

## HORTICULTURE NEW ZEALAND INCORPORATED

### EXPLANATORY NOTES TO PROPOSED NEW CONSTITUTION 2024

#### PART A OPTIONAL CHANGES (NOT REQUIRED BY INCORPORATED SOCIETIES ACT 2022)

| <b>Clause</b>   | <b>What has changed</b>   | <b>Reason for change</b>  |
|-----------------|---|---|
| 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  |
|                 | Deleted “Associate Member”  | 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. |
| 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.                             |
|                 | In para (l), added express reference to carrying out activities permitted by a levy order   | So it is clear that HortNZ may undertake activities permitted by a levy order.  |

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| 4.1 Classes of Members                | “Associate Member” class deleted   | As noted above, the Board proposes that the Associate Member class be removed.  |
|                                       | Reference to “Affiliated Member Organisations” inserted  | To clarify that an Affiliated Organisation is a member (but non-voting) of HortNZ.  |
| 4.4 Life Members                      | A resolution to designate a Life Member will be an ordinary resolution (more than 50%) instead of a 67% resolution   | To reflect current practice, where a resolution to designate a Life Member is passed on acclamation/show of hands, and not by a poll.   |
| 4.6 Application for Membership        | New clause, requiring a new member to complete an application form   | To provide for a formal application process (assists record keeping, and ensures that new members consent to becoming members, as the Act requires).  |
| 6. Affiliated Member Organisations    | Existing clauses 6 and 7 are combined into one new clause  | For ease of reference.  |
| 7. Horticulture Industry Consultation | Requirement to hold a Horticulture Industry Forum at least 3 times a year replaced with power to convene industry meetings as and when required  | The Board considers that it is preferable for HortNZ to have flexibility as to when and how often to convene meetings, than to be compelled to hold 3 Forums a year (involving a considerable amount of time and cost for HortNZ and members), even if not required.  |
| 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. |
|                                       | Reference to giving notices to “Affiliated Organisations” removed  | Having clarified that Affiliated Member Organisations are “Members” of HortNZ, it is enough to say that notices must be given to Members.   |

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| 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 <b>not</b> 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.  |
| 10.8 Voting Rights                 | Clarified that only Active Grower Members have voting rights   | For clarity.   |
| 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.  |
| 10.13 Postal and Electronic Voting | New clauses inserted   | To expressly permit HortNZ to conduct ballots of members by postal or electronic voting.   |
| 11.1 The Board                     | Total number of Board members remains at 9, but composition amended to up to 7 elected and up to 3 appointed                 | Permits the Board to consist of either 7 Elected Directors and 2 Appointed Directors, or 6 Elected Directors and 3 Appointed Directors.  |
| 11.2 Election of Elected Directors | Amended to remove requirement for a postal ballot before the AGM, and replaced with a ballot at the AGM                      | The Board considers that where an election is required, voting should be carried out at the AGM – which enables members present to hear from, and to question, the candidates. Active Grower Members unable to attend the AGM can still vote by proxy. |

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| 11.4 Appointment of Appointed Directors | “Director Selection Group” amended to be the Chairperson and 2 independent members appointed by the Board   | Currently, the independent members are appointed by the Horticulture Industry Forum (HIF). Having this decided at the HIF is potentially cumbersome, especially if industry meeting formats change over time. It is more efficient to leave this appointment task to the Board, noting the requirement that the Board must appoint persons who are independent. |
|   | 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).  |
| 11.9 Chairperson and Deputy Chairperson | References to President and Vice-President deleted  | The Board considers it somewhat outdated to have a President (who is also the Chairperson) and Vice-President (the Deputy Chairperson).   |
| 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.   |
| 13.1 Convening Meetings (Board)         | Amended to provide for at least 6 Board meetings a year   | The existing Constitution does not provide for a minimum number of Board meetings – the Board considers a minimum should be specified.  |
| 13.6 Casting vote                       | Amended to remove the Chairperson’s casting vote  | The Board considers that best practice is now for the Chairperson <b>not</b> to have a casting vote at a Board meeting. In the vote is tied, the motion does not pass.  |
| 13.7 Notice                             | Amended for clarity   | Existing clause relating to irregularities in the notice of a Board meeting is in legalese.   |

PART B CHANGES REQUIRED BY, OR TO REFLECT, INCORPORATED SOCIETIES ACT 2022

| <b>Clause</b>                              | <b>Section of Act</b> | <b>What section says</b>   | <b>What proposed clause says</b>   |
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| 1.1 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. |
| 4.2, 4.3 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, Affiliated Organisation Member or a Life Member.     |
| 4.9 Resignation or Removal from Membership | 38-44                 | The Constitution must contain procedures for resolving disputes, which must comply with natural justice  | Before the Board can end a member’s membership, the Board must have followed the dispute procedures.                       |
| 4.10 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.                                  |
| 5.4 Membership Fees                        | 38-44                 | HortNZ must follow its dispute procedures where there is a dispute.  | Before HortNZ can suspend a Member’s voting rights for non-payment of a membership fee, the Board must have                |

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|                                 |                 |  | followed the dispute procedures in Schedule 2 (given the Member notice, an opportunity to respond etc).   |
| 8 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.   |
| 10.2 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.  |
| 10.4 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”).   |
| 11.8 Duties of Directors        | 54-61           | Act sets out the duties of officers of HortNZ  | It is not required to include the duties of directors in the Constitution, as they are already set out in the Act. However, the duties are included in the Constitution due to their importance.  |
| 11.11 Indemnities and Insurance | 94-98           | HortNZ is not permitted to indemnify its Directors, or to pay for D&O cover for them, unless it complies with sections 94-98   | Reflects sections 94-98 by setting out when HortNZ may indemnify and effect 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. |
| 12 Conflicts of Interest        | 62-73           | Act sets out requirements where a Director has a conflict of interest, and   | Reflects the Act, except that:  |

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|                               |        | 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  | <ul style="list-style-type: none"> <li>• 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 <b>should</b> be able to sign documents (especially as sometimes all directors might be required to sign a certificate e.g. to a lender)</li> <li>• The Act says if 50% of the Directors cannot vote, the matter must be referred to an SGM. This is amended to “5 Directors”.</li> </ul> |
| 17 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.   |
| 22 Contact Person             | 113    | Act requires the Constitution to say who HortNZ's contact person is   | Provides that the CEO is the contact person.   |
| Schedule 2 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 2 reflects Schedule 2 of the Act.   |