

Constitution of Mount Business Association (“Mount Mainstreet”)

Dated October 2025

Constitution of Mount Business Association

Background

A. Mount Business Association (known as Mount Mainstreet, hereafter referred to as “MBA”) was first incorporated on 1 September 1993, with incorporation number **592452** (NZBN: 9429042752882634451), under the **Incorporated Societies Act 1908**. It is governed by the last updated rules dated **22 March 2022** (the “Previous Rules”).

B. The **Incorporated Societies Act 2022** came into law on **5 October 2023**, replacing the **Incorporated Societies Act 1908** after a transitional period.

C. The Act requires MBA to update its constitution and re-register as an incorporated society pursuant to the Act by **April 2026**.

D. MBA revokes its Previous Rules and replaces them with the rules set out in this Constitution.

1. Definitions and interpretation

Definitions

1.1 Unless the context requires otherwise:

Act means the Incorporated Societies Act 2022 and any regulations made under that Act.

AGM or Annual General Meeting means a meeting of the Members of MBA held once a year convened under this Constitution.

Associated Member means a person accepted to be an Associated Member in accordance with clause 4.5.

Board means MBA's governing body.

Board Member means a member of the Board, including the Chair.

Bylaws means any bylaws, policies, codes of conduct, or regulations of MBA made under clause 21.5.

Casual Vacancy is a vacancy which arises on the Board when a Board Member does not serve their full term of office.

Chair means either a Board Member or independent Chair appointed as Chair of MBA under this Constitution.

Constitution means this Constitution as amended including any schedules to this Constitution.

Contact Details means an electronic address and a telephone number.

Contact Person means a person holding the position of contact person for MBA being the person whom the Registrar can contact when needed.

Council means Tauranga City Council.

Elected Board Member means a member of the Board who has been elected in accordance with clause 9.

General Meeting means an AGM or SGM of MBA.

Interested has the meaning set out in section 62 of the Act.

Interests Register means the register of disclosures made by Officers kept by the Board.

Matter means:

- (a) MBA's performance of its activities or exercise of its powers; or
- (b) an arrangement, an agreement or a contract made or entered, or proposed to be made or entered into by MBA.

Member means any Ordinary or Associated Member of MBA set out in clause 4.1.

Member Register means the register of Members kept under this Constitution.

Mount Main Street means the Targeted Rate Area, together with such other adjacent commercial area(s) of Mount Maunganui and/or its commercial zoned Mount Town Centre as identified in the Tauranga City Plan, as MBA at a General Meeting may decide.

Notice has the meaning given to it in clause 1.3.

Officer means a Board Member and any natural person occupying a position in MBA that allows the person to exercise considerable influence over the management or administration of MBA.

Ordinary Member means a person entitled to be an Ordinary Member under clause 4.2.

Ordinary Resolution means a resolution passed by a majority of votes cast.

Register means the register of incorporated societies established under the Act.

Registrar means the Registrar of Incorporated Societies.

Regulations means regulations made under the Incorporated Societies Act 2022.

SGM or Special General Meeting means a meeting of the Members, other than an AGM, called for a specific purpose or purposes.

Society has the meaning given to it in clause 2.1.

Special Resolution means a resolution passed by a 75% majority of votes cast.

Targeted Rate means any targeted rate set by the Council pursuant to section 16 of the Local Government (Rating) Act 2002 or any equivalent legislation for the purpose of funding or contributing to the funding of the objects of MBA.

Targeted Rate Area means the geographical area of the Mount Main Street, which is subject to the Targeted Rate, as determined or approved by Council.

Working Day means any day of the week other than:

- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Te Ra Aro ki a Matariki/Matariki Observance Day, and Labour Day; and
- (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday; and
- (c) a day in the period commencing on 24 December in any year and ending on 5 January in the following year, both days inclusive; and
- (d) the day observed as the anniversary in Tauranga.

Interpretation

1.2 Unless the context otherwise requires:

- (a) Reference to a person includes any other entity or association recognised by law and vice versa.
- (b) Words referring to the singular include the plural and vice versa.
- (c) Any reference to a person includes that person's executors and administrators.
- (d) Expressions referring to writing include references to words visibly represented, copied, or reproduced, including by email.
- (e) References to statutory provisions are references to those provisions as amended or re-enacted.
- (f) All periods of time or notice exclude the days on which they are given.
- (g) Time is of the essence.

Notices

1.3 Unless specified otherwise in this Constitution, any notice or other communication (Notice) given under this Constitution must be in writing.

1.4 A Notice may be served by email to:

(a) Members at the email address in their Contact Details.

(b) To MBA at **admin@mountmaunganui.org.nz**

2. Details of Society

2.1 The name of the incorporated society is **Mount Business Association ("MBA")**, currently known for marketing and trading purposes as **"Mount MainStreet"**.

3. Objects and powers

3.1 The objects of MBA are to:

(a) To assist in the development and advancement of the interests of businesspeople and businesses in Mount Mainstreet through a coordinated and structured communications, marketing, and advocacy programme.

(b) To foster and promote the welfare of the business community of Mount Mainstreet, and to provide a forum for networking and collaboration of Members.

(c) To attract visitors to Mount Maunganui and the Mount MainStreet and support our Members and their businesses to drive economic, social, cultural, and environmental wellbeing to the Mount Mainstreet and the local community.

(d) To capitalise on the unique assets of Mount Maunganui and unique profile of Mount Mainstreet and to use that as a means of establishing an identity and positioning Mount Mainstreet as a year-round shopping and recreational destination.

(e) To make arrangements with and/or advocate to the Government, Council, local authorities and/or persons, corporations or associations for the improvement of amenity, safety, streetscapes, utilities, transport, services or other infrastructure relevant to the Mount Mainstreet including lighting, surfacing, security and cleaning of the business area of Mount Maunganui;

(f) To do all things as are, or may be incidental to, or conducive to, the attainment of these objects.

3.2 All income, benefit, or advantage must be used to advance the objects of MBA.

3.3 No Member, person associated with a Member, or Board Member is allowed to take part in or influence any decision made by MBA in respect of payments to, or on behalf of, the Member, any person associated with a Member, or Board Member of any income, benefit, or advantage.

- 3.4** Any payments made to a Member, person associated with a Member, or Board Member must:
- (a) be for goods or services that advance the objects of MBA and must be reasonable and relative to payments that would be made between unrelated parties; or
 - (b) be in accordance with clause 10.7.
- 3.5** The provisions and effect of clauses 3.2 to 3.4 must not be removed from this Constitution and must be included and implied in any document replacing this Constitution.
- 3.6** MBA has the widest possible powers to do all things which may be necessary to pursue MBA's objects.

4. Members

Membership categories

- 4.1** The Members of MBA are:
- (a) **Ordinary Members**; and
 - (b) **Associated Members**.

Membership entitlements

- 4.2** A person is entitled to be an Ordinary Member of MBA if the person:
- (a) Owns any commercial property in the Mount MainStreet; or
 - (b) Occupies any commercial property in the Mount MainStreet(as listed tenant or sub tenant in a commercial lease agreement);or
 - (c) Conducts a business in the Mount MainStreet as business owner/director.
- 4.3** For the avoidance of doubt, a person may be an Ordinary Member only once under clause 4.2 and clause 9.14, even though that person may be entitled under clause 4.2 to be an Ordinary Member on more than one ground or a business is owned , occupied or managed by more than one person.
- 4.4** An Ordinary Member has voting rights at a General Meeting and is eligible to be a Board Member.
- 4.5** A person who does not qualify as an Ordinary Member may become an Associated Member if the prescribed application for MBA is approved by the Board.
- 4.6** An Associated Member has voting rights at a General Meeting and is eligible to be a Board Member.

Membership application

- 4.7** An application for membership (Application) must be in the form required by MBA. Applications are made to the MBA manager or administrator and decided by the Board. The Board may accept or decline an application. A person becomes a Member when their application has been accepted, they have paid the required membership fees (if applicable), and are satisfied with any other preconditions.

Membership consent

- 4.8** A person or entity consents to become a Member by completing an application.

5. Membership fees

- 5.1** As at the date of this Constitution, MBA is primarily funded by Council from a Targeted Rate. There is currently no membership fee payable by Members, but MBA reserves the right to charge a membership fee in future, as set out in clauses 5.2 – 5.5 below.
- 5.2** The Ordinary Members' membership fee is paid by the Targeted Rate charged by the Council. However, if the Council ceases this funding, the Board shall decide on the amount and frequency of the membership fee payment.
- 5.3** The Associated Members' membership fee shall be decided by the Board as to the amount and frequency of payment but shall be reviewed each year and be commensurate with the Council's Targeted Rate charges.
- 5.4** The Board will decide:
- (a) any changes to membership and other fees payable by Members;
 - (b) the due date for those fees.
- 5.5** Without being released from the obligation to pay, a Member who does not pay their membership or other fees by the due date has no membership rights but is still bound by this Constitution. If payment is not made within 20 Working Days of the due date, the Board may terminate the Member's membership by Notice to the Member.

6. Cessation of membership

- 6.1** A person ceases to be a Member:
- (a) on death or, if a body corporate, on liquidation, or if a partnership, on dissolution of the partnership;
 - (b) if bankrupt;
 - (c) by resignation by giving Notice to the Board;
 - (d) on termination of membership under clause 5.5 or from a dispute resolution process in this Constitution.
- 6.2** A person who ceases to be a Member:
- (a) remains liable to pay all membership and other fees owed to MBA;
 - (b) must return all property of MBA to MBA.

7. Member Register

7.1 The Board will ensure an up-to-date Member Register is kept and the register must include:

- (a) each Member's name;
- (b) each Member's Contact Details;
- (c) the date each person became a Member; and
- (d) any other information required by this Constitution or the Act.

7.2 Members must provide Notice to the MBA Manager or Administrator of any change to the details in clause 7.1.

7.3 The Member Register must be updated as soon as practicable after the Secretary becomes aware of changes in the information recorded in the Member Register.

8. Board

Role of the Board

8.1 The Board must, and has full powers to, govern, manage, direct, and supervise the management of the operation and affairs of MBA. The Board are officers as defined in the Act, and this Constitution does not have defined roles. The Board may appoint or delegate roles or set up Board sub-committees at its discretion to assist with MBA Board matters.

8.2 Composition of the Board

The Board may consist of:

- (a) Chair (the Chair may be an elected representative Board Member or an independent Chair and may be a paid or unpaid role);
- (b) at least five (5) and up to ten (10) other elected representative Board Members;
- (c) one Tauranga City Council representative (a non-voting position, appointed by the Council);
- (d) up to three representatives from local iwi (appointed by the local iwi).

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8.3 The Board must consist of:

- (a) seven Board Members, of which five of the Board Members are Members and/or representatives of body corporates that are Members, of the business sectors as set out below in clause 8.3(b);
- (b) a minimum of one Member or Associated Member representative (maximum of two) from five defined categories: Hospitality(Food and Beverage), Retail(e.g. clothing, goods, décor stores) Service industry (e.g. beauty, visitor accommodation, hireage), Professional Services (e.g. Real estate, law, accountancy), and Land-owners (e.g. Commercial landlords);
- (c) an uneven number of voting Members, being not less than five (5) and no more than thirteen (13);

(d) subject to clause 8.3(a), the voting Members of the Board shall be the representatives referred to in clause 8.2, with the exception of the Council representative, who is not entitled to vote;

(e) both Iwi and Council shall be invited by MBA in writing at least 30 days prior to each AGM to appoint a Board representative in accordance with clause 8.3. Should either the Iwi or Council choose not to appoint a representative to the MBA Board in any particular year, the Board must comply with clause 8.4(a).

8.4 Each Member of the Board elected under clause 8.3 shall, subject to these Rules, hold office until the conclusion of the Annual General Meeting following the date of the Member's election, but is eligible for re-election up to the maximum term set out in clause 10.1.

8.5 Following consultation with the Board, the Council and Iwi may at any time replace the Members of the Board who are appointed by them.

Eligibility

8.6 Every Board Member must, in writing:

(a) consent to be a Board Member; and

(b) certify that they are not disqualified from being elected, appointed, or holding office as a Board Member under this Constitution or section 47 of the Act.

Election of Board Members

8.7 The Elected Board Members will be elected as follows:

(a) Before the AGM, the Board must call for applications for vacant Board Member positions;

(b) Applications must be received no less than 10 days before the AGM;

(c) The Board must give Notice of the applications to all Members at least 7 days before the AGM;

(d) At the AGM, if there is more than one applicant for any position, the election will be by secret ballot;

(e) The successful applicants for the vacant Board positions are the applicants gaining the highest number of votes. If more than one position is voted on together, the successful applicants will be those with the highest percentages in descending order to fill the positions available. If there is an equality of votes for any position, a further ballot will be conducted between the tied applicants;

(f) If there is only one applicant for any position, that person will be declared elected without the need for a vote.

8.8 If there are not enough applicants for the number of vacant Board Member positions, then the Board may co-opt people to fill the vacant positions at any time before the next AGM. Notwithstanding clause 10.1, any Board Member co-opted under this clause will

continue only until the next AGM, and this period is disregarded in the calculation of total term served under clause 10.1.

- 8.9** An applicant may commence or continue a position as an employee of MBA if they are elected as a Board Member.

Chair

- 8.10** The election of a Board Chair shall be by such means and on such terms as are determined by the Board, but generally either at the AGM or at the first Board meeting following the AGM. Applications for the position of Chair must be made in the same manner and at the same time as applications for Elected Board Members under clause 8.7.

- 8.11** The Chair of the Board may be either an elected Board Member or an appointed independent Chair, should the Board decide an independent Chair is appropriate.

- 8.12** Should an election of a Chair be required, the standard voting method (for example, ballot or show of hands) as determined by a simple majority of the Board will be used, taking into account the number of candidates and whether the election is being made at an AGM or a Board meeting.

- 8.13** The Chair holds office for one year until the conclusion of the AGM. The Chair may be re-elected by the Board for subsequent consecutive terms.

- 8.14** The role of the Chair includes activities agreed with the Board, which may include:
- (a) promoting MBA;
 - (b) promoting good relations and communications between Members, the Board, and staff;
 - (c) representing MBA with media as required;
 - (d) presiding at MBA events and General Meetings;
 - (e) acting as the primary contact between MBA staff and the Board.

Term of Office

- 8.15** The term of office for Board Members is one year, commencing from the end of the AGM at which they are elected or appointed and expiring at the end of the relevant

AGM. A Board Member may be re-elected or reappointed to the Board. The maximum consecutive term of office is six (6) years.

- 8.16** If there is a Casual Vacancy on the Board of an Elected Board Member, the remaining Board Members may appoint a person of their choice to fill the Casual Vacancy until the next AGM or may leave the Casual Vacancy unfilled until the next AGM.

Removal of Board Members

- 8.17** The Board may, by Special Resolution, remove any Board Member if it considers that the Member has seriously breached duties under this Constitution or the Act, or is no longer suitable to be a Board Member. The Board Member who is the subject of the motion will be counted for the purpose of reaching a quorum but may not participate in the vote.

- 8.18** Before considering a motion for removal, the Board Member affected must be given:
- (a) Notice of the meeting and the basis for the motion;
 - (b) adequate time to prepare a response; and
 - (c) the opportunity to make written submissions and be heard at the Board meeting.

- 8.19** A person ceases to be a Board Member if:
- (a) they resign by delivering a Notice of resignation;
 - (b) they are removed from office under this Constitution;
 - (c) they become disqualified under section 47(3) of the Act; or
 - (d) they die.

8.20 Remuneration and Expenses

Board Members:

- (a) may be paid remuneration for their service as a Board Member;
- (b) may receive full reimbursement for all reasonable expenses incurred on behalf of MBA when authorised by resolution of the Board.

9. Membership Meetings

9.1 Annual General Meeting

MBA must hold an AGM once a year at the time, date, and place the Board decides, but before 1 November to comply with Council MainStreet agreement, not more than 6 months after the balance date of MBA, and not more than 15 months after the previous AGM.

- (i) The Board must give Members at least 10 working days' Notice of the AGM.
- (ii) The Board must invite at least one TCC representative to attend AGM.
- (iii) The Board may invite any other stakeholder organization representatives it decides is appropriate.

9.2 Business of AGM

The following business must be on the agenda at the AGM for member resolutions:

- (a) Confirmation of the minutes of the previous AGM.
- (b) Proposed target rate grant resolution for the following financial year, including any increase from the previous financial year.
- (c) The Board's presentation of the following information during the most recently completed accounting period:
 - (i) the annual report;
 - (ii) the annual financial statements;
 - (iii) the auditor's report to members on the audited financial statements; and
 - (iv) notice of any disclosures of conflicts of interest made by Board Members, including a summary of the matters, or types of matters, to which those disclosures relate.
- (d) The election of any Board Members.
- (e) The election of the Chair.
- (f) The appointment of an auditor.
- (g) Consideration of any motions to amend this Constitution that have been properly submitted for consideration at the AGM.
- (h) Consideration of any other items of business that have been properly submitted for consideration at the AGM.

9.3 The Board must receive any proposed motions and other items of business in writing from Members at least 5 working days before the date of the AGM.

9.4 An agenda containing the business to be discussed at the AGM will be sent by the Board to the Members at least 2 working days before the date of the AGM.

Special General Meeting

9.5 A SGM must be called by the Board if it receives a request in writing stating the purpose of the SGM:

- (a) From the Board; or
- (b) Signed by ten (10) Members.

9.6 The Board must give Members at least 5 working days' Notice of the SGM, unless the Board acting reasonably decides that the nature of the SGM business is of such urgency that a shorter period of notice is to be given to Members.

9.7 A SGM will only consider and deal with the business specified in the request for the SGM.

Method of holding General Meetings

9.8 General Meetings must be held by the required quorum of Members:

- (a) Being assembled at the time and place appointed for the meeting; or
- (b) Participating in the meeting by means of audio link, audiovisual link, or other electronic communication; or
- (c) By a combination of both methods described in sub-clauses (a) and (b).

Quorum

9.9 No business is to be transacted at any General Meeting unless a quorum is present at the time when the meeting is due to start. The quorum for a General Meeting is ten (10) Members who are entitled to vote. The quorum must always be present during the General Meeting.

9.10 If a quorum is not reached within 30 minutes of the scheduled start time of an AGM, the AGM will be adjourned to a day, time, and place determined by the Chair. If no quorum is achieved at the further AGM, the Members present 15 minutes after the scheduled start time of that further AGM are deemed to constitute a valid quorum.

9.11 If a quorum is not reached within 30 minutes of the scheduled start time of a SGM, the SGM is cancelled.

Control of General Meetings

9.12 The Chair will preside at the General Meeting. If the Chair is unavailable, a Board Member appointed by the Board will preside. In the absence of both of those people, the Members present will elect a chair of the General Meeting.

9.13 Attendance and voting

The following people are eligible to attend and speak at General Meetings:

- (a) Ordinary Members; and
- (b) Associate Members.

9.14 The voting entitlement for each Member eligible to vote is:

- (a) One vote exercised in person, by proxy, online, or in writing.

9.15 Voting will be conducted by voice or by a show of hands as determined by the Chair of a General Meeting unless a secret ballot is called for and approved by Ordinary Resolution.

Proxy procedures

9.16 Voting by proxy (mail or online) is permitted. Where a Member is attending a General Meeting by proxy, written notice of the proxy signed by the Member must be received by the Chair prior to the start of the General Meeting. The form of the proxy is *"I [insert name] of [insert address] being a member of [insert society name] appoint [insert name of proxy] as my proxy to speak [and vote] for me at the General Meeting to be held on [insert date] and at any adjournment of that General Meeting. [insert if vote is directed] I direct my proxy to vote in the following manner [insert resolutions and whether the proxy is to vote for or against]."*

9.17 Elections of Elected Board Members at an AGM must be undertaken by secret ballot.

9.17 An Ordinary Resolution at a General Meeting will be sufficient to pass a resolution, except as specified in this Constitution.

Minutes

9.19 Minutes must be kept of all General Meetings.

Irregularities

9.20 An irregularity in the manner of calling a General Meeting is waived if all the Members entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Members agree to the waiver.

9.21 An accidental omission to give notice of a General Meeting to, or a failure to receive notice of a General Meeting by, a Member does not invalidate the proceedings at that General Meeting.

9.22 Any irregularity, error, or omission in notices, agendas and relevant papers of General Meetings or the omission to give notice within the required time frame or the omission to give notice to all Members and any other error in the organisation of the General Meeting will not invalidate the General Meeting nor prevent the General Meeting from considering the business of the meeting if:

- (a) The Chair in their discretion determines that it is still appropriate for the General Meeting to proceed despite the irregularity, error, or omission; and
- (b) A motion to proceed is put to the General Meeting and such motion is passed by a Special Resolution.

10. Board Meetings

10.1 Board meetings may be called at any time by the Chair or by two (2) Board Members, but the Board must set down and meet a minimum of ten times a year.

10.2 Board meetings must be held by a quorum of Board Members:

- (a) being assembled at the time and place appointed for the meeting; or
- (b) participating in the meeting by means of audio link, audiovisual link, or other electronic communication; or by a combination of both methods described in sub-clauses (a) and (b).

10.3 Except to the extent specified in this Constitution, the Board will regulate its own procedure.

Quorum

10.4 The quorum for a Board meeting is five (5) Board Members.

Chair

10.5 The Board shall elect a Chair at its first meeting following an AGM by a majority vote.

10.1 The role of the Chair is to chair meetings of the Board. If the Chair is unavailable, another Board Member must be appointed by the Board to undertake the Chair's role during the period of unavailability.

Voting

10.7 Each Board Member has one vote. Voting is by voice, or on request of any Board Member by a show of hands or by a ballot. Proxy and postal votes are not permitted. Voting by electronic means is permitted.

10.8 In the event of a tied vote, the Chair (or the Board Member chairing that meeting) will have a second or casting vote.

Resolution in writing

10.9 A resolution in writing signed or consented to by email or other electronic means by the required majority of Board Members will be valid as if it had been passed at a meeting of the Board. Any resolution may consist of several documents in the same form each signed by one or more Board Members.

11. Contact Person

11.1 The Board must appoint at least one, and a maximum of three, people to be MBA's Contact Person, subject to those people meeting the eligibility criteria set out in the Act. The Board must advise the Registrar of any change in the Contact Person or that person's Contact Details.

12. Duties Owed to Society by Officers

12.1 The Officers owe duties to MBA as set out in sections 54 to 59 of the Act.

13. Conflicts of Interest

13.1 The Board must keep an Interests Register.

13.2 An Officer who is Interested in a Matter relating to MBA must disclose details of the nature and extent of the interest, including any monetary value of the interest if it can be quantified:

(a) to the Board as soon as practicable after the Officer becomes aware that they are Interested in the Matter; and in the Interests Register.

13.3 A Board Member who is Interested in a Matter:

(a) must not vote or take part in a decision of the Board relating to that Matter.

(b) must not sign any document in relation to that Matter.

(c) may take part in any Board discussion and be present at the time of the Board decision unless the Board decides otherwise.

(d) may be counted for the purpose of determining whether there is a quorum at any meeting at which the Matter is considered.

13.4 Clauses 13.3(a) and 13.3(b) do not apply to a Board Member in relation to a particular Matter if all members of the Board who are not Interested in the Matter consent to the Interested Board Member acting as referred to in clauses 13.3(a) or 13.3(b).

13.5 Despite clause 13.4, if 50% or more of the Board Members are Interested in a Matter, a SGM must be called to consider and determine the Matter.

14. Indemnity and Insurance

14.1 MBA shall hold and maintain full and proper insurance as the Board decides, but it must, at a minimum, hold and maintain public liability insurance in accordance with its Mainstreet Agreement with TCC at all times.

14.2 MBA may indemnify and/or effect insurance for its own current and former Officers, Members, and contractors or employees as permitted by sections 94 to 98 of the Act.

15. Finances

15.1 The funds and property of MBA will be controlled and managed by the Board, subject to this Constitution.

15.2 MBA's balance date will be 30 June each year, or such other date as the Board decides.

15.3 MBA must prepare and register financial statements as required by the Act.

15.4 MBA's financial statements must be reviewed or audited each year as required by law, and the reviewed or audited financial statements must be submitted to the AGM. The auditors will be appointed by the Board.

16. Amendments

Amendment

16.1 This Constitution may only be amended or replaced by Special Resolution at a General Meeting.

16.2 If an amendment to this Constitution would have no more than a minor effect, or is to correct errors or make similar technical alterations, then the Board may give Notice of the amendment to every Member stating the text of the amendment and the right of Members to object to the amendment.

16.3 If the Board does not receive any objections from Members within 20 Working Days after the date on which the Notice is sent, or any longer period that the Board decides, then the Board may make that amendment. If it does receive an objection, then the Board may not make the amendment.

16.4 If any situation arises that, in the opinion of the Board, is not provided for in this Constitution or any Bylaws, the matter will be determined by the Board.

Bylaws

16.5 The Board may make and amend Bylaws for the conduct and control of MBA's activities and codes of conduct applicable to Members. No Bylaw will contravene or be inconsistent with the Act, any other laws, or this Constitution. Bylaws are binding on Members.

17. Dispute Resolution Process

Disputes

17.1 MBA may consider, resolve, and/or decide disputes between any one or more Members acting in their capacity as Members and any one or more Officers acting in their capacity as Officers and MBA, which relates to an allegation that:

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

How a Complaint is Made

17.2 A Member or an Officer may make a complaint by giving Notice to the Board, or any subcommittee established for this purpose, that:

- (a) states that the Member or Officer is starting a procedure for resolving a dispute under this Constitution;
- (b) sets out the allegation to which the dispute relates and who the allegation is against; and
- (c) sets out any other information required by MBA.

- 17.3** MBA may make a complaint involving an allegation against a Member or an Officer by giving Notice to the person concerned that:
- (a) states that MBA is starting a procedure for resolving a dispute under this Constitution; and
 - (b) sets out the allegation to which the dispute relates.

Person Who Makes Complaint Has Right to be Heard

- 17.4** Unless MBA decides not to proceed, the Member has a right to be heard before the complaint is resolved or any outcome is determined. A Member must be taken to have been given the right if:
- (a) the Member has a reasonable opportunity to be heard in writing or at an oral hearing, if one is held; and
 - (b) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
 - (c) an oral hearing, if any, is held before the decision maker; and
 - (d) the Member's written statement or submissions, if any, are considered by the decision maker.

- 17.5** If MBA makes a complaint, it has a right to be heard before the complaint is resolved or any outcome is determined, and a Board Member may exercise that right on behalf of MBA. MBA must be taken to have been given the right if:
- (a) they have a reasonable opportunity to be heard in writing or at an oral hearing, if one is held; and
 - (b) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
 - (c) an oral hearing, if any, is held before the decision maker; and
 - (d) its written statement or submissions, if any, are considered by the decision maker.

Respondent Has Right to be Heard

- 17.6** The Member or Officer, who, or MBA, which is the subject of the complaint (Respondent), has a right to be heard before the complaint is resolved or any outcome is determined. If the Respondent is MBA, a Board Member may exercise the right on behalf of MBA.

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

Investigating and Determining Disputes

- 17.8** MBA must, as soon as reasonably practicable after receiving a complaint or grievance, investigate and determine the complaint or grievance in a fair, efficient, and effective manner.

Circumstances in Which a Process May Not Proceed

- 17.9** Despite the content of this clause and any other clause in this Constitution or in the Regulations, MBA may decide not to proceed with a matter if:
- (a) the complaint is trivial; or
 - (b) the complaint does not appear to disclose or involve any allegation of the following kind:
 - (i) any material misconduct; or
 - (ii) any material breach or likelihood of material breach of duty under this Constitution or the Act; or
 - (iii) any material damage to a Member's rights or interests or Members' rights or interests generally; or
 - (c) the complaint is without foundation or there is no apparent evidence to support it; or
 - (d) the person who makes the complaint has an insignificant interest in the matter; or
 - (e) the conduct, incident, event, or issue giving rise to the complaint has already been investigated and dealt with under this Constitution; or
 - (f) there has been an undue delay in making the complaint.

Refer Complaint

- 17.10** MBA may refer a complaint to:
- (a) a subcommittee or an external person to investigate and report; or
 - (b) a subcommittee, an arbitral tribunal, or an external person to investigate and decide; or
 - (c) with the consent of all parties to the complaint, to any type of consensual dispute resolution such as mediation or facilitation.

Decision Makers

- 17.11** An individual may not act as a decision maker in relation to a complaint if two or more members of the decision-making body (whether it is a Board, committee, complaints subcommittee, tribunal, or other) consider that there are reasonable grounds to believe that the individual may not be:
- (a) impartial; or
 - (b) able to consider the matter without a predetermined view.

18. Ending MBA

- 18.1** The Board must give Notice to all Members of at least 20 Working Days of a proposed motion:
- (a) to remove MBA from the Register;

- (b) for the distribution of MBA's surplus assets; or
- (c) to appoint a liquidator.

18.2 The Notice must comply with section 228 of the Act and include details of the General Meeting at which the proposed motion is to be considered.

18.2 Any resolution for a motion set out in clauses 18.1(a) to 18.1(c) must be passed by a Special Resolution.

18.3 The surplus assets of MBA, after the payment of all costs, debts, and liabilities, must be returned to Council, or if Council does not require the assets, then to any other not-for-profit entity or entities that have similar objects to MBA as determined in accordance with the Act.

19. Transition

19.1 This clause applies to facilitate transition of MBA from the Previous Rules to this Constitution. If this clause is inconsistent with any other clause in this Constitution, this clause will apply to the extent of the inconsistency and the other clause will not.

Transition of Members

19.2 Subject to this Constitution, every Member who or which was a Member of MBA immediately prior to the commencement of this Constitution will continue as a Member.

Transition of Board Members

19.3 The Board under the Previous Rules shall continue under this Constitution until the next AGM.

Transition of Bylaws

19.4 All Bylaws which were in force immediately prior to this Constitution coming into force will continue in force, unless otherwise decided by the Board. If any of those Bylaws are inconsistent with this Constitution (whether in whole or in part), the Board will determine the matter as it sees fit.

19.5 In the first six (6) months, the Board may:

- (a) amend any requirement for, and/or the date by which this Constitution requires, anything to be done to facilitate transition of MBA to this Constitution;
- (b) decide any matter arising, including where such matter would normally be or is required to be guided or determined by a Bylaw or policy or process and that Bylaw or policy or process is not yet in place or does not yet exist.

Signed by Mount Business Association (**trading as Mount Mainstreet**) by affixing its common seal in the presence of two Board Members:

Common Seal

Board Member

Board Member