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## Tirohanga/Mokai Childcare Centre (2008)

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### CONSTITUTION

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## 1. Name

The name shall be the Tirohanga/Mokai Childcare Centre (2008) Incorporated” (hereinafter called the SOCIETY) and shall be duly registered and incorporated under “The Incorporated Societies Act 2022”.

## 2. Registered Office of the Society

- a) In accordance with section 18 of the Incorporated Societies Act 2022 the Society shall have a registered office to which all communications may be addressed and notice of the situation of that office and of any change therein shall be given to the Registrar as provided by that section.
- b) The registered office of the Society is:  
1452 Forest Road, Mokai 3078

## 3. Interpretation

In this Constitution, unless the context otherwise requires:

- a) “Society” means the incorporated society registered and incorporated under the Incorporated Societies Act 2022 and that is named and whose address details are detailed in clauses 1 and 2 of this Constitution.
- b) “Centre” means the licensed education and care centre, operated by the Society, and named in this Constitution.
- c) “Constitution” means this Constitution for the time being in force.
- d) “Chairperson” means the Chairperson for the time being of the Society Committee as duly elected by the Committee.
- e) “Vice-Chairperson” means the Vice-Chairperson for the time being of the Society Committee as duly elected by the Committee.
- f) “Secretary” means the Secretary for the time being of the Society Committee as duly elected by the Committee.
- g) “Member of the Committee” when used in reference to or in connection with the Committee shall include a member of Committee appointed pursuant to this Constitution.
- h) “Month” means a calendar month.
- i) “Year” means a calendar year.
- j) “Registrar” means the Registrar of Incorporated Societies under the Incorporated Societies Act 2022.
- k) “Related Person” for the purposes of Clause 6 and in relation to any business to which section CW 42 of the Income Tax Act 2007 refers, means a person specified in paragraphs (i) to (iv) of subsection (5)(b) of that section, the persons currently specified being:
  - a. a settlor or trustee of the trust by which the business is carried on; or
  - b. a shareholder or director of the company by which the business is carried on; or
  - c. a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or

- d. a person associated with a settlor, trustee, shareholder or director referred to in subparagraphs a. to c. above.
- l) “Seal” means the common Seal of the Society.
- m) The singular includes the plural and conversely.
- n) A gender includes all genders.
- o) “In writing” and “written” shall be deemed to include printing, typewriting, and electronic modes of representing or reproducing words.

In the event of any dispute as to the interpretation, the interpretation of the Committee shall be final and binding.

#### **4. Charitable Purposes and Means to Achieve Charitable Purposes**

##### **Charitable Purposes**

The Society is established for the advancement of quality education and care of pre-school-aged children in relation to the provision of early childhood education services in New Zealand by:

- a) Advancing the highest professional standard of teaching practice; and
- b) Ensuring the provision of age-appropriate childcare services.

##### **Means to Achieve Purposes**

In order to achieve the purposes of the Society, the Society may without limitation:

- a) Act in the best interests of all children
- b) Listen to and learn from families
- c) Encourage staff to adopt and act in accordance with these means
- d) Ensure our service is connected and reflects the needs of our community
- e) Model good employer practise
- f) Foster an environment of continuous quality improvement and professional development
- g) Operate in a lawful and ethical manner at all times
- h) Uphold the Treaty of Waitangi | te Tiriti o Waitangi, recognising Aotearoa|New Zealand’s founding document and responsibility of the same

#### **5. Membership**

- a) The Society is to consist of an unlimited number of members.
- b) The minimum membership of the Society is ten.
- c) Members of the Society shall be those whom the Committee has admitted or in the future shall admit to membership.
- d) Membership of the Society shall be attained though joining the Society. The Society will determine the status of membership.
- e) A Member may be any parent of a child enrolled at the Centre; and any parent of a child who has been enrolled at the Centre.
- f) A Member cannot also be a paid staff member of the Centre.

- g) A Member may be a Mana Whenua of the local Rohe
- h) A member may be a person with a vested interest in the area or Centre
- i) The Committee may by unanimous vote of those present and eligible to vote elect as a life member any member who in its opinion has rendered conspicuous service to the Society.
- j) When an applicant has been deemed to meet the requirements for membership by the Society, the Society will send to the applicant written notice of the acceptance and a request for payment of any applicable fee.
- k) Membership may be terminated by the Society where:
  - a. a member fails to meet the criteria for ongoing membership;
  - b. a member breaches any of this Constitution and termination on that ground is resolved by the unanimous agreement of the members of the Committee.
  - c. The Committee, at its discretion, expels or suspends a member from membership after giving the member an opportunity to provide an explanation or defence;
  - d. any investigating committee appointed under this Constitution, upon a proper examination and investigation, recommends to the Committee that membership be terminated, provided that, before acting on any such recommendation, the Committee may, if it thinks fit, carry out further investigations and conduct further enquiries for the purpose of satisfying itself that such recommendations should be acted upon;
- l) A member, having given notice of resignation in writing, resigns from their membership of the Society and the resignation is effective upon receipt of the notice by the Secretary.
- m) The Committee has discretion to restore membership rights, provided the member remains eligible to be a member of the Society.
- n) Upon ceasing to be a member, a person ceases to be entitled to any status of membership.
- o) A person who ceases to be a member remains liable for personal debts owing to the Society at the time of cessation of membership.

## **6. Restrictions on Private Pecuniary Profit and on Benefits in Business Activity**

### **No private pecuniary profit of any individual and exceptions**

- a) No private pecuniary profit shall be made by any person involved with the Society, except that:
  - a. any member of the Committee shall be entitled to be reimbursed out of the assets of the Society for all expenses which he or she properly incurs in connection with the affairs of the Society;
  - b. the Society may pay reasonable and proper remuneration to any officer or servant (whether a member of the Society or not) in return for services actually rendered to the Society;
  - c. any member is to be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by that member or by any firm or entity of which that member is a member, employee or associate in connection with the affairs of the Society;
  - d. any member may retain any remuneration properly payable to that member by any company or undertaking with which the Society may be in any way

concerned or involved for which that member has acted in any capacity whatever, notwithstanding that that member's connection with that company or undertaking is in any way attributable to that member's connection with the Society; and

- b) The Committee, in determining all reimbursements, remuneration and charges payable in terms of this clause, shall ensure that the restrictions imposed by Clause 6(c) are strictly observed.

### **Prohibition of benefit or advantage in business activity**

- c) In the carrying on of any business authorised under this Constitution, no benefit or advantage shall be given to, or received, by any Related Person where that Related Person, in his or her capacity as a Related Person, is able in any way (whether directly or indirectly) to determine, or to materially influence the determination of:
  - a. the nature or extent of a relevant benefit or advantage; or
  - b. the circumstances in which a relevant benefit or advantage is, or is to be, given or received.
- d) For the avoidance of doubt, and without limiting the above provision, the clause against prohibition of benefit or advantage in business activity applies to any other person with some control over the business, if that person is able to direct or divert, to their own benefit or advantage, an amount derived from the business.
- e) A person who is in the course of and as part of the carrying on, of his or her business of a professional public practice, shall not, by reason only of him or her rendering professional services to the Society or to any company or person by which any business of the Society is carried on, be in breach of the terms of Clause 6(c).

## **7. Officers and Committee**

- a) The Society shall be managed and controlled by a Committee, who are provided with all the powers necessary for managing, directing and supervising the management of the operations and affairs of the society, subject to any modifications, exceptions or limitations set out in this constitution.
- b) The Committee shall have a minimum of three (3) members.
- c) Nominations for the election of the Committee shall be made in writing and provided to the Secretary prior to the annual general meeting.
- d) Appointments to the Committee shall take effect immediately after the relevant annual general meeting at which they are appointed.
- e) At the first meeting of the Committee following election at the annual general meeting, the Committee shall elect a member of the Committee to be the Chairperson and other member(s) of the Committee to be the Vice Chairperson, the Treasurer and the Honorary Secretary. The positions of Vice Chairperson, Treasurer or Secretary may be held by the same person. Each officer will hold office for one (1) year (but may be eligible for re-election).
- f) Every officer of a society must be a natural person and comply with section 47 of the Act.
- g) In the event that the Chairperson vacates office before the end of his or her term, the Vice-Chairperson will act as Chairperson until the next general meeting and a member of the Committee, elected by the Committee, will act as the Vice-Chairperson until the next general meeting.

- h) In the event of there being no Vice-Chairperson the Committee will elect a person to the position of Chairperson who will act in the position of Chairperson until the next general meeting.
- i) A casual vacancy among the members of the Committee may be filled by the Committee if that vacancy will be for no longer than six (6) months of an annual general meeting. Any person so appointed to fill a casual vacancy must be a person who would be eligible for election under Clause 7(f), to the Committee and shall hold office for the unexpired period of service of the person whom he or she succeeds.
- j) If a member of the Committee vacates office more than six (6) months from an annual general meeting this office must be replaced, unless there are sufficient remaining members of the Committee to form a quorum.
- k) Appointments to the Committee are for one (1) year.
- l) Members of the Committee will not be eligible for reappointment after ten (10) consecutive years on Committee unless there is no other eligible member willing to accept appointment in which event the member may accept appointment for a further year.
- m) A member will cease to be a member of the Committee if:
  - a. They cease to be a member of the Society.
  - b. They are absent from two (2) or more consecutive Committee meetings without the consent of Committee.
  - c. They resign from Committee and their resignation is received by the Secretary.
- n) A member of the Committee may resign from their office by writing to the Committee. The resignation will be effective from the date of notice of receipt by the Honorary Secretary or such future date where specified in the notice given by that member.
- o) The Committee may, at its discretion, co-opt the services of any person or persons, who in the opinion of the Committee, would be in a position to assist it in its deliberations. No person or persons co-opted shall continue as a co-opted member beyond the period ending with the annual general meeting next succeeding after such co-option, but shall be eligible to again be co-opted during the next succeeding year. The maximum number of persons co-opted to the Committee shall not exceed two (2) at any one time. Persons co-opted may take part in all the deliberations of the Committee and may vote on any motion before the Committee.
- p) An officer must disclose to the Committee when they are interested in “a matter”. A matter is defined in section 62(4) of the Act as meaning the society’s performance of its activities or exercise of its power, or a transaction made or entered into, or proposed to be entered, by the Society. In accordance with section 62 of the Act, an officer is interested in a matter if they or one of their relatives receive financial benefit from the matter, or they or one of their relatives may have a financial interest in a person to whom the matter relates, or they are interested in the matter because the Society’s Constitution says so.
- q) If an officer is interested in a matter relating to the Society, under Section 63 of the Act, they must disclose the details of the nature and extent of the interest to the Committee who must record it as part of the Interests Record.

## 8. Powers of Committee

In exercising its discretion, the Committee shall have the fullest possible powers in relation to the assets and property of the Society, including the following powers:

- a) To own, lease, procure, manage, and operate the property and assets of the Committee as the Committee may determine from time to time.
- b) To purchase, erect, build, take or lease or otherwise obtain the use or occupation of and to manage, extend, improve, develop, alter, modify, pull down, demolish, maintain and repair and to sell, exchange, let, lease, donate, or otherwise dispose of real and personal property of every description.
- c) To seek, accept and receive conveyances, transfers, gifts, devises, donations and bequests of real and personal property of every description whatsoever (but with power nevertheless to accept or decline in their absolute discretion) and to hold the same or the proceeds of the sale thereof upon the trusts to which the same is subject, provided that they are consistent with the charitable purposes of the Society but otherwise subject to the terms and provisions of the Society and in the event of any such property being subject to resolutions, trusts, liabilities or obligations, nevertheless to accept and hold such property subject thereto and to take such action in respect of the same as the Committee may think fit provided that the Society shall not accept any asset if it is proposed that the asset be used by the Society in any business carried on by or on behalf of or for the benefit of the members of the Committee and, if the person disposing of that asset retains or reserves an interest in that asset then that asset will revert to that person.
- d) To invest all or any moneys held by the Society in and upon such investments as the Committee may from time to time decide.
- e) To adopt such means as the Committee may purpose of raising money including entering into any transactions of the carrying on of any business for obtaining property for the furtherance of the objects of the Society and to accept contributions, collections, donations, legacies, devises, gifts, grants, loans, debentures and subsidies of every kind.
- f) To borrow or raise money for the furtherance of the charitable purposes of the Society from sponsorships, charitable trusts, central or local Government and other sources.
- g) To open and maintain a bank account or banking accounts at such bank or banks as the Committee shall from time to time determine and to decide who shall be the signatories to such account or accounts.
- h) To secure in such manner as the Committee shall think fit the repayment of any money borrowed or raised by the Society and in particular (but without limitation) by the issue of acknowledgements of debt, debentures or debenture stock, charged upon all or any of the property of the Society both present and future and to give and execute in the prescribed manner mortgages, debentures and other instruments as security for such repayment and to pay-off, redeem or purchase any such securities.
- i) To draw, make, accept, endorse, discount, execute, and issue promissory notes, cheques, bills of exchange, warrants, and other negotiable securities or transferable instruments.
- j) To enter into, seal, execute and perform all deeds, documents, instruments, securities, mortgages, guarantees, agreements, papers and writings and to all such other things, acts, deeds, and matters as shall be necessary, incidental or conducive to the attainment of any of the charitable purposes of the Society.
- k) To make regulations as it may deem appropriate for the proper conduct control and management of the Society.



- l) To initiate, or take and to defend, compromise or abandon legal proceedings involving the property or affairs of the Society.
- m) To employ out of the funds of the Society such officials, employees and agents as considered appropriate for carrying into effect the charitable purposes of the Society and determine the duties of employment, salaries and wages of all such officials, employees and agents and at any time in accordance with law suspend or dismiss any such official, employee or agent.
- n) Subject to Clause 6, to remunerate any person, firm or company for services rendered to the Society or to pay for any properties, rights, privileges, concessions or any other thing or interest acquired by the Society.
- o) To cooperate with any body or bodies, statutory or otherwise, person or persons in any manner which the Committee may consider will promote the charitable purposes of the Society.
- p) To enter into arrangements with other like purpose organisations. Such arrangements may include engaging the other organisation to undertake services such as (amongst others) billing of annual membership fees and the maintenance of membership lists.
- q) To determine various levels of membership and issue post nominals in accordance with the levels of membership
- r) To establish appropriate procedures to maintain the standards and integrity of the Society.
- s) To do all such other things as in the opinion of the Society may be incidental or conducive to the attainment of any of the foregoing objects or the exercise of any of the foregoing powers **provided that** the Committee's powers do not authorise the Committee to do anything which may prejudice the charitable nature of the purposes of the Society.

## 9. Meetings of Committee

- a) Meetings of the Committee shall be held no less frequently than quarterly at such times as the Committee may decide but the Chairperson or any four (4) members of the Committee may convene a meeting at any time. Meetings of the Committee may be held in person, by telephone conference call or online in a recorded meeting.
- b) Notice of such meeting shall be sent to every member of the Committee to that member's designated email address seven (7) days prior to the date of such meeting, but in the case of urgency, the meeting may be called giving as much notice as possible.

## 10. Sub-Committees

- a) The Committee may in its discretion, delegate any of its powers, excluding expenditure or appointment of personnel, to a sub-committee or sub-committees consisting of such member or members of the Society or other person or persons, as it thinks fit. Any sub-committees so formed shall in the exercise of the powers so delegated, conform to any requirements that may be made by the Committee.
- b) Unless a Chairperson has been previously appointed by the Committee, a sub-committee shall elect a Chairperson of its meetings: If no such Chairperson is elected, or if at any meeting the Chairperson is not present within ten (10) minutes after the time appointed for holding the same, the members present may choose one of the members of that sub-committee to be Chairperson of that meeting.



- c) A sub-committee may regulate its own proceedings subject to any requirement made in advance by the Committee and may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes, the Chairperson shall have a second or casting vote. Persons appointed to a sub-committee in accordance with Clause 10(a) shall be eligible to vote on any question before the sub-committee.
- d) The Chairperson of the Society shall be an ex-officio member of all Committee committees and shall be entitled to attend or participate by virtue of his/her office.
- e) Meetings of any sub-committee appointed by the Committee shall be arranged at a date and time determined by the Chairperson of such sub-committee and members notified of such meeting seven (7) days prior to the date of such meeting by email.
- f) Any sub-committee established by the Committee may make recommendations only and may not bind the Committee to any decision made by such sub-committee.

## 11. General Meetings

- a) A general meeting of the Society may be summoned at any time on the authority of the Committee or the Chairperson and must be summoned by the Committee at any time on the requisition of seven (7) members. Fourteen (14) clear days' notice shall be given to members by email of any general meeting and notice of the business to be transacted thereat shall be given to each member by email at the same time as notice of the general meeting is given.
- b) The annual general meeting of the Society must be held no later than 6 months after the Society's balance date and no later than 15 months after the previous AGM and at a place to be determined by the Committee for the following purposes:
  - a. to consider an Annual report on operations and affairs of the Society during the most recently completed accounting year.
  - b. to receive and approve a report and statement of accounts and income and expenditure for the financial year preceding the meeting, and a statement of assets and liabilities as at that date.
  - c. For notice of the disclosures and the types of disclosures made under the duty of officers to disclose when they are interested in a matter under Section 63 of the Act during the period.
  - d. to amend the Constitution (if necessary), subject to Clause 19.

## 12. Quorum

- a) The quorum for any general meeting of the Society shall be ten (10) members eligible to vote at such meeting and whose representatives or their proxies are present. No member not otherwise disqualified shall be eligible to vote if that member's annual subscription is three (3) months or more in arrears.
- b) If a quorum as set out in Clause 12(a) is not achieved at an annual general meeting, members shall be notified of the adjournment by the Chairperson.
- c) The Chairperson may, with the consent of the members present at the relevant general meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- d) The quorum for any meeting of the Committee shall be four (4) Committee members.

- e) The quorum for any sub-committee meeting shall be 50% of sub-committee members plus an additional sub-committee member.

### **13. Voting**

- a) At general meetings, on all matters:
- b) Voting at any general meeting of the Society shall be, first, by a show of hands of those financial members eligible to vote and whose representatives or their proxies are present shall be taken.
- c) If the Chairperson so decides, or if any member so requests, a secret ballot shall be taken.
- d) In the event of equality in voting the Chairperson shall have a casting vote.
- e) A member may vote by proxy at a general meeting provided that the person holding the proxy is also a member of the Society.
- f) A proxy must be appointed by notice in writing signed by the appointer and lodged at the registered office no later than twenty four (24) hours prior to the general meeting.
- g) At meetings of the Committee, each member of the Committee shall have one (1) vote.

### **14. Minutes**

- a) Committee shall cause minutes to be kept of all proceedings at meetings of the Society and of the Committee and of any committee thereof and shall cause to be recorded therein the names of those present at such meeting respectively.
- b) The minutes of any meeting signed by the Chairperson at the next succeeding meeting shall be conclusive evidence of the proceedings at that previous meeting.

### **15. Saving**

Subject to Clause 19, all acts done by any meeting of the Committee or any sub-committee or by any person acting as a member of the Committee or of a sub-committee shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such member or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been properly appointed and was duly qualified to be a member of the Committee or of a sub-committee as the case may be.

### **16. Subscriptions**

- a) Any subscription shall be determined by the Committee.
- b) The subscriptions shall be paid in respect of each member admitted to the Society.

### **17. Accounts**

- a) The Committee shall cause proper books of accounts to be provided and true and accurate entries to be made of the assets and liabilities of the Society and of all sums of money received and paid by the Society under the authority of this constitution.
- b) Such books shall at times to be appointed by the Committee be open to the inspection of every member of Committee, any person authorised by law, or any person appointed by Committee who may take extracts from the same.

- c) All moneys collected or raised by the Committee or otherwise belonging to the Society shall immediately they shall have come into the hands of the Society or any member of Committee be paid into an account in the name of the Society at a registered bank, trust account, or other financial institution as the Committee shall from time to time direct.
- d) Committee shall from time-to-time issue guidelines relating to investments.
- e) No money may be withdrawn from the accounts of the Society except by persons authorised by Committee upon such terms and conditions as the Committee shall determine from time to time in writing.
- f) All cheques and other negotiable instruments required to be signed on behalf of the Society shall be signed in such manner as the Committee shall from time to time determine.
- g) Immediately after the end of each financial year the Society's Accountant shall prepare the annual balance sheet of the Society as at the end of the financial year together with a statement of income and expenditure of the Society during that financial year and such balance sheet and statement of income and expenditure shall be submitted to be approved by the Committee and thereafter submitted to the annual general meeting.
- h) A copy of such balance sheet and statement of income and expenditure shall be sent to each Committee member of the Society and such other persons as the Committee shall determine at least seven (7) days prior to the meeting of the Committee at which it is to be considered.

## 18. Indemnity

The Society:

- a) shall indemnify every officer, employee and agent of the Society against liability incurred by him or her in that capacity; and
- b) may pay or agree to pay a premium in respect of a contract insuring any such person against any such liability.

## 19. Alterations to Constitution

- a) Subject to section 30 of Incorporated Societies Act 2022, and any amendments thereto, and subject further to Clause 19(d) below, this Constitution may be altered, added to or rescinded by a resolution passed by a relevant majority of the members as being entitled to do so that are present at and voting at an annual general meeting of the Society or by a resolution passes in lieu of a meeting in accordance with the Section 89 of the Act.
- b) Notice of the proposed amendment shall be given to all voting members at least fourteen (14) days before the general meeting at which the amendment will be put forth for consideration.
- c) Following any amendment the Honorary Secretary shall ensure that all members are provided with a copy of the amended Constitution.
- d) No amendment to the Constitution shall be permitted unless the Committee is satisfied that the proposed amendment does not prejudice the charitable nature of the Society, and in particular, the efficacy of Clauses 4, 6, 22 and this Clause 19(d) in meeting the requirements for any exemption available to charities under the New Zealand revenue laws.

- e) The Society will provide the Registry a copy of the amended Constitution within 25 working days accompanied by a certificate from an officer certifying that
  - a) The officer is authorized by the society to give the certificate; and
  - b) The amendment was made in accordance with Section 30 or 31 of the Act.
  - c) The Society's Constitution, as amended, will continue to comply with the requirements of the Act.

## **20. Media and Independent Actions**

No member of the Society may without prior approval of the Committee make any public statement on behalf of the Society, make any submission to Ministers of the Crown, Members of Parliament, a select committee of Parliament, Government Departments or any body or person, on behalf of the Society, commence any legal action on behalf of the Society or engage a lawyer with the intention of entering into such legal action or incur any liabilities or enter into any arrangements that could potentially incur liabilities in the name of the Society.

## **21. Dispute Resolution**

- a) The Society has a disputes resolution procedures as part of the Society's Complaints Policy that are consistent with the clauses of natural justice and in accordance with Sections 38-44 of the Act.
- b) The dispute resolution procedures of the Society are readily available to members and are made publicly available via the Society's online portal.

## **22. Winding Up**

- a) The Society may be wound up by vote at an annual general meeting of the members or at a special meeting of 80% of the members, provided that in the case of a special meeting such resolution is confirmed at a subsequent general meeting called for that purpose and held not earlier than 30 days after the date of the first meeting that resolved to wind up the Society.
- b) If upon the winding up or dissolution of the Society there remains after the satisfaction of all its debts and liabilities any property whatsoever, then such residual property shall be distributed to some other charitable organisation(s) or body within New Zealand having charitable purposes similar to the purposes of the Society, or for some other charitable purpose or purposes within New Zealand.
- c) The Society must take reasonable steps to ensure that any surplus assets of the Society after the payment of all costs, debts, and liabilities are disposed of to 1 or more not-for-profit entities in accordance with Sections 216 of the Act.

## **23. Register of Members**

- a) The Society shall keep a Register of its members containing the registered name, address and email address of each member.
- b) The Society shall, from time to time when required by the Registrar to do so under section 22 of the Incorporated Societies Act 2022 and amendments thereto, send to him or her a list of the members with such supporting information as he or she may require accompanied by a statutory declaration verifying that list and made by the Executive Officer.

## 24. Contact Person

The Society will have at least one contact person, but no more than three (3) and these will be nominated and voted on by members at each Annual General Meeting. The contact person of the Society may not, without prior approval of the Committee, make any public statement on behalf of the Society or make any submission to Ministers of the Crown.

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