for such consideration and on such other terms and conditions as would be reasonable if that person were not a Member.

MEMBERSHIP

4. MEMBERSHIP

- 4.1 **First Members:** The first Members ("First Members") shall be those members named in Schedule 2. The First Members (other than the Controlling Member) shall resign from the Society as soon as more than 15 Owners (other than the Controlling Member) are Members. Those First Members shall have no obligations as Members. No reference in this Constitution to a "Member" shall be taken as including a reference to the First Members.
- 4.2 **Owners to be Members:** Each Owner shall be a Member, and only Owners shall be Members, and for that purpose:

- a. Each Member for so long as they are an Owner shall remain a Member in good standing of the Society and comply with the obligations under the Constitution.
 - b. Each Owner shall (immediately when called upon to do so) grant in favour of the Society an encumbrance and/or covenants ("Covenant") to be noted against that Owner's Title, securing that Owner's obligations to become and remain a Member, and to perform the obligations of a Member as set out in this Constitution and otherwise containing the terms required by the Society. Each Covenant will bind the respective Owners' successors in title so that contemporaneously with the acquisition of any interest in any Developed Property all such successors in title must become and remain a Member, and observe and perform the obligations of a Member as set out in this Constitution. In order to facilitate the effectiveness of the Covenants, each Owner shall comply with rule 8.2. The Covenants shall be prepared by the solicitors for the Society, and the respective Members shall pay the reasonable legal fees and disbursements of the Society's solicitors.
 - c. A Member shall cease to be a Member immediately upon the registration of a transfer of the certificate of title to that Member's Developed Property (after the Society has consented to such transfer in terms of rule 7.2d), provided that such cessation shall not relieve a person of any obligation or liability arising before that person ceased to be a Member.
 - d. Each Member shall, before ceasing to be an Owner, provide the Society with the particulars and documentation necessary for maintenance of the register of Members pursuant to rule 4.6 in respect of the new Owner of its Developed Property. Upon the registration of the transfer of the certificate of title to that Developed Property to the new Owner, the new Owner shall become a Member.
- 4.3 **Fee:** The Society shall be entitled from time to time to set such reasonable fee in relation to the issue of a Membership or transfer of a Membership as the Society in its sole discretion will determine. If the Society incurs any third party costs in relation to the issue of a Membership or the transfer of a Membership (including, without limitation, solicitor client costs), the applicant (in the case of the issue of a Membership) or the vendor (in the case of the transfer of a Membership) shall meet those reasonable third party costs.
- 4.4 **Developer as Controlling Member:** Until, the development of Wyuna Preserve is fully completed as determined by the Developer at its sole discretion, and the Developer no longer owns any of the Developed Properties, the Developer shall be the Controlling Member of the Society. The purpose of the Developer being the Controlling Member is to ensure that the Developer can develop Wyuna Preserve as a premium development. The Controlling Member shall have only the rights specified in this Constitution, and shall have no other rights or obligations of a Member in the Controlling Member's capacity as Controlling Member. No reference in this Constitution to a "Member" shall be taken as including a reference to the Controlling Member in its capacity as Controlling Member, provided that upon development of Wyuna Preserve being completed (or at any earlier date, at the sole discretion of the Developer), the Developer shall be deemed to have resigned as Controlling Member, and thereafter, there shall be no Controlling Member in respect of the Society.
- 4.5 **Categories of Membership:** The Committee may at any time:
- a. specify categories of Membership to recognise any category of usage that may be appropriate;
 - b. introduce Bylaws applying to any of the categories of Membership, those Bylaws to be distributed to Members and to form a part of this Constitution from such date of introduction.
- 4.6 **Register of Members:** The Society shall maintain a register of Members recording and holding the following particulars and documentation:
- a. For each Member:
 - i. *Particulars:* name, postal and email addresses, occupation, telephone number and facsimile number (at home and at work) and similar details for a third party to be contacted in the event of absence or emergency; and
 - ii. *Documentation:* a duly signed direct debit authority for the purposes of rule 6.3 and duly signed written acknowledgement for the purposes of rule 7.2d.ii(2).
 - b. **For each Occupier:** Name, postal and email addresses, occupation, telephone number and facsimile number (at home and at work) and similar details for a third party to be contacted in the event of absence or emergency.
 - c. **Membership:** the date upon which each Member became a Member.

- d. **Voting:** Where there is more than one Owner of a Developed Property, which of such Owners is entitled to vote in accordance with rule 14.1 and where a Member is a corporation and has appointed a representative under rule 14.5, the name and contact details of that representative.
 - e. Any other particulars and documentation reasonably required by the Committee from time to time.
- 4.7 **No notice of trust:** No notice of any trust express, implied or constructive will be entered on the register of Members.
- 4.8 **Register to be audited:** The Committee shall ensure that a qualified auditor audits the register of Members once a year, provided that such audit is not required until the date that the Society has first received income ("Commencement of Operation")
- 4.9 **Not assignable:** The rights, privileges and obligations of a Member are not assignable.
- 4.10 **More than one Owner:** If there is more than one Owner for a Developed Property:
- a. such Owners shall collectively constitute one Member and the liability of such Owners in relation to their Membership will be joint and several; and
 - b. such Owners will nominate one of their number to be their agent and:
 - i. such nominee will be deemed to be agent of and acting on behalf of all such Owners; and
 - ii. where that Constitution requires notice in respect of anything concerning or connected with the relevant Membership to be forwarded by the Society, the Society will be deemed to have discharged its obligation to notify the Owners if it has given notice to the nominee; and
 - c. in the event that such Owners have not made a nomination under 4.10.b, then their agent shall be deemed to be the first named person on the certificate of title for those Owners' Developed Property.
- 4.11 **Address for service:** Subject to rule 4.12, the particulars given by each Member under rule 4.6a.i shall be the address for service at which any communication or notice in writing by the Society may be served on that Member by any of the following methods:
- a. To any postal address provided by the Member or to the current address to which the local authority sends rates demands for that Member, in which case the communication or notice shall be deemed to have been accepted within seven days of posting of any such communication or notice.
 - b. By way of facsimile or email to any facsimile number or email address provided by the Member in which case the communication or notice shall be deemed to have been served immediately upon faxing or emailing any such communication or notice to the Member.
 - c. By personally delivering any communication or notice to a Member in which case the communication or notice shall be deemed to have been served on all Owners if served on the Member who is entitled to vote under rule 14.1.
- 4.12 **Service on Occupier:** The Society may elect to serve any communication or notice on an Occupier of a Developed Property at the particulars given under rule 4.6b by any of the methods specified in rule 4.11 and such communication or notice shall be deemed to have been served on the Owner of that Developed Property.
5. **USE OF COMMUNAL FACILITIES**
- 5.1 **Use of Communal Facilities:** Subject to any rules of the Society relating to the use of the Communal Facilities (and in the case of the Recreation Area and the Trekking Area, subject to the terms and conditions of the licence in the Society's favour) and subject to rule 5.2, each Member, Occupier and Invitee shall be entitled to make full use of the Communal Facilities (including the Recreation Area and the Trekking Area).
- 5.2 **Persons not entitled to use Communal Facilities:** No person, other than those persons set out in rule 5.1, shall be entitled to use the Communal Facilities (with the exception of the Recreation Area and Trekking Area, which the landowner may grant use of, to third parties).

6. COMPUTATION AND PAYMENT OF LEVIES

- a. The Society is responsible for setting the levies described in this rule 6. All levies must be set in a way that is fair and equitable to the Society and to all Members. The levies for an Expense Year will be set taking into account the estimated Operating Expenses for the Expense Year and any contingency sum/special levy contemplated under rule 6.7;
- b. Levies may be fixed in any of the following ways or in any combination of them:
 - i. a uniform annual charge (fixed charge) for Utilities, amenities and services, provided that such levy must always be reasonable taking into account the nature of that Utility, amenity or service and the location of Wyuna Preserve. That levy will be payable per Member;
 - ii. specific usage charges (variable charges) provided that such levy must always be reasonable taking into account the nature of that Utility, amenity or service and the location of Wyuna Preserve. That levy may be payable per Member;
 - iii. a charge calculated on the basis of each Member's Proportion;
 - iv. a contingency sum/special levy under rule 6.7; and
 - v. a one-time connection charge for connection to specified Utilities.

6.2 **Levies:** Levies shall be fixed in accordance with this rule 6.2. Prior to or as soon as practicable after the commencement of each Expense Year, the Society shall prepare an annual budget ("Annual Budget") and shall by written notice advise each Member of:

- a. the fixed charge for that Expense Year;
- b. the rate for any variable charge for that Expense Year;
- c. the Society's estimate of each Member's Proportion of Operating Expenses for that Expense Year ("**the Society's Estimate**");
- d. such contingency sum and/ or special levies as the Society shall fix under rule 6.7; and
- e. any one time connection fees that the Society is levying in that Expense Year;
- f. details of the Annual Budget.

6.3 **Payment of levies:** Subject to rule 6.5, each Member shall, on the first day of each Quarter in each Expense Year, pay:

- a. one quarter of that Member's Proportion of Operating Expenses;
- b. any fixed charge that the Society has decided is payable in that Quarter;
- c. any contingency sum/special levies fixed under rule 6.7 applicable to that Quarter of the Expense Year; and
- d. the specific usage charges applicable to that Members usage;

by direct debit to a bank account nominated by the Society.

6.4 **Connection and Disconnection Charges:** One time connection and disconnection charges are payable as determined by the Society from time to time which, without limitation, may include in advance of connection.

6.5 **Statement of Operating Expenses:**

- a. As soon as practicable after the end of each Expense Year the Society shall provide to each Member an itemised statement of the actual Operating Expenses for the just completed Expense Year.
- b. If:
 - i. the actual Operating Expenses for the previous Expense Year are greater than the total levies fixed for that Expense Year under rule 6.2, the Society shall advise the Members of

that difference and call upon the Members to pay the Member's Proportion of the difference on the first day of the Quarter of the then current Expense Year; or

- ii. the actual Operating Expenses for the previous Expense Year are less than the total levies fixed for that Expense Year under rule 6.2, the Society shall credit the difference to the Society's estimate of the Operating Expenses for the then current Expense Year.

6.6 **Interim Payments:** If the Society has failed to advise a Member of the Society's Estimate for an Expense Year before the date the first Quarterly payment is due under rule 6.3, the Member shall on that date and every other date on which a payment is due under rule 6.3 until the Society's Estimate is available, pay one quarter of the total levies levied by the Society for the previous Expense Year. On the Society's Estimate fixed under rule 6.2 for the Expense Year being advised to that Member:

- a. If the aggregate of a Member's payments made under this rule 6.6 during the Expense Year exceeds the aggregate of payments which should have been made under rule 6.3, the Society shall deduct the difference from the payment due by that Member in the next Quarter for the then Expense Year.
- b. If the aggregate of a Member's payments under this rule 6.6 during the Expense Year is less than the aggregate of payments which should have been made under rule 6.3, the Member shall immediately pay the Society the difference.

6.7 **Special Levies:** The Committee shall fix:

- a. an additional levy to be paid by each Member to be set aside as a sinking fund to allow for and meet the costs of Capital Improvements, or for the replacement of Capital improvements that form part of the Communal Facilities provided that any levy payable by a Member under this rule 6.7a shall be equal to that Member's Proportion of the total estimated cost to be provided for and met from the proceeds of the levies paid by all Members; and
- b. such other levies, payable by each Member at such times as are set by the Society, as the Society considers are necessary for it to meet its obligations under this Constitution provided that any levy payable by a Member under this rule 6.7b shall be equal to that Member's Proportion of the total estimated cost to be provided for and met from the proceeds of the levies paid by all Members;

7. OBLIGATIONS OF MEMBERS

7.1 **Covenants and bylaws:** Each Member agrees to promptly and fully comply with the terms of this Constitution, any Bylaws and any covenants given in favour of the Society by such Member (whether by separate deed of covenant or as noted against each Owner's Title). No amendment to this Constitution shall be made that results in there being any conflict between the provisions of this Constitution (including any rule or Bylaw) and the provisions of the Covenant (as described in rule 4.2b).

7.2 **Sale of Developed Property:** Where a Member sells ("**Vendor**") a Developed Property:

- a. Notwithstanding any other rule in this Constitution, the Vendor shall remain liable for sums owed to the Society by that Vendor.
- b. Without limitation, the Vendor shall continue to be liable as a primary and principal debtor for all indebtedness of the purchaser ("**Purchaser**") of the Developed Property to the Society until such time as:
 - i. the transfer of the certificate of title for that Developed Property to the Purchaser is registered at the Land Transfer Office; and
 - ii. the Purchaser is legally bound by the Covenants secured against the Developed Property; and
 - iii. the Vendor has complied with its obligations under rules 7.2 and 8.2 .
- c. The Purchaser shall be liable as a Member for all indebtedness of the Vendor to the Society in respect of the Developed Property purchased and a statement of the Society given pursuant to rule 7.3 shall be conclusive as to the sum of this indebtedness.
- d. The Vendor must obtain the consent of the Society to transfer the Vendor's Developed Property prior to the date of transfer, and notwithstanding anything else contained in this rule 7.2, the Society may decline to consent to a transfer of the Vendor's Developed Property until:

- i. the Vendor has performed its obligations as a Member as set out in this Constitution, including (without limitation):
 - (1) the Vendor's payment of all sums owed to the Society in full (including any fees charged or costs incurred under rule 4.3); and
 - (2) the Vendor's provision of the Purchaser's particulars and documentation in accordance with rule 4.2d, and
- ii. the Purchaser has:
 - (1) paid the levy (or part thereof) which the Society will require under rule 6.3 for the next Quarter of its proposed membership in the Society; and
 - (2) given a written acknowledgement to the Society that it has read and understood this Constitution, all then current Bylaws and any covenants given in favour of the Society by the Vendor or its predecessors.

7.3 **Society to provide statement:** The Society shall, on application by a Member, or any person authorised in writing by such Member, provide the Member or authorised person with a statement of the indebtedness of the Member to the Society calculated to the date specified in the application. The statement shall show:

- a. the Society's estimate of such Member's Proportion of Operating Expenses for the current Expense Year;
- b. payments made by the Member on account of Operating Expenses in the current Expense Year;
- c. payments due from the Member on account of Operating Expenses in the current Expense Year, and not paid by the Member; and
- d. any accumulated unpaid default interest.

7.4 **Lease of Developed Property:** No Member shall:

- a. lease or licence the Member's Developed Property;
- b. allow any assignment of any lease or licence or sublet or otherwise allow any further change in possession of the Member's Developed Property,

for a period longer than the period specified from time to time by the Society without first notifying the Society of such arrangement. The notification will include the names and contact details of any lessee, licensee, assignee or sub-tenant in possession of that Developed Property. The purpose of such notification is to enable the Society to generally monitor and manage security within Wyuna Preserve.

7.5 **Change of Control:** Where any Member is an unlisted company or any Occupier is an unlisted company then any change in the legal or beneficial ownership of any of its shares, issue of new capital or amalgamation which results in a change in the effective management or control of the company is deemed to be a transfer or parting with possession in terms of rules 7.2 or 7.4.

7.6 **Payment of Rates and Compliance With Obligations:** For clarity, each Member acknowledges that it is still liable to pay rates levied by the Queenstown Lakes District Council and/or by the Otago Regional Council (or their successors) and to otherwise comply with all legal obligations in respect of that Member's Developed Property.

8. BREACH OF OBLIGATIONS

8.1 **Occupiers and Invitees:** A reference to an act or omission by any Member shall include any act or omission by Users of the Member's Developed Property.

8.2 Each Member must, without limitation and in addition to the requirements of rules 4.2 and 7.2:

- a. procure that all leases, licences, agreements for sale and purchase and all other agreements and documents that relate to the Member's Developed Property include a provision for the benefit of the Society that requires all such Users of the Member's Developed Property to comply with this Constitution; and

- b. make all such Users of the Member's Developed Property aware of the Covenants described in rule 4.2; and
- c. attach a copy of the Constitution and its Bylaws to all leases, licences, agreements for sale and purchase and all other agreements and documents that relate to the Member's Developed Property; and
- d. take all reasonable steps (including enforcing the terms of all leases, licences, agreements for sale and purchase and all other agreements and documents that relate to the Member's Developed Property) to ensure that all Users of the Member's Developed Property comply with this Constitution. In any case of persistent default by a User of the Member's Developed Property of this Constitution, the Owner shall on demand by the Society and where legally possible, terminate the rights of the Users of the Member's Developed Property to the Developed Property.

8.3 **Consequences:** Upon any breach of this Constitution by a Member ("**Offending Member**") without prejudice to the Society's other rights and remedies:

- a. Where damage has been caused to the Communal Facilities, the Offending Member shall immediately make good such damage to the standard reasonably required by the Society.
- b. If such default continues for seven days after notice is given by the Society to the Offending Member to remedy the default, the Society may do anything, including paying money, necessary to remedy the default.
- c. All money paid and the expenses incurred by the Society (including any legal costs of the Society) in remedying, or attempting to remedy, any breach by an Offending Member of this Constitution, or incurred in the exercise, or attempted exercise, or enforcement, or attempted enforcement of any power, right or remedy of the Society in respect of such breach, shall be a debt due from the Offending Member to the Society.
- d. If any money payable by an Offending Member to the Society is in arrears and unpaid for seven days (whether or not formal demand for payment has been made and without any formal demand being necessary) such money shall be payable on demand and shall bear interest at the Default Interest Rate, computed on a daily basis from the due date until the date of payment in full.
- e. If such default continues for seven days after notice is given by the Society to the Offending Member to remedy the default (provided that the notification period may in the Society's sole discretion be abridged in the event the Society considers that necessary) then, in addition to the consequences set out in rule 8.3, the Society may give further notice to the Offending Member suspending, for such time as the Society may determine, the Offending Member's right to use the Communal Facilities, provided that nothing in this rule will relieve the Offending Member from the Member's obligation to pay any levies or other monies payable to the Society under the terms of the Constitution.

8.4 In the event that any Member breaches the Constitution persistently (being three distinct breaches of the Constitution in any 12 month period), then the Society shall be entitled to fine that Member an amount to be determined by the Committee at its discretion. When determining that amount the Committee shall take into account the seriousness of the breaches, however any fine imposed under this clause shall be no more than two times the amount of the Member's Proportion of Operating Expenses for that year. Once the amount of the fine has been determined by the Committee, the Committee shall give notice to that Member of the three breaches and the fine imposed. That Member shall then have 1 month to pay that fine, before it becomes overdue, in which case the provisions of clause 8.3.d and 8.3.e shall apply. Any fine received by the Society under this clause shall be added to the sinking fund referred to in rule 6.7.a, for the benefit of all Members.

THE SOCIETY

9. POWERS AND OBLIGATIONS OF THE SOCIETY

9.1 **Bylaws:** In the fulfilment of the purposes and objects of the Society, the Society shall (subject to clause 15.4) promulgate, amend and distribute to Members from time to time bylaws for the use of the Communal Facilities (including any restrictions on use for security, maintenance or other reasons), bylaws concerning the behaviour of Owners, Occupiers and Invitees, and bylaws governing the use of Developed Properties. The first such bylaws shall be those bylaws attached as Schedule 1 to this Constitution.

9.2 **Repair of Communal Facilities:** The Society shall ensure the proper operation, maintenance, repair, renovation and replacement of the Communal Facilities consistent with standards generally proposed or adopted in high quality residential developments of this nature, and shall undertake such Capital Improvements as are necessary for this purpose. Each Member agrees and allows the Society (or any parties

engaged under rule 9.4) access to the Developed Property of that Member for the purposes of this rule 9.2. However, the Society shall make good any damage caused by such access within a reasonable time frame after the completion of any work carried out to give effect to this rule 9.2.

9.3 **Insurance:** The Society shall effect and maintain all insurances as it considers prudent with respect to the Communal Facilities, the Society's affairs and members of the Committee, and shall meet all costs of such insurance (which shall include all valuations and other professional fees required or deemed desirable for the purposes of such insurances and the cost of certificates relating to such insurances). Insurance regarding members of the Committee may be effected, without limitation, in respect of:

- a. Liability, not being criminal liability, for any act or omission in a Committee member's capacity as such; and
- b. Costs incurred by that Committee member in defending or settling any claim or proceeding relating to any such liability, and
- c. Costs incurred by that Committee member in defending any criminal proceedings for any act or omission in a Committee member's capacity as such in which he or she is acquitted.

9.4 **Service contractors and utility suppliers:**

- a. For the supply and maintenance of Utilities or services (including security, landscaping, rubbish collection or other such essential services as the Society considers desirable) to Wyuna Preserve, the Society may, from time to time, nominate:
 - i. service contractors;
 - ii. Utilities suppliers;
 - iii. an exclusive service contractor for a particular service; or
 - iv. an exclusive Utilities supplier.
- b. Any Member wishing to contract for services or Utilities to that Member's Developed Property must use the service contractor(s) or Utilities supplier(s) who have been nominated by the Society.
- c. Where service contractor(s) or Utilities supplier(s) have been nominated by the Society, every Member must comply with all guidelines for use of the particular services or Utilities reasonably imposed by such contractor(s) and supplier(s).

9.5 **Transfer of Facilities:** The Society acknowledges that the Developer may from time to time transfer facilities for communal use to the Society, and the Society must accept transfer of such facilities.

9.6 **Agreement to Grant Easements:** Each Member agrees to grant any easements and/or covenants in favour of the Society over or under that Member's Developed Property which are necessary to permit the Society access to that Member's Developed Property to give effect to this Constitution or any Bylaw made by the Society under rule 9.1.

10. LIMITATIONS OF THE SOCIETY

10.1 **No indebtedness:** The Society shall not borrow any money, other than short-term borrowing to cover any temporary shortfall in meeting the Society's obligations under this Constitution, except by Special Resolution.

10.2 **No encumbrances:** The Society shall hold the Communal Facilities in its own name and shall not mortgage, charge, encumber, transfer or otherwise deal with such Communal Facilities, except by 90% Resolution, provided that where the Society is obliged to grant any interest in or right in respect of the Communal Facilities by any agreement with the Developer, such interests or rights may be granted by the Committee.

10.3 **No investments:** The Society shall hold all funds with a Bank, and shall not invest those funds other than by deposit with a Bank, except by Special Resolution.

10.4 **No improper use:** All Communal Facilities designed for recreational purposes shall be used only for such purposes.

10.5 **Application of funds:** All money paid to the Society by Members in accordance with this Constitution is to be applied exclusively for the purposes of:

- a. owning, administering, maintaining, replacing and renewing the Communal Facilities;
- b. managing and administering the Society and administering and enforcing this Constitution;
- c. providing services, utilities, facilities and benefits to Members of the Society; and
- d. such further or other incidental matters as the Committee may deem beneficial for members of the Society.

OPERATION OF THE SOCIETY

11. COMMITTEE

- 11.1 **Powers:** The administration of the Society shall be vested in the Society in general meeting, and shall be delegated to the Committee. The Committee may exercise all the powers, authority and discretions of the Society as permitted by this Constitution and do on its behalf all such acts as they deem necessary or expedient. The powers, authority and discretions as exercised by the Committee are subject always to any limits, which may from time to time be imposed by the Society. The Committee may delegate any of its powers to committees consisting of such member or members of their body as they think fit or to the treasurer/secretary or the Manager. Any committee so formed shall in the exercise of the powers so delegated conform to directions of the Committee.
- 11.2 **Bank accounts:** The Society shall establish a bank account with a Bank and any drawings on that account (including any cheque drawn on that account) shall be made only under the signature of the Manager and one other member of the Committee.
- 11.3 **Deeds:** Any contract which, if made between private persons, must be by deed shall, when made by the Society, be in writing under the common seal of the Society, to be affixed in accordance with rule 11.17.
- 11.4 **Other Documents:** All other documents and written announcements requiring execution on behalf of the Society must be signed by the chairperson.
- 11.5 **Composition:** The Committee shall comprise no less than 2 and no more than 6 general Committee members, as determined by the Society in general meeting before the election of Committee members. One of those Committee members shall also be the chairperson. In addition the Committee shall also engage (on a paid basis) a suitably experienced treasurer/secretary to carry out the duties outlined in clause 11.9.
- 11.6 **Committee Members:** The chairperson shall be the nominee of the Controlling Member at its option (if there is one) or where there is no Controlling Member the chairperson shall be as elected by the Committee at every annual general meeting. The treasurer/secretary shall be the person as the Committee shall appoint from time to time, and who may or may not be a Member. The balance of the Committee shall be elected by the Society at every annual general meeting, and may be elected at any other time by the Society in general meeting.
- 11.7 **Rotation of Committee:** At the annual general meeting of the Society in every third year, two Committee Members (except for the treasurer/secretary), shall retire from office. The Committee members to retire shall be those who have been longest in office since they were last elected. If two or more of those Committee members were last elected on the same day, the Committee members to retire (unless they otherwise agree) shall be determined by lot. A retiring Committee member is eligible for re-election provided that he or she has not previously served as a Committee Member continuously in the 9 year period immediately preceding that annual meeting, and:
- a. shall act as a Committee member throughout the meeting at which that Committee member retires; and
 - b. shall not be eligible for re-election as a Committee Member, once he or she has served for 3 terms of 3 years, until at least a 2 year period has passed since serving on the Committee.
- 11.8 **Duration of Membership:** A Committee member (except for the treasurer/secretary) shall hold the elected position until the earliest of:
- a. is removed from office at an annual general meeting under rule 11.7;
 - b. the date written resignation from such position is received by the Society;
 - c. the date of removal from such position by the Society in general meeting; or
 - d. the date of cessation of Membership.

- 11.9 **Treasurer/Secretary:** The treasurer/secretary shall hold that position until the earliest of:
- a. the date written resignation by the treasurer/secretary from the position is received by the Society; or
 - b. the date of removal from that position by the Society in general meeting; or
 - c. the date of removal from that position by the Committee in Committee meeting.
- 11.10 **Casual vacancies on Committee:** In the event of a casual vacancy in any position on the Committee (whether caused by death, cessation of Membership from the Society, or some other means) the remaining Committee members may appoint another Member to fill the vacancy until the position is filled by the Society in general meeting.
- 11.11 **Manager and Controlling Member:** Notwithstanding any other rule in this Constitution, the Controlling Member shall remain as chairperson, for so long as it remains Controlling Member, and the Society shall not be entitled to remove the Controlling Member from that position for any reason whatsoever. For so long as the Controlling Member remains the Controlling Member, it shall be entitled to exercise all the powers of the Committee referred to in rule 11.1 and where no Manager/s have been so appointed, any reference to the "Manager" in this Constitution shall be deemed to be the Controlling Member.
- 11.12 **Duties of Treasurer/Secretary:** The treasurer/secretary shall:
- a. convene general meetings when requested to do so in accordance with this Constitution;
 - b. attend all meetings of the Committee and have full speaking rights at such meetings;
 - c. give all notices required to be given by these rules or as directed from time to time by the Society or the Committee;
 - d. keep minutes at all general meetings and Committee meetings and enter into the minute book:
 - i. the time, date and venue of such meeting;
 - ii. all business considered and resolutions passed at such meeting;
 - e. hold in safe custody the common seal of the Society;
 - f. receive, and issue receipts for, all annual levies, additional fees, and any other moneys paid to the Society;
 - g. operate and maintain a current bank account in the name of the Society;
 - h. pay all accounts properly incurred by or on behalf of the Society;
 - i. report immediately to the Society any Member who fails to pay annual levies or additional fees within the prescribed period;
 - j. keep all financial records and any security documents in safe custody;
 - k. compile all proper accounting records from time to time as required by the Act or by the Committee which give a true, fair and complete account of the financial affairs and transactions of the Society; and
 - l. compile the financial statements immediately following each financial year as required by the Act, and provide for the auditing of those records and the distribution of the audited financial statements to Members as soon as reasonably practicable after each audit is completed, provided that such audit is not required until the Commencement of Operation.
- 11.13 **Conduct of Meetings:** The Committee may meet together, adjourn and otherwise regulate its meeting and procedures for conducting its business as it thinks fit. The Committee may meet at any time and the secretary shall, upon the request of the chairperson or any two Committee members, convene a meeting of the Committee.
- 11.14 **Quorum:** Four members of the Committee, provided that number includes the Controlling Member (if there is one) shall form a quorum for a Committee meeting. No business of the Committee shall be conducted at any time when less than a quorum is present at the same time and place.

- 11.15 **Chairperson:** Subject to Rule 11.6, the Committee from time to time shall appoint, remove and replace a chairperson for such term as it sees fit from one of their number to chair Committee meetings and otherwise exercise the powers of the chairperson set out in this Constitution.
- 11.16 **Chairperson to have casting vote:** In the case of a tie in votes, the chairperson may exercise a casting vote.
- 11.17 **Seal:** The Committee shall obtain a common seal for the use of the society and shall provide for its safe custody. The common seal shall not be used except by resolution of the Committee. Every instrument to which the common seal is affixed shall be signed by the Chairperson and one other member of the Committee.
- 11.18 **Voting:** Resolutions of the Committee shall be passed by majority. Each Committee member shall be entitled to exercise one vote, provided that the treasurer/secretary shall not be entitled to vote and further provided that the Controlling Member (if there is one) shall be entitled to exercise a number of votes equal to one more than the number of other Committee members present at any Committee meeting. Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by such of the Committee members as would constitute a quorum at a Committee meeting, together with the Controlling Member (if any), shall be as valid and effectual as if it had been passed at a meeting of the Committee duly convened and constituted.
- 11.19 **Validity of Committee's actions:** All acts properly done by any meeting of the Committee or by any person acting as a Committee member, notwithstanding that it may afterwards be discovered that there was some defect in the appointment or continuance in office of any such Committee member, or that they were disqualified, shall be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Committee member.
- 11.20 **Committee minutes and records:** The Committee shall cause proper minutes to be kept of the proceedings of all meetings of the Society and of the Committee. All business transacted at such meetings signed by the chairperson shall be accepted as a correct and accurate record of the business transacted at such meetings without any further proof of the facts contained in such minutes.

12. **MANAGER**

- 12.1 **Duties:** Subject to rule 11.11, the Committee may:
- a. appoint, remove and replace a manager from time to time to carry out such of the obligations of the Society, and exercise such of the discretions and powers of the Society, as the Committee shall see fit;
 - b. enter into and terminate from time to time management agreement(s) or equivalent arrangements whereby the Committee appoints a third party to carry out certain of the obligations of the Society to operate, maintain, repair, renovate or replace all or any of the Communal Facilities,
- and the Committee may pay any fee or expense associated with either such appointment or outsource management fees and expenses.
- 12.2 The Manager for the first five years (from the date that the certificates of title for the Wyuna Preserve lots are issued) shall be the Controlling Member who shall carry out the obligations of the Society to operate, maintain, repair renovate and manage the Communal Facilities, the cost of which is (without margin or profit) to be passed onto the Society.

13. **GENERAL MEETINGS**

- 13.1 **Annual general meeting:** In addition to any other meetings in that year, the Society shall hold an annual general meeting each year which must be held:
- a. not later than 12 months after the date of the last annual general meeting or in respect of the first annual general meeting not later than 18 months after the Society's date of registration; and
 - b. not later than nine months after the end of each Expense Year.

The Committee will determine the time and place of each year's annual general meeting but this meeting must be held in the Queenstown Lakes district of New Zealand.

- 13.2 **Special general meetings:** A general meeting other than an annual general meeting may be requested by the Committee, or by written requisition signed by not less than 25% of current Members, or by written notice

of the Controlling Member (if there is one). The secretary shall call a special general meeting within 30 days of receiving an effective request.

- 13.3 **Powers of the Society in general meeting:** The Society in a general meeting may, by resolution, exercise all powers, authorities and discretions of the Society notwithstanding that any such power, authority and discretion may have been delegated to the Committee by or pursuant to this Constitution. Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by 75% of the Members entitled to vote in person or by proxy at general meetings, together with the Controlling Member (if there is one), shall be as valid and effectual as if it had been passed at a general meeting of the Society duly convened and constituted.
- 13.4 **Quorum:** No business shall be transacted at any general meeting of the Society unless the quorum is present when a meeting proceeds to business. The quorum shall be not less than 25% of all Members or 10 Members (whichever is the lesser) eligible to vote at general meetings, present in person or by proxy, together with the Controlling Member (if there is one).
- 13.5 **Notice of general meeting:** A note of general meeting of the Society shall be sent to every Member and to the Controlling Member not less than 30 days before the date of such meeting. Such notice shall specify:
- a. the date, time and venue of such meeting;
 - b. the nature of the business to be transacted at the meeting in sufficient detail to enable a Member to form a reasoned judgement in relation to it; and
 - c. the text of any Special Resolutions and/or 90% Resolutions to be submitted to the meeting.
- 13.6 **Failure to give notice:** The accidental omission to give notice, or the non-receipt of such notice by a Member, shall not invalidate the proceedings at any such meeting.
- 13.7 **The chairperson:** The chairperson at any general meeting shall be:
- a. the chairperson of the Society; or
 - b. if the chairperson is not present or is unwilling to take the chair, then those committee members who are present may choose one of their number to chair the meeting; or
 - c. if for any reason no chairperson is selected by the Committee, any Member appointed by a majority of Members present in person or by proxy.
- 13.8 **Adjournment:** If a quorum is not present within half an hour from the time appointed for the holding of a general meeting convened on requisition of Members, the meeting shall be dissolved. In any other case the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Committee shall determine (such date not to be later than 14 days from the date of the adjourned meeting). If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present together with the Controlling Member (if there is one) shall constitute a quorum.
- 13.9 **Adjourned meetings:** No business other than that business which might have been transacted at the meeting from which the adjournment took place, shall be transacted at any adjourned meeting. Members shall not be entitled to receive any notice in respect of adjourned meetings.

14. VOTING

- 14.1 **One Member one vote:** Each Member present at a general meeting of the Society (not at that time being in breach of this Constitution) shall be entitled to one vote for each Developed Property of which that Member is a registered proprietor, which may be exercised either in person or by proxy. Where there is more than one Owner in respect of any Developed Property, and such Owners are collectively a Member pursuant to rule 4.10, only one such Owner shall be entitled to vote. In the absence of agreement between such Owners as to who shall exercise this vote, the Owner appearing first on the Owners' Title shall be entitled to exercise that vote. On the death of any Member, the trustee of that Member's estate shall be entitled to exercise that Member's vote (except where that Member's Developed Property was jointly owned, in which case the survivor shall be entitled to exercise that Member's vote).
- 14.2 **Controlling Member's vote:** The Controlling Member (if there is one) shall be:
- a. entitled to exercise a number of votes equal to one more than the number of Members entitled to vote at any general meeting; provided that

- b. on any matter which must be passed by Special Resolution, the Controlling Member is entitled to exercise a number of votes equal to 76% of the number of Members entitled to vote on that matter, and
 - c. on any matter which must be passed by 90% Resolution, the Controlling Member is entitled to exercise a number of votes equal to 91% of the number of Members entitled to vote on that matter, however
 - d. the Controlling Member may not use its vote to alter any rule of the Constitution.
- 14.3 **Exercise of Controlling Member's Vote:** In the event that the Controlling Member intends to exercise its powers under Rule 14.2, the Controlling Member shall provide to every member of the Society fourteen (14) days notice in writing of their intention to exercise such vote. Every notice under this Rule shall outline the matter at issue together with a statement of intention from the Controlling Member as to the vote they intend to cast. During the 14 day notice period every Member shall have the right to provide written submissions to the Controlling Member regarding the matter at issue. The Controlling Member shall in good faith consider all submissions prior to exercising the Controlling Member's vote.
- 14.4 **Appointment of Mediator:** An independent mediator shall be appointed to act in a dispute between any Members and the Developer concerning the Developer's compliance with this Constitution when exercising its powers or performing its duties as the Controlling Member if 50% of all Members of the Society, vote to appoint a mediator. The Members in question must promptly give full written particulars of the failure ("dispute") to the Controlling Member, and the dispute will be referred to mediation. The mediation process is:
- a. the parties will appoint a mediator and if they fail to agree the mediator will be appointed by the President of the New Zealand Law Society or the President's nominee;
 - b. the parties must co-operate with the mediator in an effort to resolve the dispute;
 - c. if the dispute is settled, the parties must sign a copy of the terms of settlement;
 - d. if the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease;
 - e. the cost of the mediator's fee and costs including travel, room hire, refreshments etc must be met as to half by the Society and as to half by the Controlling Member;
 - f. the terms of settlement are binding on the parties;
 - g. the terms of settlement may be tendered in evidence in any legal proceedings;
 - h. the parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible in any arbitration or legal proceedings.
- 14.5 **Corporation representatives:** Any corporation which is a Member may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Society, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which that person represents as that corporation could exercise if it were an individual Member, and references in this Constitution to a Member being present in person shall mean and include a representative appointed pursuant to this rule, and such person may also stand for election to the Committee.
- 14.6 **No vote if fees unpaid:** Unless all annual levies and additional fees presently payable by the Member to the Society have been paid in full, the Member shall not be entitled to vote at any general meeting of the Society, whether in his own right or as a proxy for another person.
- 14.7 **Voting at meetings:** At any general meeting:
- a. A resolution may be put to the vote by the chairperson or by any Member present at the meeting and entitled to vote.
 - b. Resolutions put to the vote shall be decided on voices or a show of hands, unless a poll is demanded on or before declaration of the result of the voices or show of hands by:
 - i. the chairperson of the meeting; or
 - ii. at least 5 Members present in person or by proxy; or

- iii. the Controlling Member (if there is one).
 - c. In the case of a resolution put to the vote of the meeting by voices or a show of hands, a declaration by the chairperson that such resolution has been carried or lost or an entry to that effect in the Society's minute book, shall be conclusive evidence of that fact, without further proof of the number or portion of votes recorded in favour of or against such resolution.
 - d. Resolutions shall be passed by a majority of votes, except where Special Resolution or the 90% Resolution of all Members is expressly required by this Constitution.
 - e. In the case of a tie in votes, the chairperson may exercise a casting vote.
 - f. A Member may exercise the right to vote either by being present or by proxy. A proxy for a Member is entitled to attend, to be heard and vote at a meeting of the Society as if the proxy were the Member. A proxy must be appointed by notice in writing signed by the Member and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding twelve months. No proxy is effective in relation to a meeting unless a signed copy of the notice of appointment is produced before the start of the meeting.
- 14.8 **Good faith:** Members shall, in exercising any vote at any general meeting, or as a Committee Member, exercise such vote in good faith with a view to ensuring that all Members are treated equally by the Society, and that each Member shall bear that Member's Proportion of all Operating expenses and of all costs and expenses to be met by levies made by the Society under rule 6, irrespective of whether any expenditure by the Society benefits all Members.

GENERAL

15. GENERAL

- 15.1 **Dissolution:** The Society may be wound up under section 24 of the Act, however a 90% Resolution to wind up the Society must first be obtained. Upon the winding up of the Society:
- a. ownership of the Communal Facilities (with the exception of the benefit of any licences, which shall be surrendered to the owner of the land subject to the licences) shall vest in; and
 - b. the contents of any sinking fund collected by the Committee in accordance with rule 6.7a shall be distributed to,
- the Members as tenants in common in shares equal to the Member's Proportion as at the date of winding up, and the Society shall take all necessary steps to vest legal title to the Communal Facilities in the Members.
- 15.2 **Alteration of Constitution:** Subject to rules 15.3 and 15.5 the Constitution shall not be amended, added to or rescinded unless:
- a. such action is taken at an annual general meeting, or a general meeting convened for that purpose, and
 - b. written notice of the proposed amendment, addition or rescission has been given to all Members in accordance with this Constitution and
 - c. such action is taken by Special Resolution, and
 - d. such action is taken with the written consent of the Controlling Member (if there is one).
- 15.3 **Restrictions on Amendments:** Notwithstanding any other rule in this Constitution, this Constitution shall not be amended, added to or rescinded so as to alter, add to or rescind rules 4.2, 5.1, 7.1, 7.2, 8.2, 9.1, 12.1, 13.3, 14, 15.1, 15.2 and 15.3.
- 15.4 **Introduction, Alteration or Cancellation of Bylaws:** The Bylaws in existence at the date of incorporation of this Society are adopted as the first Bylaws of the Society ("First Bylaws") and are as attached to this Constitution, and

- a. To the extent the Committee wishes to promulgate any new Bylaw/s in addition to the First Bylaws, those new Bylaw/s shall not be effective until approved by the Members by Special Resolution in accordance with rule 14.7; and
 - b. To the extent the Committee wishes to promulgate vary or cancel any or all of the First Bylaws, those proposed variation/s or cancellation/s shall not be effective until approved by the Members by 90% Resolution in accordance with rule 14.7.
- 15.5 **Acceptance by Registrar:** No amendment, addition or rescission to the Constitution shall be valid unless and until accepted by the Registrar.
- 15.6 **Registered office:** The registered office shall be situated at a place nominated by the Committee.
- 15.7 **Liability of Members:** No Members shall be under any liability in respect of any contract or other obligation made or incurred by the Society, except than as specified in this Constitution.
- 15.8 **Society to indemnify Members:** The Society shall indemnify and keep indemnified:
- a. each Member against any liability properly incurred by such Member in respect of the affairs of the Society, to the extent of property owned by the Society; and
 - b. members of the Committee from and against any liability in respect of any act or omission in their capacity as a Committee member, to the extent of property owned by the Society, except where criminal liability is adjudged in respect of any Committee member.
- 15.9 **No action in favour of Members:** No action in law or otherwise shall lie in favour of any Member against any other Member or the Committee, or any Committee member in respect of any act or omission pursuant to this Constitution. Nothing in this rule shall prevent an action in respect of any loss or expense arising from the wilful default of the person against whom such action is taken.
- 15.10 **Member to indemnify Society:** Each Member shall indemnify and keep indemnified the Society from and against any action, claim, demand, loss, damage, cost, expense and liability which the Society may become liable in respect of or arising from any breach of this Constitution by the Member.
- 15.11 **Arbitration:** Any difference or dispute which may arise between a Member and the Society concerning this Constitution or any act or thing to be done, suffered or omitted under this Constitution, or concerning the construction of this Constitution shall be referred to the arbitration of a single arbitrator if the parties can agree upon one, but otherwise to two arbitrators (one to be appointed by either party) and an umpire (to be appointed by the arbitrators before entering upon the reference). Any dispute, difference or question as to the jurisdiction of the arbitrator shall be determined by the arbitrator. The arbitration shall be conducted in accordance with and subject to the provisions of the arbitration statutes for the time being in force in New Zealand. Such arbitration shall be a condition precedent to the commencement of any action at law.
- 15.12 **Approval:** Where in this Constitution any reference is made to the approval or consent of the Society or the Developer:
- a. Such approval or consent shall be given at the sole discretion of the Society, or the Developer, as appropriate;
 - b. No approval or consent given on any occasion by either the Society or the Developer shall serve as a precedent for, or be binding in any way with respect to, any future application for consent or approval; and
 - c. Such reference shall mean the prior written approval or consent of the Society or the Developer, as appropriate.
- 15.13 **Balance Date:** The financial year of the Society shall end on 31 March in each year.

SCHEDULE 1

(Constitution)

Society Bylaws



WYUNA
P R E S E R V E

BY-LAWS

**BYLAWS OF
WYUNA PRESERVE RESIDENTS ASSOCIATION INCORPORATED**

BACKGROUND:

- A. Under the rules of the Constitution:
- (i) The Society may promulgate, amend and distribute to Members from time to time Bylaws for the use of the Communal Facilities (including any restrictions on use for security, maintenance or other reasons), Bylaws concerning the behaviour of Users of the Members' Developed Properties and Bylaws governing the use of Developed Properties.
 - (ii) Members are required to comply with any Bylaws made by the Society from time to time.
 - (iii) The Society may at any time:
 - 1) specify categories of Membership to recognise any category of usage that may be appropriate;
 - 2) introduce Bylaws applying to categories of Membership, those Bylaws to be distributed to Members and to form a part of the Constitution from such date of introduction.
- B. The Society has specified categories of Membership in accordance with the Constitution and has introduced Bylaws to apply to such category of Membership as detailed in clause 15 below.
- C. These Bylaws are the third Bylaws promulgated by the Society and are effective from 1 March 2013 ("**Acceptance Date**") being the date they were approved by the Society in accordance with clause 14.7 of the Constitution.
- D. From the Acceptance Date, the Second Bylaws are deemed to be repealed and substituted with these Bylaws.

BYLAWS:

1. Definitions and Interpretation

- 1.1 In these Bylaws, unless the context otherwise requires:

"**Authority**" means any local body government or other authority having jurisdiction or authority over or in respect of any part of Wyuna Preserve or its use.

"**Bylaws**" means these bylaws and any other bylaws made by the Society from time to time under the Constitution.

"**Committee**" means the committee members from time to time elected to manage the affairs of the Society pursuant to the Constitution.

"**Communal Facilities**" means all land, natural features, buildings, plant, equipment, facilities, and amenities including any Infrastructure, Utilities, private roads, private ways, trails and walkways within Wyuna Preserve owned, leased, licensed or otherwise held, levied or operated in whole or in part by the Society (and includes the benefit of any licence in favour of the Society in relation to the Recreation Area and the Trekking Area, and any improvements constructed on that servient land that are owned by the Society) from time to time including those facilities from time to time transferred to the Society by the Developer, by any other company which is directly or indirectly controlled by the Developer or by any company of which the Developer is a subsidiary (whether directly or indirectly).

"**Constitution**" means the Constitution of the Society as amended or added to, including all schedules to the Constitution (including these Bylaws).

"**Controlling Member**" has the same meaning as defined in the Constitution.

"**Design Guidelines**" means the design guidelines attached to these Bylaws at Schedule One as added to or amended from time to time by the Society.

"Design Control Committee" means the committee described in Bylaw 7.1.

"Developed Property" means a property within Wyuna Preserve:

- a. for which a separate title (including, without limitation, a unit title or a certificate of title for an estate in fee simple) has issued; and
- b. which either:
 - i. is a bare lot available for immediate development as a residential property, or any other use permitted within Wyuna Preserve including, in each case, a lot on which development/construction has commenced; or
 - ii. has been fully developed as a residential property or any other use permitted within Wyuna Preserve; but
- c. includes a bare section available for development which is owned by the Developer.

"Developer" means the unincorporated joint venture between Cabo Limited and Pisidia Holdings Limited promoting and carrying out the development (including maintenance) of Wyuna Preserve, including:

- a. any entity related to the joint venture or either joint venture partner that undertakes any part of the development or maintenance of the development at Wyuna Preserve; and/or
- b. any assignee and/or successor in title whether in whole or in part or parts of Wyuna Preserve, that continues promoting and carrying out such development, and is nominated by the joint venture.

"District Plan" means the Queenstown-Lakes District Plan.

"First Bylaws" has the same meaning as defined in clause 15.4 of the Constitution.

"Homesite Area" means that area on a Developed Property identified under the Consent Notice registered on the certificate of title to that Developed Property as a homesite or building platform area.

"Invitee" means any invitee of or any visitor to an Owner or Occupier.

"Lots 31 to 34" means Lot 31 to 34 DP402648 (inclusive)

"Member" means each person who shall from time to time be a member of the Society under the Constitution. For the avoidance of doubt, the term "Member" includes any member that is either a Non-Residential Member or a Residential Member pursuant to clause 15.

"Membership" means a membership of the Society.

"Non-Residential Member" means a Member under the Non-Residential Membership category.

"Non-Residential Membership" has the meaning as defined under clause 15.

"Occupier" means any person occupying any Developed Property under any lease, licence or other occupancy right and shall include the Owner and all members of an Owner's family.

"Owner" means each person registered as a proprietor (whether individually or with others) of a Developed Property.

"Recreation Area" means that area adjacent to Wyuna Preserve (as marked on the plan attached as Schedule Two) for which the Society will be granted an easement by the landowner for the use of that area for recreational purposes.

"Residential Member" means a Member under the Residential Membership category.

"Residential Membership" has the meaning as defined under clause 15.

"Second Bylaws" means the Bylaws that applied as at 1 January 2013.

"Service Lines" means underground power cables, underground telephone and electronic data and computer media services, underground gas supply lines (if any) and underground water supply lines.

"Signage" means any trade, business, professional or advertising sign (including, without limitation, "for sale" and "for rent" signs) or any notice, name board or plate.

"Society" means Wyuna Preserve Residents Association Incorporated.

"Trekking Area" means that track area surrounding and within Wyuna Preserve (as marked on the plan attached as Schedule Two) for which the Society will be granted an easement by the landowner for the use of that area for walking and horse trekking purposes.

"Users of the Member's Developed Property" means any users of the Member's Developed Property including any mortgagee in possession of that Member's Developed Property, the Occupiers of such Member's Developed Property, the Invitees of such Occupier, the Invitees of such Member, and the purchaser of such Member's Developed Property.

"Utilities" means the following utilities and services:

- a. Sealed and metal vehicle access over all roading within Wyuna Preserve, including roading which is accessible to the general public connecting to the adjoining Queenstown-Glenorchy Road;
- b. Service Lines connecting all Developed Properties and Communal Facilities within Wyuna Preserve, to appropriate supply networks, which may supply Wyuna Preserve.
- c. Domestic and irrigation water systems (including storage tanks, treatment facilities, reticulation, etc) connecting all Developed Properties and Communal Facilities within Wyuna Preserve to water supply systems sourced from the water bore that supplies Wyuna Preserve with water;

and in each case includes the supply of services and utilities as applicable, and any other services (such as by way of example only rubbish collection services) that may be required at Wyuna Preserve.

"Wyuna Preserve" means the residential development and common land and facilities arising from the subdivision and development undertaken by the Developer, at Glenorchy, New Zealand (located adjacent to the Queenstown-Glenorchy Road), previously contained in Certificate of Title 356841 being Lot 4 DP386150, and as consented under Subdivision Consent RM020552 (and its variations, if any), including but not limited to the dwellings, roading, open spaces, pasture land and revegetation land and all other associated infrastructure on the site, and includes any additional land or facilities subsequently acquired by the Society for the benefit of the Owners.

- 1.2 In the event of any conflict between the provisions of the Constitution, and the provisions of these Bylaws, the provisions of the Constitution shall prevail and be given priority.
- 1.3 A reference to an act or omission by any Member shall include, without limitation, any act or omission by Users of the Members' Developed Properties.
- 1.4 An obligation to do something is also an obligation to permit or cause that thing to be done and an obligation not to do something is also an obligation not to permit or cause that thing to be done.

BYLAWS REGARDING COMMUNAL FACILITIES

2. Use

- 2.1 No Member shall make improper, offensive or unlawful use of any Communal Facilities, and each Member shall use the Communal Facilities only for the purposes for which they were designed.
- 2.2 No Member shall fetter, obstruct or impede the use of any Communal Facilities by any other Member.
- 2.3 No Member shall place anything in or on Communal Facilities without the approval of the Society.
- 2.4 No Member shall do any act which may prejudice or add to the premium payable in respect of any insurance of the Communal Facilities.

2.5 No Member shall do any act which detracts from the attractiveness or state of repair of any of the Communal Facilities. Any Member who discovers any damage to any of the Communal Facilities shall immediately report such damage to the Society.

2.6 No Member shall do any act which adversely affects any wetlands which form part of the Communal Facilities or deposit any material in or on any such wetland or allow any rubbish to escape from that Member's Developed Property into any such wetland.

3. **Prohibited Acts**

3.1 No Member shall operate any craft (whether motorised or not) on any body of water which forms part of the Communal Facilities without the prior approval of the Society, except for on any body of water in the Recreation Area, where the operation of non-motorised craft is permitted.

3.2 No Member shall swim, wade, paddle or bathe in, or carry out any like activity in or on, any body of water which forms part of the Communal Facilities (except for in the Recreation Area where such activities are permitted) without the prior approval of the Society.

3.3 No Member shall do anything whereby any obstruction, restriction or hindrance may be caused to any road, driveway and pathway (other than a driveway of that Member's Developed Property) or other parts of Wyuna Preserve or to persons lawfully using them unless otherwise approved by the Society.

3.4 No Member shall pollute or contaminate the Communal Facilities.

3.5 No Member shall discharge onto or into the Communal Facilities any poisonous, noxious, dangerous or offensive substance or thing.

4. **Closure of Communal Facilities**

4.1 Subject to clause 4.2, from time to time, at any time and for any length of time (including, without limitation, permanently) the Society shall be entitled to close or restrict access to any or all of the Communal Facilities as the Society considers necessary for any reason including (without limitation) for the purposes of maintenance, repair, grazing, recreational activity or security purposes, or for health and safety reasons.

4.2 The Society acknowledges that it may only temporarily close ("**Temporary Closure**") any vehicular access road that provides access to a Members' Developed Property. An alternative vehicular access route is to be provided to a Members' Developed Property if the Temporary Closure exceeds 4 hours in consecutive duration during any 24 hour period.

5. **Roads**

5.1 No Member shall park any vehicle on the roads or any other Communal Facilities, other than in spaces specified by the Society from time to time as suitable for that purpose.

5.2 No Member shall operate any vehicle, or otherwise act, on the roads or any other Communal Facilities in an unlawful manner, including (without limitation) over any speed limit or contrary to any Bylaw lawfully set and notified by the Society from time to time.

5.3 In addition to clause 5.1 and 5.2, except with the prior written consent of the Society, a Member can only operate a motorised vehicle (excluding a mobility scooter) on the Communal Facilities:

- a. that is registered with Land Transport New Zealand and holds a current warrant of fitness; and
- b. if the Member holds all required government licences to operate the motorised vehicle and only operates the motorised vehicle on the sealed roadways that form part of the Communal Facilities.

BYLAWS REGARDING DEVELOPED PROPERTIES

6. Members' Developed Property

6.1

- a. Each Member shall keep that Member's Developed Property (including, without limitation, all improvements and fences) in good repair and condition and shall not permit the accumulation of unsightly rubbish or materials or in any other way permit the appearance of that Member's Developed Property to detract from the general standards established for Wyuna Preserve.
- b. The Society shall notify a Member in writing if in its opinion that Member's Developed Property is not being kept in such condition. If the Member has not brought its Developed Property up to the condition required by the Society within 14 days of notice being served on that Member (or such longer period as the Society deems appropriate at its sole discretion), the Member shall be deemed to allow the Society to access its Developed Property in order to bring that Member's Developed Property up to that condition, at the cost of the Member.
- c. Any cost(s) incurred by the Society under Bylaw 6.1b shall be payable to the Society by the Member immediately upon the Society serving notice of the same on that Member.

6.2 Each Member shall at all times duly and punctually pay all rates, taxes, charges and other outgoings payable in respect of that Member's Developed Property.

6.3 No Member shall erect on any Developed Property any aerials, satellite dishes or other communication receivers (except for those devices of a size and type that are commonly used in domestic residences), other than those approved by the Society which permission may in the Society's absolute discretion be withheld should it consider that these do not conform to the standards desirable for the development of Wyuna Preserve.

6.4 No Member shall erect any second-hand or relocatable building on that Member's Developed Property.

6.5 No Member shall use that Member's Developed Property for the storage or accumulation of any rubbish or materials other than building materials during the period of construction of any improvement on that Member's Developed Property. During construction that Member shall cause any excess building material and/or rubbish to be stored in a sightly manner and removed from that Member's Developed Property without undue delay and in any event at a minimum of every two weeks.

6.6 No Residential Member shall:

- a. provide less than a two-car garage on that Member's Developed Property.
- b. park boats, trailers, caravans, additional cars and trailer vehicles other than within a garage on that Member's Developed Property.

6.7 Each Member shall:

- a. provide screened areas on that Member's Developed Property for clothes drying.
- b. undertake all planting on that Member's Developed Property within the Homesite Area in accordance with:
 - i. any landscape plan approved by the Authority; and
 - ii. the Design Guidelines.
- c. within the Homesite Area, arrange for regular watering, fertilising and cutting of grass areas and watering, fertilising and pruning of trees and shrubs, removal of all weeds, rubbish and the maintenance of all driveways, footpaths and landscaping features on that Member's Developed Property.
- d. in all areas outside the Homesite Area ("Outside Area"), but within that Member's Developed Property, retain the grassland and/or regenerating native shrubland (subject to 6.7.e), AND shall eradicate Spanish Heath, broom, gorse and other noxious weeds.
- e. Reduce or remove vegetation in the Outside Area in the interests of reducing fire danger, to be completed within a reasonable time of such a direction by the Society.

- 6.8 No Member shall allow or install any open, solid fuel fires within any residential building or on any Developed Property other than:
- a. any internal or external barbecue fire being operated for cooking purposes (except that use of such a facility may be prohibited at the direction of the Society at certain times of year to reduce the risk of fire danger);
 - b. any external or internal burner or fire provided that it is contained completely within a fireplace or burner appliance that has been approved by the Design Committee for such use, and
- provided that at all times, such fire is in compliance with any restrictions of the Authority.
- 6.9 Except as provided in clause 16.3 in relation to Lots 31 to 34 only, no Member shall use its Developed Property for anything other than private residential accommodation and activities normally associated with private residential use. Business and commercial activities (with the exception of certain residential letting arrangements as permitted by bylaw 6.10) are not to be carried out on any Developed Property except with the prior written approval of the Society.
- 6.10 Except as provided in clause 16.3 in relation to Lots 31 to 34 only, short-term letting or the provision of visitors accommodation (being letting of accommodation for periods of less than one week) of a Developed Property is not permitted and to this end, no Member shall let or lease its Developed Property for any period that is less than one week.

7. DESIGN CONTROL COMMITTEE

- 7.1 The initial Design Control Committee shall comprise the following persons:
- a. a landscape architect registered by the New Zealand Institute of Landscape Architects ("**Landscape Architect**") or an Architect registered by the New Zealand Registered Architects Board ("**Architect**") appointed from time to time by the Developer until the Developer has sold all lots at Wyuna Preserve to third party purchasers or resigned from the Design Control Committee. When the Developer has sold all lots at Wyuna Preserve or resigned from the Design Control Committee, then the Landscape Architect or Architect will be appointed by the Committee;
 - b. a representative of the Controlling Member appointed by the Controlling Member, for so long as there is a Controlling Member. When there is no Controlling Member the Society shall appoint a representative to join the Design Control Committee to replace the Controlling Member;
 - c. a representative of the Developer appointed by the Developer until the date the Developer has sold all lots at Wyuna Preserve to third party purchasers or until the Developer elects in writing to the Society that it no longer requires a representative of the Developer on the Design Control Committee. From the date the Developer has sold all lots at Wyuna Preserve or elected not to have a representative on Design Control Committee, then the Society shall appoint a representative to join the Design Control Committee to replace the representative of the Developer;
 - d. from the date the Developer has sold and transferred 25 out of the 34 Developed Properties in Wyuna Preserve to third party purchasers, the Society shall appoint an additional representative to join the Design Control Committee.
- 7.2 The Design Control Committee may publish from time to time new Design Guidelines (or variations thereof) in respect of residential development within Wyuna Preserve. The first such Design Guidelines shall be those design guidelines attached to these Bylaws at Schedule One.
- 7.3 Before commencing:
- a. any building or development or other structure for which a consent is required from any Authority; or
 - b. obtaining any consent from any Authority to build; or
 - c. any alterations to the exterior of any building or other structure for which a consent is required from any Authority;
- within Wyuna Preserve, a Member must first submit the design of the proposed building/structure to the Design Control Committee for its written approval.

- 7.4 The approval of the Design Control Committee in relation to Developed Properties owned by Residential Members shall not be unreasonably withheld or delayed where the design complies with, in the following order of priority:
- a. the District Plan; and
 - b. any consent notice or covenant registered on the certificate of title for that Member's Developed Property; and
 - c. these Bylaws; and
 - d. the Design Guidelines.
- 7.5 The approval of the Design Control Committee in relation to Developed Properties owned by Non-Residential Members (being Lots 31 to 34) is at the discretion of the Design Control Committee, provided the Design Control Committee will not unreasonably withhold or delay such approval where the design complies with:
- a. any preliminary design plan previously approved by the Design Control Committee; and
 - b. any consent notice or covenant registered (or any variation of a consent notice or covenant or further consent notice or covenant required by an Authority) on the certificate of title for that Member's Developed Property. The Design Control Committee may provide its approval to any plan that contains structures that are outside a Homesite provided that such approval is conditional upon the Non-Residential Member (at its cost) obtaining any required Authority approval to allow such structures outside of the Homesite; and
 - c. these Bylaws; and
 - d. the objectives of the Design Guidelines (in the opinion of the Design Control Committee noting the objectives of the Design Guidelines may be applied differently to Lots 31 to 34 as those lots are not being developed as "residential properties").
- 7.6 All costs of the design approval process (including without limitation, any disbursements or professional charges of a member of the Design Control Committee) shall be met by the Member seeking the approval.
- 7.7 A refundable bond of \$2,000 (or such other amount as the Design Control Committee reasonably determines) will be required to be deposited with the Society by the Member at the time of lodging any design for approval. The bond paid by the Member minus any deductions and approval fees will be returned to the Member once the finished project matches the approved drawings to the satisfaction of the Design Control Committee.
- 7.8 A refundable bond of \$5,000 (or such other amount as the Design Control Committee reasonably determines) will be required to be deposited with the Society by the Member prior to commencement of any work on the Developed Property, to cover any damage to any services, private roading, kerbing or other facility/structure not owned by the Member.
- 8. Security Measures**
- 8.1 Each Member shall properly secure that Member's Developed Property when it is not occupied.
- 8.2 Each Member shall have any private security devices installed at that Member's Developed Property monitored so as to ensure:
- a. prompt and effective response when those devices are activated; and
 - b. deactivation by independent persons if a Member is absent from that Member's Developed Property.
- 8.3 Each Member may contract with a supplier of security services of that Member's choice for that Member's Developed Property provided that where the Society nominates a particular supplier of security services that Member must use that particular supplier in accordance with the Constitution. Each Member who contracts with a supplier of security services for that Member's Developed Property shall:

- a. provide the Society with all information required by the Society regarding that supplier; and
- b. comply with all guidelines for use of the security services imposed by that supplier.

9. Sale of Developed Property

- 9.1 If a Member intends to sell its Developed Property, it must immediately give the Society written notice of that intention and how the Member wishes to conduct the sale process including (without limitation) details of any real estate agent the Member wishes to engage. Such sale process must comply with any relevant Bylaws and/or instructions of the Society.
- 9.2 No Member shall hold any auction sale on any Developed Property without the prior written approval of the Society.

10. Monitoring and Maintenance of Infrastructure

- 10.1 Each Member acknowledges that any infrastructure related to the supply of potable water located on or under that Member's Developed Property shall be maintained in good order by the Society so that the potable water supply infrastructure available to other Members functions appropriately.
- 10.2 Each Member shall permit the Society to access that Member's Developed Property for the purposes of monitoring and maintaining any potable water supply infrastructure (including, without limitation, any water meters) on or under that Member's Developed Property.
- 10.3 Any maintenance or monitoring undertaken by the Society under Bylaw 10.2 shall be at the cost of the Member and payable immediately upon the Society serving notice of the same on that Member.

OTHER BYLAWS

11. Animals, Pets etc.

- 11.1 Notwithstanding any other Bylaw, no Member shall keep (or permit to be kept) any cat on its Developed Property.
- 11.2 Subject to Bylaw 11.1, no Member shall allow any animal, bird or pet (collectively "**Pet**") to cause a nuisance to any other Member.
- 11.3 Without limiting Bylaws 11.1 and 11.2, each Member shall ensure, in respect of that Member's Pets, that:
- a. the number and size of any Pets are reasonable given the size of that Member's Developed Property and the residential environment or neighbourhood within which that Developed Property is situated;
 - b. when Pets are outside the boundaries of that Member's Developed Property, those Pets are under control and supervision, and for this purpose, all dogs are on a leash;
 - c. all Pet droppings are immediately picked up and disposed of;
 - d. all Pets are maintained in a healthy and clean condition, and all laws and regulations relating to the keeping of such Pets are complied with;
 - e. no dangerous Pets are kept within Wyuna Preserve; and
 - f. no grazing Pets are kept within Wyuna Preserve without first obtaining the consent of the Society, at the Society's sole discretion.

The Members acknowledge that Society may allow Council animal/dog control rangers to have access to Wyuna Preserve for enforcement purposes.

- 11.4 Each Member shall be liable for the costs of repairing any damage to any Communal Facilities or another Member's Developed Property caused by that Member's Pets.
- 11.5 No Member shall allow any Developed Property or any Communal Facilities to become infested by pests including vermin or insects.

12. **Conduct and noise**

- 12.1 Each Member shall at all times comply with the requirements of all statutes, regulations and requirements of Authorities (including, without limitation, all planning instruments and consents) within Wyuna Preserve.
- 12.2 No Member shall use any Developed Property or Communal Facility for any purpose which is illegal or may be injurious to the reputation of Wyuna Preserve.
- 12.3 Each Member shall comply with any instructions from time to time issued by the Society or any of its agents for the efficient safe and harmonious use of the Communal Facilities and to otherwise give effect to these Bylaws and the Constitution.
- 12.4 No Member shall make or permit any improper or unreasonable noise within Wyuna Preserve, nor act in any fashion so as to annoy, disturb or irritate any other Member or so as to breach any relevant planning instruments (including, without limitation, the District Plan) or any other requirements of any Authority.
- 12.5 No Member shall obstruct or interfere with or disturb or trespass upon the rights of any other Member in his or her quiet and uninterrupted occupation and enjoyment of that other Member's Developed Property.
- 12.6 Where intoxicating liquor is consumed within Wyuna Preserve, each Member shall ensure that all laws governing the consumption of intoxicating liquor are complied with.
- 12.7 The Society reserves the right to exclude or evict from Wyuna Preserve any person:
- a. who in the opinion of the Society is under the influence of intoxicating liquor or illegal substances, or
 - b. who in any manner acts in violation of the Constitution or these Bylaws, or
 - c. for health and safety reasons.

13. **Rubbish**

- 13.1 No Member shall:
- a. Dispose of any rubbish on any Developed Property or any Communal Facility except into bins or receptacles especially provided or designed for rubbish disposal.
 - b. Place any private rubbish bins or receptacles on any part of the Communal Facilities except on the day advised by the Society as being the day for rubbish collection, or on the day prior to that day, and shall remove the emptied rubbish bin or receptacle on the day following rubbish collection.
 - c. Place any private rubbish bins or receptacles on any part of that Member's Developed Property which is visible from any Communal Facility or neighbouring Developed Property.

14. **Signage**

- 14.1 No Member shall exhibit or put on any part of that Member's Developed Property or any Communal Facilities any Signage except:
- a. in accordance with any Bylaws relating to Signage promulgated by the Society from time to time; or
 - b. where no such Bylaws exist, with the prior consent of the Society or the Design Control Committee; and
 - c. that Signage complies with any requirements of the Queenstown Lakes District Council.

15. **Categories of Membership**

- 15.1 The Society has specified two categories of Membership pursuant to clause 4.5 of the Constitution.
- 15.2 The first category of membership is a "**Residential Membership**" category applying to Lots 1 to 13, 15 to 18, 20, 24 to 30 DP402648 and Lots 14, 19, 21 to 23 DP437485 (inclusive). All Bylaws contained in clause 1 to 15 and 17 apply to lots with Residential Membership.

15.3 The second category of membership is a "**Non-Residential Membership**" category applying to Lots 31 to 34. All Bylaws contained in clause 1 to 18 apply to lots with Non-Residential Membership. If there is any conflict between the Bylaws contained in clause 1 to 15 and the Bylaws contained in clause 16 to 18, then clause 16 to 18 prevail.

15.4 Notwithstanding clause 15.2 and 15.3, all of Lots 31 to 34 may cease to be included within the Non-Residential Membership category pursuant to clause 18.

16. **Non-Residential Membership relating to Lot 31 to 34**

16.1 For the purposes of this clause 16, the term "**Wellness Retreat**" means a single complex/operation to be carried out on Lots 31 to 34:

- a. to be used by fee paying guests/groups that value alternative health, and the benefits of self-sufficiency through partaking in programmes ("**Retreat Programme**") lead by local and international educators;
- b. that will offer Retreat Programmes that centre around massage, watsu, yoga, pilates, rolf movement, therapy, philosophy, dance, hiking, meditation permaculture and environmental sustainability; and
- c. that aims to recycle and harvest natural resources and run a permaculture programme.

16.2 For the purposes of this clause 16, the term "**Wellness Retreat Development**" is limited to the following activities and restrictions:

- a. the development and use of Lots 31 to 34 as a Wellness Retreat for guests enrolled in Retreat Programmes, operated by a single operator, which will include accommodation facilities on the below basis:
 - i. guest accommodation to be provided in 8 buildings ("**Guest Accommodation Buildings**") for up to a maximum of 32 guests as detailed below;
 - ii. each Guest Accommodation Building will be capable of sleeping up to a maximum of four people and will contain one bathroom that is to be shared by the occupants of that Guest Accommodation Building;
 - iii. subject to clause 16.2(iv), accommodation on Lots 31 to 34 is only to be provided to people enrolled in Retreat Programmes at the Wellness Retreat;
 - iv. accommodation can be provided on Lots 31 to 34 to staff who are employed by the operator of the Wellness Retreat;
 - v. all attendees enrolled in Wellness Programmes are to be accommodated within the Guest Accommodation Buildings unless prior written approval has been obtained from the Society.

For the avoidance of doubt, in addition to the Accommodation Buildings, there will be other buildings constructed on Lots 31 to 34 for the Wellness Retreat (for example buildings for kitchen, dining and meeting rooms). All buildings and structures require Design Control Committee approval as provided under these Bylaws.

- b. the development and use of Lots 31 to 34 in accordance with plans as approved by the Design Control Committee.
- c. subject to clause 16.2(d) and the remainder of this clause 16.2(c), each Retreat Programme is to be for a consecutive 7 to 14 day duration. Retreat Programmes can be offered for shorter duration periods provided such shorter duration Retreat Programmes:
 - i. are no less than 3 consecutive days (2 nights) in duration; and
 - ii. make up less than the majority of the total number of Retreat Programmes held during any 12 month period.
- d. up to a maximum of 10 single day Retreat Programmes during any 12 month period subject to obtaining prior written consent from the Society (such consent to be at the Society's sole discretion and/or on terms and conditions as the Society requires).

- e. the prior written consent of the Society is required to erect any structures on Lots 31 to 34 that do not require Design Control Committee approval under these Bylaws. Such consent is to be at the Society's sole discretion and/or on terms and conditions as the Society requires.
- f. the registered proprietor(s) of Lots 31 to 34 is to (at its cost):
 - i. obtain and comply with any required territorial, regional or other statutory approvals; and
 - ii. give reasonable consideration and take all reasonably required actions to minimise any disruption to the enjoyment of the Communal Facilities by any other Occupier,for any development and activities to be carried out on Lots 31 to 34.
- g. up to a maximum of 26 vehicles can be parked on Lots 31 to 34 at any time, made up as follows:
 - i. up to 13 vehicles that belong to guests/visitors of the Wellness Retreat ("**Guest Vehicles**");
 - ii. up to 13 vehicles that relate to the operation of the Wellness Retreat (including staff vehicles, service vehicles and guest transport vehicles)("Staff Vehicles").
- h. All carparking on Lots 31 to 34 are to be screened by landscaping as required by the Design Control Committee (acting reasonably).

16.3 Notwithstanding clause 6.9 and 6.10, Lot 31 to 34 can be developed and operated as a Wellness Retreat Development subject to the terms as set out below:

- a. Subject to clause 18, the Wellness Retreat Development is the only development and activity permitted on Lots 31 to 34. Any proposed change to the use of Lots 31 to 34 from the Wellness Retreat Development will require the approval by the Society by way of a special resolution in accordance with clause 14 of the Constitution.
- b. The registered proprietor(s) of Lots 31 to 34 is responsible for the cost of any required construction, installation, upgrade, enhancement, repairs and maintenance for any Communal Facilities that are required as the sole result of the Wellness Retreat Development.
- c. Any breach of the restrictions relating to the Wellness Retreat Development contained in this clause 16 will be deemed to be a breach of the Constitution and Bylaws under clause 8 of the Constitution.
- d. The Society (at its discretion) may permit the registered proprietor(s) of Lots 31 to 34 (at its cost) to construct a new walking track between Lots 31, 32, 33 and 34 on Society owned land ("**Track**"). The registered proprietors of Lots 31 to 34 will be jointly and severally liable for the maintenance, repair and upkeep of the Track. If in the Society's opinion (acting reasonably), the registered proprietors of Lot 31 to 34 are not maintaining, repairing and keeping the Track to a reasonable standard, then Society may carryout such maintenance, repair and upkeep of the same and recover such cost in doing so, jointly or severally, from the registered proprietor(s) of Lots 31 to 34.
- e. The Wellness Retreat can only be operated and managed by an entity ("**Operator**") that has first been approved by the Society in writing ("**Society Approval**"). Before the initial establishment and any sale (including any sale by a chargeholder), transfer, assignment, disposal or otherwise ("**Transfer**") of the Wellness Retreat operation/business, the "Transferor" of the Wellness Retreat must obtain the Society Approval. The Society Approval will be provided if the following conditions are met:
 - i. the Transferor proves to the satisfaction of the Society that the proposed new Operator ("**Transferee**") is (and in the case of a company that the shareholders of the proposed Transferee are) respectable, responsible and have the financial resources and prior business experience and acumen to run the Wellness Retreat and meet the requirements of the Constitution.

- ii. in the case of the Transferee being a company, a deed of guarantee of the Transferee's obligations under the Constitution in a form as prepared by the Society is duly executed by the directors of the Transferee.
 - iii. the Transferee signs a deed of covenant to be prepared by the Society (at the cost of the Transferor) agreeing to be bound by the Constitution.
 - iv. there is no subsisting breach of the Constitution in relation to Lot 31 to 34 by either the registered proprietor of Lot 31 to 34 or the Transferor.
 - v. the Transferor meeting the Society's reasonable costs and disbursements incurred in respect of the Society Approval and the preparation of the deed of covenant and any guarantee referred to in clause 16.3(e)(ii and iii) and all fees and charges reasonably incurred in respect of all of any reasonable inquiries made by or on behalf of the Society concerning the proposed Transferee. All such costs shall be payable whether or not the Transfer proceeds.
 - vi. where the Operator is an unlisted company then any change in the legal or beneficial ownership of any of its shares, issue of new capital or amalgamation which results in a change of effective management or control of the Wellness Retreat operator is deemed to be a transfer under this clause 16.3(e) requiring Society Approval.
 - vii. for the avoidance of doubt, the above Society Approval arrangements apply to any proposed transfer of Lots 31 to 34 by the registered proprietor(s) of Lots 31 to 34 if the registered proprietor(s) is also the Operator of the Wellness Retreat.
- f. The registered proprietor(s) and Users of the Member's Developed Property on Lots 31 to 34 (including all employees and guests on Lots 31 to 34):
- i. have no right to use the clubhouse and boat house located on Lot 202 DP437485 (which forms part of the Communal Facilities) for any purpose ("**Society Club/Boathouse**");
 - ii. only have access to Lake Fyfe (which forms part of the Communal Facilities) to launch kayaks and other permitted recreational devices within the area as marked on the plan attached in Schedule Two.
- g. The Operator will on 30 April of every year, provide a letter from a New Zealand registered chartered accountant addressed to the Society detailing the duration of all Retreat Programmes held on Lots 31 to 34 during the immediately preceding 1 April to 31 March period ("**Letter**"). This Letter is to ensure compliance with clause 16.2(c and d) above. If the Letter shows any non-compliance with clause 16.2(c and d), then the Operator is:
- i. deemed to be in breach of the Bylaws and Constitution in accordance with clause 16.3(c); and
 - ii. required to provide a Letter within 15 days from the end of each month (for the next 12 consecutive months) providing the details of all Retreat Programmes held on Lots 31 to 34 during the immediately preceding month.
- h. The registered proprietor(s) of Lot 31 to 34 (at its cost) will only develop and operate Lots 31 to 34 as the Wellness Retreat Development in compliance with all required Authority approvals and consents and will provide copies of the same to Society on written request.
- 16.4 For the avoidance of doubt:
- a. Lots 31 to 34 are "Developed Properties"; and
 - b. the Operator, agents, guests, invitees, work persons and employees of the Wellness Retreat Development are included within the definition of "User of the Members' Developed Property",
- as those terms are defined in the Constitution.
17. **Alternative Access to Wyuna Preserve and Levies**
- 17.1 As part of the Wellness Retreat Development, it is possible that Lots 31 to 34 may create and use an alternative accessway from Glenorchy – Queenstown Road to the southern boundary of the Wyuna

Preserve adjoining Lot 34 DP 402648 ("**Alternative Accessway**"). The registered proprietor(s) of Lots 31 to 34 will use reasonable endeavours to secure and use such Alternative Accessway during the construction of the Wellness Retreat Development to reduce the amount of construction related traffic passing through the Wyuna Preserve. The Alternative Accessway may provide permanent access to Lots 31 to 34 as provided in clause 17.2.

- 17.2 Subject to the Alternative Accessway providing permanent registered easement protected access to Lots 31 to 34 to the satisfaction of the Society (acting reasonably), the registered proprietor(s) of Lots 31 to 34 will:
- a. (including the Users of the Member's Developed Property on Lots 31 to 34), have no right (except in the event of emergency) to use that portion of Lot 100 DP437485 from the Glenorchy-Queenstown Road to the point as approximately shown on the plan attached in Schedule Two for motorised vehicular access.
 - b. jointly and severally be responsible for the cost of all Society's maintenance, repair and upkeep of the gravel section ("**Gravel Road**") of Lot 100 DP437485 south of the point as shown as "Gate Turn Around Area" on the plan attached in Schedule Two.
 - c. install (at its cost) a gate, turning circle and associated landscaping ("**Gate/Turning Area**") in approximately the area as shown on the plan attached in Schedule Two. The Gate/Turning Area is to prevent motorised vehicular access through the Gate (except in the event of emergency) and to allow an appropriate vehicular turning area. The Gate is to allow pedestrian and non motorised vehicle access (including bicycles) through the Gate. The registered proprietor(s) of Lot 31 to 34 will be responsible (at its cost) for all matters relating to, and obtaining, Design Control Committee approval to the construction of the Gate/Turning Area. This Design Control Committee approval is required prior to the registered proprietor(s) of Lot 31 to 34 undertaking any installation or construction works for the Gate/Turning Area. From the date ("**Vesting Date**") the Gate/Turning Area has been constructed to the satisfaction of the Society (acting reasonably), the Gate/Turning Area will be deemed to vest in Society (at no cost) as a Communal Facility. From the Vesting Date, Society will carryout maintenance of the Gate/Turning Area. Notwithstanding the Gate/Turning Area will be deemed to be a Communal Facility and available for use by all Members, Occupiers and Invitees, the registered proprietors of Lots 31 to 34 will be jointly and severally liable for all Society's costs in relation to the maintenance, repair and upkeep of the Gate/Turning Area.
- 17.3 In the event a Gate is installed pursuant to clause 17.2(c), and in recognition that registered proprietors of Lots 31 to 34 are responsible for the cost of Society's maintenance of the Gravel Road, the owners of all other lots in Wyuna Preserve will not have motorised vehicular access to the south of the Gate (except in the event of emergency).
- 17.4 The Members acknowledge that the specific usage charge component of the levies payable under clause 6(b)(ii) of the Constitution will be calculated on a different basis as between the Residential Membership and Non-Residential Membership categories. This is to recognise that:
- a. Non-Residential Members will not be levied in relation to expenses relating to the Society Club/Boathouse as they have no right to use the Society Club/Boathouse.
 - b. if the Alternative Accessway provides permanent access to Lots 31 to 34 as provided in clause 17.2, then:
 - i. Residential Members will not be levied to contribute to Society's costs for the maintenance, repair and upkeep the Gravel Road and Gate/Turning Area. These costs will be levied from Non-Residential Use Members;
 - ii. Non-Residential Members will not be levied to contribute to Society's cost for the maintenance, repair and upkeep of the sealed roads and gravel roads north of the Gate/Turning Area and the gate house at the entrance to Wyuna Preserve. These costs will be levied from Residential Use Members.
 - c. Residential Members will not be levied for any Society maintenance, repair or upkeep of the Track under clause 16.3(d). These costs will be levied from Non-Residential Members if required under clause 16.3(d).
 - d. subject to clause 17.4(a, b and c) the Society (acting reasonably) will levy Non-Residential Members to ensure that any increase in Society costs (for example, but not limited to, capital

expenditure and operating costs in relation to the increased use of Communal Facilities and costs as provided under clause 16.3(b)) due to Lots 31 to 34 being used as a Wellness Retreat Development and not as four residential lots are recoverable from the registered proprietors of Lot 31 to 34 as Non-Residential Members.

- e. noting the above levy arrangements, the Society will set the levies payable by Non-Residential Members in a way that is fair and equitable to the Society and all Members (including Non-Residential Members) but the Non-Residential Members acknowledge and agree that the Society will have final discretion and approval as the setting of the levies as provided under clause 6 of the Constitution.

18. Revocation of Non-Residential Use Membership

- 18.1 Subject to the provisions contained in clause 18.3, the registered proprietor(s) of all of Lot 31 to 34, acting collectively and unanimously can on irrevocable written notice to the Society ("**Revocation Notice**") elect for all of Lots 31 to 34 to cease to be used as a Wellness Retreat Development.
- 18.2 From the date the Revocation Notice is received by the Society, clause 16 and 17 will be deemed to be deleted from these Bylaws. Accordingly, all of Lots 31 to 34:
 - a. will be deemed to have a Residential Membership (and be subject to clause 6.9 and 6.10 above).
 - b. will be treated under the Constitution and levied as other lots within the Residential Membership category, including in relation to Society's costs for the Communal Facilities (which includes all road ways within Wyuna Preserve and the gatehouse at the entrance to Wyuna Preserve). This is regardless of whether Lots 31 to 34 have easements rights to allow their continued use of the Alternative Accessway.
- 18.3 A Revocation Notice can only be served if the registered proprietor(s) of all of Lot 31 to 34, acting collectively and unanimously, has first obtained and provided to the Society all Authority consents and approvals required to allow all Lots 31 to 34 to be used as single residential lots on the same terms and conditions as applied to Lots 31 to 34 on 8 April 2011 (except the approved building platforms for Lots 31 to 34 can be the building platforms as established as part of the resource consent for the Wellness Retreat Development).
- 18.4 If a Revocation Notice is served, then the registered proprietor(s) of Lots 31 to 34, jointly and severally, will immediately (at its cost):
 - a. remove the Track;
 - b. reinstate the land affected by the Track, and the removal of the Track, to its pre-Track condition; and
 - c. complete native planting as reasonably required by the Society's landscape consultant in the vicinity of the Track,together called "**Track Reinstatement Works**".
- 18.5 If in the Society's opinion (acting reasonably), the registered proprietors of Lot 31 to 34 do not carry out the Track Reinstatement Works, then Society may carryout the Track Reinstatement Works and recover all costs in doing so, jointly or severally, from the registered proprietor(s) of Lots 31 to 34.

SCHEDULE ONE

Design Guidelines



WYUNA
P R E S E R V E

DESIGN GUIDELINE

March 2009

1.0 INTRODUCTION

These Design Guidelines have been developed for the Wyuna Preserve in accordance with the Wyuna Station Rural Lifestyle Subdivision Design Controls and shall be deemed to be inclusive as part of these Design Guidelines.

2.0 SITE DESIGN CONTROLS

These controls refer to the following Rural Lifestyle Zone areas (*Refer Figure 1*). All allotments referred to in these design guidelines are highlighted below in green.

Figure 1: Rural Lifestyle Zone



2.1 High Country Allotments

2.1A Site Development Principles and Definitions

Design Principles:

- Ensure all development is appropriately sited and controlled with respect to buildings, infrastructure and landscape;
- Create a built environment that integrates with the surrounding natural environment;
- Avoid development that is visually intrusive and inappropriate within the natural environment;
- Establishment of prescriptive Design Guidelines in order to achieve all the above.

'Homesites' and 'Openspace' Concept (*Refer Appendix 1 and 2*)

'Homesite': A land area between 3000m² – 4000m² designated within each allotment, where development and modification is permitted. The 'Homesite' is site specific to each allotment and forms part of the covenants on the title. Each 'Homesite' is located to ensure that building and landscape modifications are appropriately sited with respect to localised landform, vegetation patterns and visibility from the surrounding area. All built forms must be located entirely within the 'Homesite' area, with the exception of the access driveway, underground services and wastewater disposal systems.

'Openspace': The remaining area within the allotment is protected by an 'Openspace' covenant, for the retention and enhancement of existing grasslands; wetlands and native vegetation. Assessment matters recommended for this area include a minimum requirement for 'Openspace' areas to be reinstated with local native shrubland, wetland or grassland plant species.

2.1B Architectural Controls

1. Objectives

- To achieve an architectural language specific to the Wyuna Preserve that responds to the natural character of the site;
- Establishment of a prescriptive materials palette that is responsive to the natural character of the environment;
- Ensure that architecture is responsive yet subservient to the surrounding environment.

2. Controls

Height

- **The maximum height of any building is 5.5m above a nominated datum located within each building platform.**
- **A recession plane of 35 degrees shall be measured from 3.5m above the nominated datum, along the north and west boundary of building platforms 01-30.**
- **A recession plane of 35 degrees shall be measured from 3.5m above the nominated datum, along the south and east boundary of building platforms 31-34.**
- **Residential buildings are restricted to single storey except for a basement garage or utility rooms. The basement garage or utility room must not be visible from Lake Wakatipu or the Glenorchy-Queenstown Road.**
- Approved datum heights shall be nominated prior to lodging the Survey Plan for the RMA Section 223 approval from the council.

Wall Materials

- All exterior walls are to be clad in;
 - **natural Wyuna stone**; or
 - **cedar timber**; or
 - any combination of the above materials; or
 - other materials as approved by the DRB.

Glazing

- **Exceed no more than 50% on any elevation visible from Lake Wakatipu or the Glenorchy-Queenstown Road, unless**
 - **anti-reflective glazing is used**; or
 - **eaves of that elevation are extended outwards 1.2m**; or
 - **glazing is covered by external louvers that prevent direct solar radiation from reflecting off the glazing.**
- **Glazing to be recessed a minimum of 150mm for all walls.**
- **Mirror tinting shall not be permitted.**

Roof Pitch and Materials

- **The roof pitch range is between 25–35 degrees**;
- A maximum of 25% of building footprint to have a flat roof with a waterproof membrane system in dark grey to black tones;
- The balance of the building footprint is restricted to;
 - **red cedar shakes or cedar shingles**; or
 - natural dark grey **slate tiles** or other colours as approved by the DRB; or
 - **oxidated dark zinc or galvanized iron finished in dark grey or charcoal tones**; or
 - other materials as approved by the DRB.

Setbacks

- The 'Homesite' is already defined within the title; no other internal boundary setbacks are required.

2.1C Landscape Controls

1. Objectives

- To covenant the 'Openspace' as an area for native revegetation and/or regeneration;
- To encourage the planting of predominantly indigenous vegetation within the 'Homesite', and allow flexibility for planting of non-indigenous plant species;
- Ensure that the natural character of the landscape is enhanced;

2. Controls

Roading - Private Access Roads

- Maximum 3.5m wide carriageways with passing bays;
- 4.0m wide grass swales, 2.0m on either side where possible;
- 1.5m grass paths where possible;
- Roothing material to be precoated (or 2 coat) chipseal with edge restraint;
- No sections of road to be built with a gradient exceeding 1:6;
- Pavement thresholds may be included and will be constructed of Wyuna Stone.

Earthworks – Grading and Drainage

- No cut batter to exceed 1:2;
- No cut to fill is to occur outside the 'Homesite', except for driveway access through 'Openspace' to the 'Homesite'.
- Any cut to fill slope outside the 'Homesite' is to be revegetated with indigenous vegetation to blend in with the surrounding vegetation;
- Wherever possible, natural slopes are preferred over retaining structures;
- Soft engineering drainage principles such as swales are preferred;
- Natural drainage course are to be protected and existing drainage patterns maintained;
- New drainage courses are to be designed to function and appear as natural drainage systems.

Exterior Lighting

- Only low level bollard lighting will be used on roading to the extent required for safety, signage and at intersections.
- Private lighting is only permitted in the 'Homesite' area if:
 - the light source is incandescent, halogen or other white light; and
 - it is low intensity; and
 - **it is not visible from the Glenorchy-Queenstown Road.**

Planting – 'Homesite'

- **A minimum of 50% of new planting within the 'Homesite' area shall be indigenous plant species** (excluding lawn), and a maximum of 30% of new planting shall be exotic plant species;
- **No exotic vegetation is permitted except for:**
 - (i) Grass species if local and characteristic of the area; and
 - (ii) **Other vegetation if it:**
 - **grows to less than 1.5m in height at maturity;** and
 - is within 10 metres of the main building footprint; and
 - is naturally a non invasive species; or
 - is intended for human consumption.
- **Remainder of the lot is to be retained in open grassland or regenerating native shrubland.**

- The DRB reserves the right to amend this list or decline ANY species considered contradictory to the character of the Wyuna environment.

Planting – ‘Openspace’

- A minimum of 20% or 3000m² of the ‘Openspace’ area of every title, whichever is the greater, is to be revegetated with indigenous planting prior to any construction on the ‘Homesite’;
- If a title has existing native vegetation coverage equal to or greater than the prescribed minimums, then a similar sized area shall be revegetated by the landowner, in an approved location in the Native Revegetation Preserve;
- The approved plant list for revegetation of ‘Openspace’ areas is attached as Appendix 3.

Wetlands

- No landscaping or earthworks are permitted within 7 metres of any wetland areas identified in the Master Development Plan.

Fences/Walls

- All entry structures are limited to a height not to exceed 1.2m;
- **Lot entry structures constructed from Wyuna Stone are only permitted where they are not visible from Lake Wakatipu or Glenorchy-Queenstown Road.**
- All walls within the ‘Homesite’ area are to be constructed of Wyuna Stone and should not exceed 2.0m in height;
- **Fences or walls are not permitted outside of the ‘Homesite’** (refer Appendix 2) or along the property boundary **except for:**
 - **retaining walls associated with driveways or roads and constructed of local Wyuna Stone; or**
 - post and rail fencing; or
 - **1.2m high ‘post and wire’ fencing** for stock management purposes.

2.2 Preserve Open Space

2.2A Site Development Principles and Definitions

Design Principles:

- To encourage indigenous plant revegetation and/or regeneration.
- Landscape management of invasive, noxious or pest plant species.

'Preserve Open Space' Concept (*Refer Appendix 1*)

'Preserve Open Space': Areas of land throughout the development specifically designated for native revegetation and/or regeneration. The 'Preserve Open Space' is located to ensure significant natural areas of the site are protected for the recreational benefit and enjoyment of Wyuna residents. No construction works are permitted inside the 'Preserve Open Space' with the exception of private driveway access to a 'Homesite' which must be appropriately sited with respect to landform, existing vegetation patterns and visibility from the surrounding area.

2.2B Landscape Controls and Management

1. Objectives

- All 'Preserve Open Space' areas are to be managed in accordance with the Landscape Management Plan;
- Farming of certain areas is encouraged by Wyuna Station and will be undertaken for landscape management purposes.

2. Controls

- Post and wire fencing is permitted in the 'Preserve Open Space' as a landscape management tool for stock control purposes;
- **All noxious weeds, i.e. Spanish heath, gorse, broom** and any exotic invasive tree species, i.e. larch and sycamore **are to be removed.**
- Controls specified in 2.1C covering Roading, Earthworks and Exterior Lighting also apply to the 'Preserve Open Space'.

APPENDIX 1: 'Homesite', 'Openspace' and 'Preserve Open Space' Concepts



APPENDIX 2: Typical Lot Layout



APPENDIX 3: Approved Native Plant Species List

RECOMMENDED PLANT SPECIES

| Species | Common name | Habitat | Rushland | Matagouri Shrubland | Manuka Shrubland | Forest | Rush Tussock Sedge | Shrub | Small Tree | Tree |
|--|------------------|------------------------|----------|---------------------|------------------|--------|--------------------|-------|------------|------|
| <i>Carex coriacea</i> | Rautahi | Edge and moist | ✓ | | | | ✓ | | | |
| <i>Carex secta</i> | Purei | Edge | ✓ | | | | ✓ | | | |
| <i>Carex virgata</i> | | Edge | ✓ | ✓ | | | ✓ | | | |
| <i>Carpodetus serratus</i> | Marble leaf | All | | | ✓ | | | | ✓ | |
| <i>Chionochloa rubra</i> | Red tussock | Moist ground | ✓ | | | | ✓ | | | |
| <i>Coprosma propinqua</i> | Mikimiki | All | ✓ | ✓ | ✓ | | | ✓ | | |
| <i>Coprosma rugosa</i> | | Dry and moist ground | ✓ | | | | | ✓ | | |
| <i>Cordylina australis</i> | Cabbage tree | All | | ✓ | ✓ | | | | | ✓ |
| <i>Coriaria samentosa</i> | Tutu | Dry and moist ground | ✓ | | | | | ✓ | | |
| <i>Cortaderia richardii</i> | Toetoe | Dry and moist ground | ✓ | | | | ✓ | | | |
| <i>Dacrycarpus dacrydioides</i> | Kahikatea | Moist, fertile, recent | | ✓ | | | | | | ✓ |
| <i>Discaria toumatou</i> | Matagouri | Well-drained ground | ✓ | | | | | ✓ | | |
| <i>Fuchsia excorticata</i> | Fuchsia | Moist sheltered sites | | ✓ | | | | | ✓ | |
| <i>Griselinia littoralis</i> | Broadleaf | All | | ✓ | ✓ | ✓ | | | | ✓ |
| <i>Hebe salicifolia</i> | Koromiko | Moist sheltered sites | | ✓ | | | | ✓ | | |
| <i>Juncus gregiflorus</i> | | Edge and moist | ✓ | | | | ✓ | | | |
| <i>Juncus pallidus</i> | | Edge | ✓ | | | | ✓ | | | |
| <i>Leptospermum scoparium</i> | Manuka | Moist ground | ✓ | | | ✓ | | ✓ | | |
| <i>Meliccytus ramiflorus</i> | Mahoe | All | | ✓ | ✓ | ✓ | | | ✓ | |
| <i>Metrosideros umbellata</i> | Rata | Bluffs and outcrops | | ✓ | | | | | | ✓ |
| <i>Myrsine australis</i> | Mapou | Moist sheltered sites | | ✓ | | | | | ✓ | |
| <i>Nothofagus fusca</i> | Red beech | All | | ✓ | ✓ | ✓ | | | | ✓ |
| <i>Nothofagus solandri var. cliffortioides</i> | Mountain beech | All | | ✓ | ✓ | ✓ | | | | ✓ |
| <i>Phormium tenax</i> | Mountain flax | Moist ground | ✓ | | | | ✓ | | | |
| <i>Pittosporum tenuifolium</i> | Kohuhu | All | | ✓ | ✓ | ✓ | | | ✓ | |
| <i>Prumnopitys taxifolia</i> | Matai | Moist, fertile, recent | | ✓ | | | | | | ✓ |
| <i>Pseudopanax colensoi</i> | Three finger | All | | ✓ | ✓ | ✓ | | | | ✓ |
| <i>Pseudopanax ferox</i> | Fierce lancewood | All | | ✓ | | | | | ✓ | |
| <i>Sophora microphylla</i> | Kowhai | Bluffs and outcrops | | ✓ | | | | | | ✓ |

SCHEDULE TWO

Plan showing Trekking Area and Recreation Area



SCHEDULE 2

(Constitution)

First Members

The Joint Venture

Stoney Creek Cattle Co (2) Limited
Stoney Creek Cattle Co (3) Limited
Stoney Creek Cattle Co (4) Limited
Stoney Creek Cattle Co (5) Limited

SCHEDULE 3

(Constitution)

Access & Recreation Plan

