

DETAILED EXPLANATORY NOTES TO PROPOSED NEW CONSTITUTION 2025

MOTION 4 – ADOPTING NEW CONSTITUTION WITH CHANGES REQUIRED BY, OR TO REFLECT, INCORPORATED SOCIETIES ACT 2022 (“BASE VERSION”)

| Clause | Section of Act | What section says | What proposed clause says |
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| 5(a) and 5(g) Membership | 76 | A person must consent to become a member of a society. | A person must consent in writing to becoming an Active Grower Member, Associate Member or a Life Member. |
| 5(f) Ceasing to be a Member | 38-44 | The Constitution must contain procedures for resolving disputes. | A Member’s membership will end if that is the outcome of the dispute resolution process. |
| 5(h) to 5(l) Register of Members | 79 | HortNZ must keep a register of its members, containing certain information. | HortNZ must keep a Register of Members that contains the information required by the Act. |
| 8(d) Annual Report to AGM | 86 | HortNZ must present an annual report to each AGM | HortNZ must present an Annual Report to each AGM, with the content set out in the Act. |
| 9(n) deleted – Exclusion of Members from attendance at AGM | 38-44 | The Constitution’s procedures for resolving disputes must comply with natural Justice. | Existing clause 9(n) is deleted because it allowed Members to exclude another Member without following natural justice. |
| 10(b) Special General Meetings | 64(3) | If 50% or more of the Board are prevented from voting on a matter due to a conflict of interest, a SGM must be called to decide the matter – but the Constitution can amend this requirement | An SGM must be called if 5 or more Directors are prevented from voting on a matter by a conflict of interest (with a Board of up to 9 Directors, the clause replaces “50%” with “5”). |
| 12(n) and 12(o) Duties of Directors | 54-61 | Act sets out the duties of officers of HortNZ | Directors’ duties are already set out in the Act. The duties are nonetheless included in the Constitution due to their importance. |
| 12(q) to 12(v) Indemnities and Insurance | 94-98 | HortNZ is not permitted to indemnify its Directors, or to pay for D&O cover | Reflects sections 94-98 by setting out when HortNZ may indemnify and effect |

| Clause | Section of Act | What section says | What proposed clause says |
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| | | for them, unless it complies with sections 94-98 | insurance for a Director – including permitting Hort NZ to indemnify or effect insurance for a Director in relation to liability for a failure to comply with their duties. |
| 13(k) to (q) Conflicts of Interest | 62-73 | Act sets out requirements where a Director has a conflict of interest, and sets out what is, and what is not, a conflict of interest. HortNZ is permitted to amend the Act's provisions relating to conflicts of interest in its Constitution | Reflects the Act, except that: <ul style="list-style-type: none"> • The Act says an interested Director may not sign any document relating to the matter – the Board considers that a Director must not vote, but should be able to sign documents (especially as sometimes all directors might be required to sign a certificate e.g. to a lender) • The Act says if 50% of the Directors cannot vote, the matter must be referred to an SGM. This is amended to “5 Directors”. |
| 19 Method of Contracting | 123 | Act sets out how a society can enter into contracts | Reflects the Act – Constitution does not need to repeat the Act's provisions, but they are included for ease of reference – and reference to the common seal is deleted. |
| 21 Liquidation | 208 | Act sets out how a society can be put in liquidation | Reflects the Act – removing the need for a second resolution confirming the first resolution |
| 23 Disputes | 26(1)(j), 38-44 | The Constitution must contain procedures for resolving disputes, which must comply with natural Justice. | Any Dispute (see Definitions) must be decided under the Dispute Procedures in Schedule 2. |

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| 24 Contact Person | 113 | Act requires the Constitution to say who HortNZ's contact person is | Provides that the CEO is the contact person. |
| 25 Existing Members, Affiliated Organisations etc | | | Confirms, for avoidance of doubt, that existing members/directors etc continue to be members/directors etc under the new rules. |
| 26 Definitions | Various | Act introduces requirements for HortNZ to have a disputes procedure, to maintain an interests register and register of members, and to provide an annual report to each AGM. | New definitions inserted – Annual Report, Complaint, Dispute, Dispute Procedures, Interests Register, Register of Members. |
| Schedule 1 Dispute Procedures | 39. 40 | Act requires HortNZ to have dispute procedures that are consistent with natural justice – and provides that if HortNZ adopts the procedures in Schedule 2 of the Act, the procedures will be deemed to comply | Schedule 1 reflects Schedule 2 of the Act. |

MOTION 5 – ADOPTING NEW CONSTITUTION WITH CHANGES REQUIRED BY, OR TO REFLECT, INCORPORATED SOCIETIES ACT 2022 (SEE ABOVE) AND ADDITIONAL OPTIONAL CHANGES (NOT REQUIRED BY INCORPORATED SOCIETIES ACT 2022) (“MODERNISED VERSION**”)**

| Clause | What has changed | Reason for change |
|------------------------|---|---|
| 1.1 Definitions | Changed “Affiliated Organisation” to “Affiliated Member Organisation” | To clarify that an Affiliated Organisation is a member (but non-voting) of HortNZ – for tax purposes |
| 3.1 Objects | In para (f), included “biosecurity and food safety”, deleting “taxation law”, amended “local government plans” to “local and central government plans”, and simplified “labour and employment issues (including seasonal labour” to “labour issues” | Amended to better reflect the work of HortNZ – in particular, to include biosecurity activities, and remove reference to taxation (as HortNZ does not and cannot advise on tax matters). |
| | In para (i) added reference to online publication, and deleted specific publication titles | To modernise the “publication” Object, and provide flexibility in the types of publications. |
| | In para (k), replaced “fostering the organization and development of” district associations etc with “supporting any” district associations etc. | HortNZ considers it important to support the existing district associations and product groups, but it does not consider it is in the interests of members or the industry for new associations or groups to be formed. |
| 4.1 Classes of Members | “Associate Member” class deleted | The Board considers that “association” with HortNZ is better dealt with by way of contractual arrangements than by membership. This will affect the 25 current Associate Members, who will cease to be members on adoption of the new Constitution. |
| | Reference to “Affiliated Member Organisations” inserted | To clarify that an Affiliated Organisation is a member (but non-voting) of HortNZ. |

| Clause | What has changed | Reason for change |
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| 10.2 Annual General Meeting | Softened requirement for fixing date and giving notice of AGM – instead of it being “fixed” 70 days prior, and notice given 42 days prior, the proposed date is advised 8 weeks prior, and notice is given 21 days prior | The existing timeframes are challenging – HortNZ asks for the flexibility to advise a proposed date well in advance, but with the ability to change that date if there are reasonable grounds for doing so (such as the Nelson floods in 2022). Also, under the new Act, HortNZ has 5 months in which to prepare its financial statements, but because of the requirement to give 42 days’ notice of the AGM (with the notice typically being accompanied by the annual report) HortNZ has less time. |
| 10.3 Notices of Motion | Deadline for members giving notices of motion to HortNZ shortened from 49 days before the AGM to 28 days before | As noted above, the existing timeframes and deadlines are challenging – including for members. |
| 10.4 Special General Meetings | Number of members required to be able to call a SGM reduced from 100 to “50, or if lower, 10% of Active Grower Members” | HortNZ currently has ~4500 members. The Board considers the current requirement for 100 members to support the calling of an SGM to be too high. |
| 10.6 Chairperson | Removed the Chairperson’s casting vote at an AGM or SGM | The Board considers that best practice is now for the Chairperson not to have a casting vote at a members’ meeting. In the unlikely event that a vote is tied, the motion does not pass. |
| 10.7 Quorum | Amended the quorum for an AGM or SGM from “35 members” to “20 Active Grower Members”. | The current quorum refers to “members” and so would include Affiliated Member Organisations and Life Members, even though they cannot vote. The new requirement is 20 voting members. |
| 10.10 Dual Voting | Amended the number of members required to be able to call a dual vote to “50, or if lower, 10% of Active Grower Members” | HortNZ currently has ~4500 members. Providing for a percentage of Active Grower Members helps future-proof the Constitution against a possible decline in member numbers. |
| | The matters not subject to dual voting are a resolution to amend the Constitution and, now, a resolution to elect a Director | Reflects current practice, where the election of Directors is not subject to dual voting. |

| Clause | What has changed | Reason for change |
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| 11.4 Appointment of Appointed Directors | Amended to clarify that an Appointed Director is eligible for reappointment at the end of their term, without having to be re-recommended by the Director Selection Group | To reflect current practice. |
| 11.5 Terms of Office | Amended to provide that no Director may hold office for more than 9 consecutive years | To provide that a person cannot hold office as either an Appointed Director or an Elected Director for more than 9 years (otherwise, a person could potentially hold office in one capacity for 9 years, and in the other capacity for another 9 years). |
| 11.10 Remuneration | Amended to clarify that Directors are entitled to reimbursement of reasonable expenses, without that having to be approved by members | The Board considers it appropriate that members vote to approve Directors' remuneration. But so long as expenses are reasonable (and incurred in accordance with HortNZ's internal policies), these should be reimbursable without member approval. |
| 13.6 Casting vote | Amended to remove the Chairperson's casting vote | The Board considers that best practice is now for the Chairperson not to have a casting vote at a Board meeting. In the vote is tied, the motion does not pass. |