



NOTICE OF MEETING

Joint Shareholders Committee

Komiti Joint Shareholders

Supplementary Agenda

Date: Monday 22 May 2023

Time: 9.00 am

**Venue: Tasman Council Chamber
189 Queen Street, Richmond**

LATE ITEMS

That the late item, 8.2, Infrastructure Holdings Limited - Transfer of Shares in Port Nelson Limited and Nelson Airport Limited - Late Attachments, be considered at today's meeting. In accordance with section 46A(7) of the Local Government Official Information and Meetings Act 1987 and Standing Order 9.12, the reason the item was not on the agenda is that the three attachments were not available when the agenda was published and the reason that the item cannot be delayed until a subsequent meeting is because, the three attachments are schedules to Attachment 3 in support of the report, RJSC23-04-5 Infrastructure Holdings Limited – Transfer of Shares in Port Nelson Limited and Nelson Airport Limited.

8 REPORTS

- 8.2 Infrastructure Holdings Limited - Transfer of Shares in Port Nelson Limited and Nelson Airport Limited - Late Attachments 4

8 REPORTS

8.2 INFRASTRUCTURE HOLDINGS LIMITED - TRANSFER OF SHARES IN PORT NELSON LIMITED AND NELSON AIRPORT LIMITED - LATE ATTACHMENTS

Information Only - No Decision Required

| | |
|----------------------------|---------------------------------------|
| Report To: | Joint Shareholders Committee |
| Meeting Date: | 22 May 2023 |
| Report Author: | Marie Callander, Senior Legal Advisor |
| Report Authorisers: | Matthew McGlinchey, Finance Manager |
| Report Number: | RJSC23-05-1 |

1. Summary / Te Tuhinga Whakarāpoto

The Unanimous Shareholder Resolutions and Entitled Persons' Agreement (Attachment 3 of the Infrastructure Holdings Limited – Transfer of Shares in Port Nelson Limited and Nelson Airport Limited report) refers to:

- the Establishment Resolutions - Schedule 1
- the Board Resolutions – Schedule 2, and
- the Constitution – Schedule 3.

These three documents were not included in the agenda and are now attached as a supplementary report.

2. Recommendation/s / Ngā Tūtohunga

That the Joint Shareholders Committee receives the Infrastructure Holdings Limited - Transfer of Shares in Port Nelson Limited and Nelson Airport Limited - Late Attachments report.

3. Attachments / Tuhinga tāpiri

| | | |
|----------------------|---|----|
| 1. ↓ | The Establishment Resolutions - Schedule 1 | 5 |
| 2. ↓ | IHL Board Resolutions Approving the Restructuring Transactions and the Second Share Issue | 10 |
| 3. ↓ | Infrastructure Holdings Limited Constitution | 17 |

INFRASTRUCTURE HOLDINGS LIMITED

Establishment Resolutions

| | |
|---------------------------|---|
| Function: | For Approval |
| Author: | Daryl Wehner |
| Date: | 27 January 2023 |
| Subject: | IHL Establishment Resolutions |
| Purpose: | The purpose of this paper is: For approval. To provide the IHL board with information that will allow directors to approve several establishment resolutions. |
| Recommendation(s): | It is recommended that directors resolve to approve and ratify the following: <ul style="list-style-type: none"> a. All matters in connection with the registration of Infrastructure Holdings Limited (“IHL”). b. The persons listed below being appointed as the initial directors of IHL: Sue Sheldon; Quinton Hall; Darren Mark; Gerrard Wilson; and Paul Zealand. c. Sue Sheldon being appointed as the chairperson of the board of directors of IHL. |

Recommendation(s):

- d. As listed below, NCC and TDC, having consented and been named in the application for incorporation as the holder of the number of shares set opposite its name.

| Name | No. of shares | Issue price |
|-------------------------|-------------------------------|--------------------|
| Nelson City Council | 42,230 ordinary shares | \$100.00 per share |
| Tasman District Council | 42,230 ordinary shares | \$100.00 per share |
| Total | 84,460 ordinary shares | \$8,446,000 |

and that the proposed consideration and terms for the issue of these shares is as follows:

- i. with \$nil consideration per share to be paid upon incorporation and the balance remaining outstanding on call; and
 - ii. ordinary shares, having the rights set out in section 36(1) of the Act.
- e. In accordance with section 41 of the Act, its name, shareholding and other details, as required by section 87(1) and (2) of the Act, have been entered in the share register of IHL.
- f. The Registrar of Companies has been notified that the registered office and address for service of IHL is Port Nelson Limited, 8 Vickerman Street, Port Nelson, Nelson.

- Recommendation(s):**
- g. IHL's shareholders, having consented, the Constitution is adopted as the constitution of IHL upon incorporation.
 - h. Banking accounts be opened with Westpac at its Nelson branch.
 - i. The board be authorised to acquire and establish all necessary books, registers, records and other documentation required by statute to be kept, including such books of account as are necessary to record the financial transactions of IHL.
 - j. The Office of the Auditor General be requested to appoint Ernst & Young as auditor of the Company.

EXECUTIVE SUMMARY

Infrastructure Holdings Limited's ("IHL") board of directors wishes to record, approve and ratify the actions of IHL in connection with the incorporation of IHL.

At a later stage, the board will be required to approve the terms of the **Shareholders' Agreement**, Share Purchase Agreement, and all necessary "settlement" deliverables under that agreement and any other documents that a Director considers necessary or desirable in connection with the above.

Further, once the restructuring transactions contemplated by the Shareholders' Agreement, Share Purchase Agreement, and any other documents have been implemented, it is further proposed that IHL will:

- join the New Zealand Local Government Funding Agency Limited (LGFA) borrowing programme as a "council-controlled organisation" for the purposes of the Local Government Act 2002 (LGFA Accession) following which, IHL will be able to borrow from LGFA;
- enter into borrowing, transactional banking and risk hedging facilities with Westpac, which is NAL and PNL's current bank; and
- on-lend amounts borrowed from the LGFA borrowing programme and Westpac to PNL and NAL under intra-group funding arrangements.

It will be a condition to the LGFA Accession and Westpac's facilities that NCC and TDC subscribe for further ordinary shares in the Company on an uncalled and unpaid basis, and IHL will provide security over its call rights and proceeds of calls, as credit support for its funding and financing requirements.

ESTABLISHMENT OF INFRASTRUCTURE HOLDINGS LIMITED

IHL was incorporated as a limited liability company under the Companies Act 1993 (Act) on 17 January 2023. All matters in connection with the registration of the Company have been attended to.

Sue Sheldon, Quinton Hall, Darren Mark, Gerrard Wilson and Paul Zealand have consented to act as the initial directors of IHL. All being duly qualified were named as such in the application for incorporation of the Company.

The Registrar of Companies has been notified that the registered office and address for service of IHL is situated at Port Nelson Limited, 8 Vickerman Street, Port Nelson, Nelson.

The Registrar of Companies has been notified that IHL has a constitution upon incorporation.

INITIAL SHARE ISSUE

At incorporation, shares were issued to Nelson City Council and Tasman District Council as per the following table. The consideration for the shares was \$100, but that amount is not to be paid now and is to instead remain outstanding until called. The intention is that a call will be made at the same time as settlement of the Sale and Purchase Agreement so that both amounts can be set off against each other (so that no money will actually flow).

| Name | No. of shares | Issue price |
|-------------------------|-------------------------------|--------------------|
| Nelson City Council | 42,230 ordinary shares | \$100.00 per share |
| Tasman District Council | 42,230 ordinary shares | \$100.00 per share |
| Total | 84,460 ordinary shares | \$8,446,000 |

INFRASTRUCTURE HOLDINGS LIMITED

Company number 8572709

(Company)

RESTRUCTURING TRANSACTIONS, SECOND SHARE ISSUE AND INTRA-GROUP LOANS

Resolution in writing pursuant to clause 12.38 of the Company's constitution

BACKGROUND

The Company's board of directors (**Board**) wishes to:

- approve the terms of the Restructuring Documents and the Restructuring Transactions (including the Second Share Issue), as described (and as those terms are defined) in Parts A and C of this Background section;
- record certain matters in connection with the issue of the Initial Shares, as described (and as that term is defined) in Part B of this Background section;
- record and approve the terms of the issue of the Second Shares, as described (and as that term is defined) in Part C of this Background section; and
- note and (where relevant) approve certain documents required to give effect to the Financing Proposal (defined below in Part D).

Part A: Restructuring Transactions

- A.** Nelson City Council (**NCC**) and Tasman District Council (**TDC**) are the joint ordinary shareholders in equal shares of Port Nelson Limited (**PNL**) and Nelson Airport Limited (**NAL**). The Crown holds, and will continue to hold, one special "Kiwi Share" in NAL.
- B.** It is projected that PNL's and NAL's debt requirements and financing costs may increase over the next 10+ years to meet infrastructure-upgrade costs. Accordingly, the Company has been established as a treasury vehicle for PNL and NAL. In order to achieve this purpose, it is proposed that NCC and TDC will sell all of their respective ownership rights in PNL and NAL (**Share Sale**) to the Company under an agreement for the sale and purchase of shares (**Sale and Purchase Agreement**).
- C.** Based on advice received by NCC and TDC from Deloitte, it has been determined that the total purchase price for the PNL and NAL shares will be \$379,400,000 (**Purchase Price**). It is intended that the Company's obligation to pay NCC and TDC the Purchase Price will be satisfied on a cashless basis by way of set-off against NCC's and TDC's obligation to pay to the Company consideration for the subscription of shares in the Company (described further below).
- D.** To facilitate the restructuring proposal described at paragraphs A to C above, the Company will need to enter into, execute, and perform the following documents (**Restructuring Documents**) and the transactions contemplated by the Restructuring Documents (**Restructuring Transactions**):

- a shareholders' agreement between the Company, NCC and TDC (**Shareholders' Agreement**);
- the Sale and Purchase Agreement;
- all "settlement" deliverables under the Sale and Purchase Agreement (including, but not limited to, share transfer forms recording a transfer of the shares in PNL and NAL from NCC and TDC to the Company); and
- any other documents that a director of the Company (**Director**) considers necessary or desirable in connection with the above.

Part B: Initial issue of shares

- E. The Company was incorporated as a limited liability company under the Companies Act 1993 (**Act**) on 17 January 2023. The Company is owned by NCC and TDC in equal shares.
- F. On 27 January 2023, the Board passed resolutions (**Establishment Resolutions**) recording, approving and ratifying (among other things) that:
- upon incorporation, the Company issued 84,460 ordinary shares (**Initial Shares**) to NCC and TDC in equal shares (**Initial Issue**) at an issue price of \$100.00 per share (being an initial subscription amount of \$8,446,000) (**Initial Subscription Amount**). The consideration for the Initial Shares remains unpaid, and it was agreed that such consideration would be paid by each of NCC and TDC in accordance with the Shareholders' Agreement; and
 - the constitution of the Company (**Constitution**) be adopted.

Part C: Second issue of shares

- G. In order to facilitate the cashless transaction described at paragraph C above, NCC and TDC have each agreed to subscribe for, and the Company has agreed to issue, a further 1,854,770 ordinary shares in the Company (being a further 3,709,540 ordinary shares in total) (**Second Shares**) at an issue price of \$100.00 per share (**Second Share Issue**). The Second Share Issue will be issued under the terms described in the Shareholders' Agreement. The total consideration for the Second Share Issue will be \$370,954,000 (**Second Share Subscription Amount**) and will be paid by each of NCC and TDC in accordance with the Shareholders' Agreement.
- H. Following the Second Share Issue, the Company will have issued 3,794,000 ordinary shares in total to NCC and TDC at \$100.00 per share. Accordingly:
- NCC and TDC will be required to pay to the Company (in total) \$379,400,000 in consideration for the Initial Shares and the Second Shares; and
 - the Company will be required to pay NCC and TDC the Purchase Price (being \$379,400,000) in respect of the Share Sale.

Part D: Financing Proposal

- I. Once the Restructuring Transactions have been implemented, it is further proposed that (**Financing Proposal**) the Company will:

- join the New Zealand Local Government Funding Agency Limited (**LGFA**) borrowing programme as a “council-controlled trading organisation” for the purposes of the Local Government Act 2002 (**LGFA Accession**) following which, the Company will be able to borrow from LGFA;
 - enter into borrowing, transactional banking and risk hedging facilities with Westpac New Zealand Limited and Westpac Banking Corporation (together, **Westpac**). Westpac New Zealand Limited is NAL’s and PNL’s current bank; and
 - on-lend amounts borrowed from the LGFA borrowing programme and the Westpac facilities to PNL and NAL (**Intra-Group Loans**) under intra-group loan agreements (**Intra-Group Loan Agreements**).
- J.** To implement the Financing Proposal, the Company needs to enter into, execute, and perform certain documents. Further details of the Financing Proposals, and the documents required to implement the Financing Proposal, will be approved at a later meeting of this Board following negotiations with LGFA and Westpac.
- K.** However:
- the Intra-Group Loan Agreements are in, or near, final form and will be approved pursuant to these resolutions; and
 - two of the documents that will be required by the Financing Proposals, namely a “common terms deed” and “general security deed”, are available in draft form and are tabled at this meeting for the Board’s consideration only. The common terms deed and the general security deed are referred to in these resolutions as the “**Draft Financing Documents**”.

NOTED

Proper Purpose

By signing these resolutions, each director of the Company (**Director**) confirms that they are acting for a proper purpose in voting that the Company approves the Restructuring Documents, the Restructuring Transactions (including the Second Share Issue), the Intra-Group Loan Agreements and the Intra-Group Loans.

Interested Directors

By signing these resolutions, each Director confirms that he or she is not interested (within the meaning of section 139 of the Act) in the Restructuring Transactions (including the Second Share Issue) or the Intra-Group Loans.

Shareholders and Entitled Persons’ Approval Required

The Initial Issue, the Restructuring Documents and the Restructuring Transactions (including the Second Share Issue), the Intra-Group Loan agreements and the Intra-Group Loans, and the adoption of the Constitution, require the approval of the Company's shareholders (**Shareholders**) and the Company’s entitled persons (as that term is defined in section 2(1) of the Act) (**Entitled Persons**) by unanimous shareholders’ resolutions and entitled persons’ agreement (**Unanimous Shareholders’ Resolutions and Entitled Persons’ Agreement**) on the basis that the:

1. Initial Issue requires the approval of all Shareholders and the Entitled Persons for all purposes (including to satisfy any requirement under the Act);
2. Restructuring Transactions and the Intra-Group Loans are or may constitute major transactions for the purpose of section 129 of the Act;
3. Second Share Issue requires the approval of all Entitled Persons in accordance with:
 - (a) section 107(2) of the Act, so that the Second Shares may be issued otherwise than in accordance with sections 42, 44 or 45 of the Act; and
 - (b) clause 3.4 the Constitution; and
4. adopting the Constitution requires the approval of the Shareholders by special resolution under section 32 of the Act.

DOCUMENTS

By signing these resolutions, each Director confirms that he or she received the following documents before they signed these resolutions:

1. the most recent drafts of the Restructuring Documents, the Intra-Group Loan Agreements and the Draft Financing Documents; and
2. the form of Unanimous Shareholders' Resolutions and Entitled Persons' Agreement.

RESOLUTIONS

It is **RESOLVED** that:

1. **Corporate Benefit:** having made due and proper enquiry, the Directors consider that the Company's entry into, execution, and performance of the Restructuring Documents, the Restructuring Transactions (including the Second Share Issue), Intra-Group Loan Agreements and the Intra-Group Loans, will be in the best interests of the Company;
2. **Fair Value:**
 - 2.1 the Company will receive fair value (as determined under section 141 of the Act) from the Restructuring Transactions and the Intra-Group Loans; and
 - 2.2 in the opinion of the Directors, the consideration for and terms of the Second Share Issue are fair and reasonable to the Company and to all existing shareholders;
3. **Value of Consideration or Benefit:** after taking into account all relevant factors (including, in the case of a guarantee, all rights of contribution and subrogation to which the Company would be entitled if called on to perform its obligations and the solvency of the guaranteed and the other guaranteeing parties), the Board considers that the value of the consideration or benefit to be received by the Company under the Restructuring Transactions (including the Second Share Issue) and the Intra-Group Loans is not less than the value of the consideration to be provided by the Company;
4. **Solvency:** having made due and proper enquiry, the Board considers that the Company:

- 4.1 is solvent and able to meet its debts (including all debts arising under or in connection with the Restructuring Documents and the Intra-Group Loan Agreements) as they fall due;
 - 4.2 is not engaged, or about to engage, in business or a transaction for which its financial resources are, given the nature of the business or transaction, unreasonably small (within the meaning of section 346 of the Property Law Act 2007);
 - 4.3 will not become unable to pay its due debts or insolvent as a result of the Restructuring Documents and the Restructuring Transactions (including the Second Share Issue) or the Intra-Group Loan Agreements and the Intra-Group Loans;
 - 4.4 does not intend to incur, nor believes (acting reasonably) that it is incurring, debts beyond its ability to pay by entering into the Restructuring Documents and the Restructuring Transactions (including the Second Share Issue) or the Intra-Group Loan Agreements and the Intra-Group Loans; and
 - 4.5 has no intention of prejudicing any creditor (within the meaning of Part 6.6 of the Property Law Act 2007) by entering into the Restructuring Documents and the Restructuring Transactions (including the Second Share Issue) or the Intra-Group Loan Agreements and the Intra-Group Loans;
5. **Second Share Issue:**
- 5.1 the Company approves the Second Share Issue on the terms and conditions set out in the Shareholders' Agreement;
 - 5.2 the Company be authorised to issue the Second Shares; and
 - 5.3 the Company be authorised to update the Company's share register to reflect the Initial Issue and the Second Share issue;
6. **Draft Financing Documents:** the Directors note the Draft Financing Documents;
7. **Approval of the Restructuring Documents and Intra-Group Loan Agreements:** the Company:
- 7.1 note and approve the Restructuring Documents and the Intra-Group Loan Agreements in the forms circulated; and
 - 7.2 authorise each Director to approve and make such amendments to any Restructuring Document and the Intra-Group Loan Agreements as he or she may consider necessary or useful in the best interests of the Company (as conclusively evidenced by the execution of that document by the Company);
8. **Unanimous Shareholders' Resolutions and Entitled Persons' Agreement:** the Shareholders and Entitled Persons (being NCC and TDC) be requested to sign the Unanimous Shareholders' Resolutions and Entitled Persons' Agreement;
9. **Execution and Performance of the Restructuring Documents:** once the Unanimous Shareholders' Resolutions and Entitled Persons' Agreement has been signed by NCC and TDC, the Company:

- 9.1** enter into and execute the Restructuring Documents and the Intra-Group Loan Agreements (as amended under resolution 7.2) in any manner permitted by law; and
- 9.2** following the execution of the Restructuring Documents and the Intra-Group Loans Agreements, deliver them and perform the Company's obligations under them (including the Restructuring Transactions, the Second Share Issue, and the Intra-Group Loans);
- 10. Restructuring Documents and Acts:** each Director be severally authorised in the Company's name and on its behalf to enter into and execute any and all of the Restructuring Documents and the Intra-Group Loan Agreements, and to:
- 10.1** enter into, execute, and deliver such other agreements, deeds, instruments, notices, communications, and other documents; and
- 10.2** do such other things,
- under or in connection with the Restructuring Documents and the Restructuring Transactions (including the Second Share Issue), and the Intra-Group Loan Agreements and the Intra-Group Loans, as he or she may consider necessary or useful in the best interests of the Company (as conclusively evidenced by the execution of the relevant document or doing of the relevant thing);
- 11. Authorised Persons:** without limiting any of the Directors' powers under the Act, any one or more of the following persons be authorised and empowered to execute and deliver on behalf of the Company any notice, request, demand, consent, or communication and to take any other action required under or in connection with the Restructuring Documents and the Intra-Group Loan Agreements on behalf of the Company (including completing any blanks in those documents):
- | Name | Position |
|--------------------------|--------------------------|
| Quinton Charles Hall | Director |
| Darren Nicholas Mark | Director |
| Susan Jane Sheldon | Director and Chairperson |
| Gerrard Llewellyn Wilson | Director |
| Paul Alan Zealand | Director |
- 12. Financing Proposal:** subject to considering the terms of the documents required to effect the Financing Proposal, work towards implementing the Financing Proposal.

DATED

2023

Quinton Charles Hall
Director

Darren Nicholas Mark
Director

Susan Jane Sheldon
Director and Chairperson

Gerrard Llewellyn Wilson
Director

Paul Alan Zealand
Director

(being all of the directors of the Company entitled to receive notice of a board meeting)

Constitution of Infrastructure Holdings Limited

SER-023544-426-24-V5

76874544v1

Table of Contents

| | | |
|-----|---|----|
| 1. | Definitions and interpretation | 2 |
| 2. | Objective and relationship to Act and Local Government Acts | 5 |
| 3. | Issuing Shares | 5 |
| 4. | Calls on Shares | 7 |
| 5. | Pre-emptive rights on transfer | 8 |
| 6. | Registration of Share transfers | 13 |
| 7. | Suspension of right to distributions, lien and forfeiture | 13 |
| 8. | Distributions to Shareholders | 15 |
| 9. | Company acquiring its own Shares | 15 |
| 10. | Assistance by Company for Share purchase | 16 |
| 11. | Shareholders' meetings | 16 |
| 12. | Directors | 21 |
| 13. | In specie distribution on liquidation | 25 |
| 14. | Audit | 26 |
| 15. | Amendment | 26 |

Constitution of Infrastructure Holdings Limited

1. Definitions and interpretation

Definitions

1.1 In this Constitution, unless the context otherwise requires:

- | | |
|--|---|
| Act | means the Companies Act 1993; |
| Board | means the Directors acting together as the board of directors of the Company; |
| Company | means Infrastructure Holdings Limited; |
| Council-Controlled Organisation | has the meaning given to it in section 6 of the Local Government Act 2002; |
| Council-Controlled Trading Organisation | has the meaning given to it in section 6 of the Local Government Act 2002; |
| Director | means a person appointed as director of the Company in accordance with the terms of the Act and this Constitution; |
| Fair Value | means the price determined by the Valuer in accordance with clause 5.16; |
| Independent | means a person who is free from any association that could materially interfere with the exercise of their independent judgement, including that the person: <ul style="list-style-type: none"> (a) does not hold or control more than 5% of the Shares or have significant influence over the Company, and is not an officer of a Shareholder or other entity that holds or controls more than 5% of the Shares or has significant influence over the Company, during, or at any point during the two years immediately before, their current appointment to the Board; (b) is not employed, and has not previously been employed, in an executive capacity by a Shareholder, the Company or any of its subsidiaries, unless there has been a period of at least two years between ceasing such employment and serving on the Board; |

- (c) does not currently hold (and has not held within the last three years) a senior role in a provider of material professional services to a Shareholder, the Company or any of its subsidiaries, and is not currently (and has not within the last two years been) an employee of such a service provider materially associated with the services provided;
- (d) does not currently have (and has not within the last two years had) a material business or contractual relationship (for example, supplier or customer) with a Shareholder, the Company or any of its subsidiaries;
- (e) is not a relative (as defined in the Act) of anyone in any of the above categories; and
- (f) has not been a Director of the Company for a term or terms that, in aggregate, amount to more than six years.

| | |
|--------------------------------|--|
| Independent Chairperson | means an Independent chairperson appointed to the Board in accordance with clause 12.2; |
| Interested Director | has the meaning given in clause 12.16; |
| Local Government Acts | means the Local Government Official Information and Meetings Act 1987, the Local Government Act 1974 and the Local Government Act 2002; |
| Proposal Notice | has the meaning given in clause 11.44; |
| Share | means any share in the Company; |
| Shareholders | means all persons for the time being registered in the Company's share register as the holder of one or more Shares; |
| Shareholder's Notice | has the meaning given in clause 11.43; |
| Specified Price | has the meaning given in clause 5.2; |
| Statement of Intent | means the statement of intent to be completed by the Board from time to time in accordance with section 64 of the Local Government Act 2002; |
| Transfer Notice | has the meaning given in clause 5.2; |
| Transferee | has the meaning given in clause 5.13; |

| | |
|-----------------------------|--|
| Transferor | means a person who wishes to transfer any legal or beneficial interest in Shares; |
| Unanimous Resolution | means a resolution that is approved by all of the votes of those Shareholders entitled to vote and voting on the relevant matter; |
| Valuer | has the meaning given in clause 5.16; and |
| Working Day | means any day other than a Saturday, Sunday or statutory public holiday in Nelson, New Zealand. A Working Day is deemed to commence at 9.00 am and end at 5.00 pm. |

Interpretation

1.2 In this Constitution, unless the context otherwise requires:

- (a) 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) The word including and other similar words do not imply any limitation.
- (d) Any reference to a party includes its successors or permitted assigns or both.
- (e) Where a party is made up of more than one person, the liability of each of those persons is joint and several.
- (f) Words importing any gender will include all other genders.
- (g) Clause headings are for reference only.
- (h) References to clauses and schedules are references to clauses of, and schedules to, this Constitution.
- (i) Reference to any document includes reference to that document as amended, novated, supplemented, or replaced from time to time.
- (j) References to money will be New Zealand currency, unless specified otherwise.
- (k) Expressions referring to **writing** will be construed as including references to words printed, typewritten or otherwise visibly represented, copied or reproduced (including by electronic mail).
- (l) References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.

2. Objective and relationship to Act and Local Government Acts

Objective

- 2.1 The primary objective of the Company is to provide a funding vehicle to enable the reduction in finance costs and increase shareholder returns from Port Nelson Limited and Nelson Airport Limited.

Relationship to Act and Local Government Acts

- 2.2 As at its date of incorporation, the Company is a Council-Controlled Trading Organisation.
- 2.3 The Company must comply with its obligations under the Local Government Acts, including preparing a Statement of Intent.
- 2.4 If there is any conflict:
- (a) between a provision in this Constitution and a mandatory provision in the Act, then the mandatory provision in the Act prevails;
 - (b) between a provision in this Constitution and a provision in the Local Government Acts, then the provision in the Local Government Acts prevails; and
 - (c) between:
 - (i) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; and
 - (ii) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,then the provision, word or expression in this Constitution prevails.

3. Issuing Shares

Types of Shares

- 3.1 Subject to this Constitution and the approval of the Shareholders by Unanimous Resolution (other than in the case of the initial issue under clause 3.2), the Board may:
- (a) issue Shares at any time, to any person and in any number;
 - (b) issue Shares in different classes which have different rights; and
 - (c) divide existing Shares into different classes which have different rights.

Initial Share issue

- 3.2 Once the Company has been registered, it must issue Shares to its Shareholders in accordance with its application for registration.

Redeemable Shares

- 3.3 The Company may redeem a redeemable Share:

- (a) at the option of the Company; or
- (b) at the option of the holder of the Share; or
- (c) on a date specified in this Constitution,

for a consideration that is:

- (d) specified;
- (e) to be calculated by reference to a formula; or
- (f) required to be fixed by a suitably qualified person who is not associated with or interested in the Company.

Share issue

- 3.4 The Board may only issue Shares which rank equally with, or in priority to, existing Shares (whether as to voting rights or distributions) if:

- (a) all affected interest groups (if any) have unanimously approved the issue;
- (b) the issue is made in accordance with the pre-emptive rights (on issue) provisions in clauses 3.6 to 3.9; or
- (c) all entitled persons have agreed to the proposed Share issue.

Consideration for Share issues

- 3.5 The consideration for which a Share is issued may take any form.

Pre-emptive rights on issue

- 3.6 For the purposes of clause 3.4(b), new Shares issued by the Company must be offered in a manner and on terms that would, if accepted, maintain the existing voting and distribution rights, or both, of existing Shareholders as follows:

- (a) first, to the holders of the same class of Shares;
- (b) secondly, to the holders of other classes of Shares (if any); and
- (c) thirdly, to any person or persons whom the Board is prepared to register as a holder or holders of that class of Share with the consent of the existing Shareholders by Unanimous Resolution.

- 3.7 An offer to existing Shareholders under clause 3.6(a) or 3.6(b) must:

- (a) be pro rata according to the number of Shares held by each Shareholder;

SER-023544-426-24-V5

- (b) state the period (at least 20 Working Days) at the end of which the offer, if not accepted, will be deemed to be declined;
 - (c) state that any Shareholder who wishes to acquire Shares in excess of his or her entitlement must, when replying to the Board, state the number of excess Shares the Shareholder wishes to acquire; and
 - (d) state the consideration and other terms of issue of the Shares.
- 3.8 Shareholders of the same class of Share may purchase additional Shares to the extent that Shareholders of that class do not accept the offer in full in accordance with clause 3.7(c). Competing applications for additional Shares must be allocated pro rata according to the number of Shares held by the applicants.
- 3.9 Except as provided in this Constitution and the Act, the procedure for the offer, acceptance and issue of Shares will be determined by the Board. No irregularity in the process will affect the allocation and issue of Shares.

4. **Calls on Shares**

- 4.1 The Board may make calls on any Shareholder in respect of any money unpaid on their Shares and not previously made payable at a fixed time. Shareholders must comply with the terms of any call made by the Board. A call may be revoked or postponed by the Board.
- 4.2 Notice and particulars of any call must be given to the person who holds the relevant Share. The Company is not required to give notice and particulars of a call to a subsequent holder of the Share.
- 4.3 Joint holders of a Share are jointly and severally liable to pay all calls in respect of it.
- 4.4 The holder of the Share when the call is due for payment is liable for payment of the call.
- 4.5 Any calls made by the Board in respect of any money unpaid on Shares must be made on all Shareholders that hold unpaid Shares on a pro rata basis according to the number of unpaid Shares held by each Shareholder.
- 4.6 Money payable in accordance with the terms of issue of a Share will be deemed to be a call made and payable in accordance with the terms of issue.
- 4.7 A person who fails to pay a call on the due date must pay:
- (a) interest on that money from the day payment was due to the day of actual payment at a rate fixed by the Board; and
 - (b) all expenses which the Company has incurred or may incur because of non-payment.

The Board may waive payment of all or part of that interest or those expenses.

5. Pre-emptive rights on transfer

- 5.1 No Shares may be sold or transferred by the Board, or by any Shareholder or liquidator, without Unanimous Resolution or until the following rights of pre-emption have been exhausted.

Transfer notice

- 5.2 Every Transferor must give a transfer notice (**Transfer Notice**) to the Board, specifying:
- (a) the Shares the Transferor proposes to transfer; and
 - (b) the price for which the Transferor wants to transfer the Shares (**Specified Price**). If there is no Specified Price, the price will be Fair Value.

- 5.3 The Transfer Notice can only be withdrawn as provided in this clause.

- 5.4 If the Transferor is offering more than one Share, it will give one Transfer Notice in respect of all offered Shares. The Transferor is not obliged to sell or transfer only some of the Shares specified in the Transfer Notice, except where clause 5.27 applies.

Offer of Shares

- 5.5 The Board will be the Transferor's agent for the sale of the Shares.
- 5.6 The Shares specified in a Transfer Notice must be offered for sale by the Board in the following order:
- (a) to the Company; then
 - (b) to the holders of the same class of Shares (other than the Transferor); then
 - (c) to the holders of other classes of Shares (if any); and finally
 - (d) to any other person whom the Board is prepared to register as a Shareholder with the unanimous approval (not to be unreasonably withheld) of the existing Shareholders (other than the Transferor).
- 5.7 An offer to the other Shareholders must:
- (a) be in writing;
 - (b) be pro rata according to the number of relevant Shares held by them;
 - (c) state the number and class of Share on offer;
 - (d) state the price payable. Where clause 5.27 applies, the Fair Value must be determined before the Board makes an offer to Shareholders;
 - (e) the period for acceptance of the offer, which must be at least 20 Working Days from the date of the offer being sent to holders of Shares (**Acceptance Period**);

- (f) specify that, if the offer is not accepted by notice in writing to the Board within the Acceptance Period, it is deemed to be declined; and
- (g) notify the Shareholders that if they wish to purchase Shares in addition to their proportional entitlement, the number of additional Shares must be specified in the written acceptance.

5.8 Shareholders of the same class of Shares may purchase additional Shares to the extent that the other Shareholders of that class do not accept the offer in full. Competing applications for additional Shares must be allocated pro rata according to the number of relevant Shares held by the Shareholders.

Acceptance of offer

- 5.9 If a Shareholder wishes to accept an offer of Shares, they must give an acceptance notice (**Acceptance Notice**) to the Board that:
- (a) must be in writing;
 - (b) may relate to all or only part of the Shares offered for sale;
 - (c) may state the number of additional Shares to be purchased from declined offers (if any); and
 - (d) may be for purchase of the Shares at the Specified Price or at their Fair Value.
- 5.10 An offer that has not been accepted in the time or in the manner set out in the preceding clauses will be deemed to have been declined.

Allocation of Shares

- 5.11 Following expiry of the Acceptance Period, the Board will allocate the Shares offered for sale according to Acceptance Notices received. This allocation will include the allocation of additional Shares from declined offers.
- 5.12 If the acceptances received are for fewer than the number of Shares specified in the Transfer Notice, the Board will give the Transferor written notice of the provisional allocation. Except where clause 5.27 applies, the Transferor will then have five Working Days from receipt of that notice to give notice in writing to the Board electing to withdraw the Transfer Notice in accordance with clause 5.17.
- 5.13 If:
- (a) Acceptance Notices have been received for all of the Shares specified in the Transfer Notice; or
 - (b) the Transferor does not validly withdraw the Transfer Notice,
- the Board must give notice in writing of the Share allocation to all persons who have been allocated Shares (each, a **Transferee**) within 10 Working Days of the expiry of the Acceptance Period.
- 5.14 If any Acceptance Notices are received at Fair Value, then the Board will give notice of allocation within 20 Working Days of the expiry of the period set out in clause

SER-023544-426-24-V5

5.17(c), unless the Transferor waives their right to withdraw in respect of any or all acceptances pursuant to clause 5.17.

Other procedure

5.15 Except as provided in this clause, the procedure for the offer, acceptance and allocation of Shares may be decided by the Board. Any irregularity in the process will not affect the validity of the allocation and sale of Shares.

Determination of Fair Value

5.16 If any Shareholder accepts an offer for sale of Shares at their Fair Value:

- (a) The Board and the Transferor will appoint a suitably qualified independent accountant (**Valuer**) to calculate the Fair Value of the Shares.
- (b) If those parties cannot agree on the Valuer within five Working Days of the expiry of the Acceptance Period, the Valuer will be appointed by the President of the New Zealand Law Society or the President's nominee.
- (c) The Valuer must set the procedure and a timetable for calculating the Fair Value and the parties must comply with that procedure and timetable.
- (d) The Valuer must give the parties a written certificate of the Fair Value of the Shares.
- (e) Fair Value means the price, which in the Valuer's opinion, would be paid for the Shares by a willing Transferee from a willing Transferor where the Transferor and the Transferee have comparable knowledge and bargaining power as at the date that the Transfer Notice is given. The Valuer must take into account:
 - (i) all the assets and liabilities (including contingent liabilities) of the Company;
 - (ii) the provisions of the Constitution;
 - (iii) the amount of any bona fide offer for the purchase of the Shares received by the Transferor; and
 - (iv) anything else the Valuer considers relevant.
- (f) The Valuer will be deemed to be acting as an expert and not as an arbitrator.
- (g) The Board must co-operate with the Valuer and give the Valuer all information that it reasonably requires.
- (h) The Valuer must give the Transferor and the Transferees a reasonable opportunity to make submissions in relation to the Fair Value before releasing a decision.
- (i) The Valuer may estimate the Fair Value if, in the Valuer's opinion, the likely value of all Shares for which a Fair Value must be fixed does not justify the expense of a full valuation.

- (j) The Valuer's costs must be paid:
 - (i) by the Transferor if the Specified Price is more than 10% in excess of the Fair Value;
 - (ii) by the Company, if sub-clause 5.16(j)(i) does not apply and the Transferee is an existing Shareholder; and
 - (iii) otherwise by the Transferee and if there is more than one Transferee then by each of them in proportion to the value of the Shares they have each agreed to buy.
- (k) The Valuer must not commence the valuation until:
 - (i) all Shares offered for sale have been accepted for purchase; or
 - (ii) the Transferor gives the Company written notice of its intention to proceed with any of the acceptances at Fair Value already received; or
 - (iii) the period for the Transferor to withdraw its Transfer Notice has expired in accordance with clause 5.12.
- (l) The Valuer's decision will be final except in the case of obvious error.

Right to withdraw

- 5.17 Unless clause 5.22 applies, the Transferor may withdraw the Transfer Notice in respect of all or any Shares offered for sale if:
- (a) any Share remains unallocated three months after issue of the Transfer Notice; or
 - (b) any of the Shares offered for sale have been accepted at Fair Value; and
 - (c) the Fair Value is less than the Specified Price and the Transferor gives written notice of withdrawal to the Board within 20 Working Days of the Transferor receiving the certificate of Fair Value. If revocation occurs under this subclause, the Transferor will bear all costs of fixing the Fair Value under this clause.

Settlement

- 5.18 The sale of the Shares in the Transfer Notice must be settled 20 Working Days after:
- (a) notice of allocation (clause 5.13) if all the Shares offered for sale have been accepted at the Specified Price; or
 - (b) the Valuer gives the certificate of Fair Value if any of the Shares offered for sale have been accepted at Fair Value.
- 5.19 Transferees who have accepted the offer for sale at the Specified Price must pay that price.
- 5.20 Transferees who have accepted the offer for sale at Fair Value must pay Fair Value.

- 5.21 The Transferor must transfer the relevant number of Shares to each Transferee on settlement.
- 5.22 If the Transferor accepts payment for any Shares, the Transferor may not withdraw the Transfer Notice in respect of those Shares.

Sale to third parties

- 5.23 Any Shares which remain unallocated three months after the Board has received a Transfer Notice may be sold or offered for sale by the Transferor at any time within the following six months to any person on terms which are not more favourable to that person than those in the Transfer Notice, as determined by the Board. But in any other circumstance, the Transferor must give another Transfer Notice if it wishes to sell.
- 5.24 The Board's decision as to whether or not the terms are more favourable will be final.
- 5.25 Clause 5.23 does not apply to any Shares for which the Transfer Notice has been withdrawn.
- 5.26 The above right to sell will at all times be subject to the ability of the Board to refuse to register a Share transfer pursuant to any power which it might have under the Act or the provisions of any other document.

Deemed transfer

- 5.27 If a Shareholder is bound to do so, but fails to give a Transfer Notice:
- (a) The Board may give a Transfer Notice on behalf of that Shareholder. The Transfer Notice may not be withdrawn without the Board's consent. The Specified Price will be the Fair Value of the Shares.
 - (b) If the Transferor is bound by the previous subclause, but fails to transfer the Shares on the settlement date then the Company may receive the sale price and enter the Transferee's name in the Share register as the Shareholder. The sale price must be held in trust for the Transferor subject to any lien in favour of the Company.
 - (c) The Board's receipt will be a good discharge for the sale price and after the Shares are registered in the names of the Transferees, the validity of the proceedings may not be questioned by any person.

Exceptions

- 5.28 The provisions of this Constitution relating to pre-emptive rights do not apply to a transfer of Shares:
- (a) to any successor of the Tasman District Council or the Nelson City Council that is a local authority under the Local Government Acts; or
 - (b) to any Council-Controlled Organisation wholly owned by one or more local authorities; or

- (c) if all the Shareholders consent by way of Unanimous Resolution.

6. Registration of Share transfers

6.1 The Board must refuse registration of any transfer of any Share if:

- (a) the transfer would result in a breach of the law or this Constitution; or
- (b) the transferee is a person without legal capacity to contract; or
- (c) any applicable pre-emptive rights provisions have not been complied with; or
- (d) the Board has notice of an agreement between Shareholders relating to the transfer of the Share which has not been complied with.

6.2 The Board may refuse or delay the registration of any Share transfer if:

- (a) any money payable on that Share is due for payment and has not been paid; or
- (b) the Company has an unsatisfied lien on that Share or the proceeds of sale of that Share; or
- (c) the transfer has not been properly executed; or
- (d) the transfer is not accompanied by proof (reasonably required by the Directors) of the right of the Transferor to make the transfer; or
- (e) the transferee is, or is directly or indirectly associated with, a competitor of the Company; or
- (f) in the opinion of the Board, the transferee is unlikely to meet the financial or other obligations of the Shareholder; or
- (g) the Directors acting in good faith decide that registration of the transfer would not be in the best interests of the Company; or
- (h) the transfer document is not in any usual or common form or otherwise in a form prescribed by the Board from time to time (if any),

but the Board must comply with section 84 of the Act.

7. Suspension of right to distributions, lien and forfeiture

Suspension of distributions

- 7.1 If a Shareholder has defaulted in paying any money due to the Company, the Board may suspend payment of any distribution to that Shareholder until the default is remedied.
- 7.2 The Company may apply any suspended payment in full or part satisfaction of the money due by the Shareholder to the Company.

- 7.3 A Shareholder's liability for all money owing under a call is not extinguished by a transfer of the Share in respect of which the money is owed.
- 7.4 When the total distributions withheld and applied under clause 7.2 equal the amount due by the Shareholder, any suspension of the rights will end.

Lien

- 7.5 The Company has a first lien on the proceeds of sale and all distributions declared in respect of every Share registered in the name of a Shareholder (whether solely or jointly with others), for:
- (a) all money payable in respect of Shares held by the Shareholder; and
 - (b) all other money payable by the Shareholder to the Company; and
 - (c) any money the Company may be required to pay under any statute or regulation in respect of the Shareholder's Shares,
- whether or not the time for the payment has arrived.
- 7.6 The Company may sell any Share on which the Company has a lien. The Company may not make such a sale:
- (a) unless money in respect of which the lien exists is due for payment; and
 - (b) until it has given notice to the registered Shareholder, or the person entitled to the Share, requiring payment of the money in respect of which the lien exists within 20 Working Days of the notice.
- 7.7 A certificate signed by a Director stating that the power of sale in clause 7.6 has arisen and is exercisable by the Company is conclusive evidence of the facts stated in the certificate.
- 7.8 The Board may authorise any person to complete a transfer of Shares to a purchaser to give effect to any sale exercising a lien.
- 7.9 In respect of a sale exercising a lien under this clause:
- (a) clause 5 will apply with the following modifications:
 - (i) the Board will be deemed to have received a Transfer Notice when it resolves to exercise its lien; and
 - (ii) the Board may fix the Specified Price;
 - (b) the proceeds of sale must be applied first in satisfying any sale costs and second in paying any money owed in respect of the lien. Any balance must be paid to the former Shareholder;
 - (c) a Shareholder whose Shares have been sold will cease to be a Shareholder in respect of those Shares, but will remain liable to pay the Company all money which, at the time of the sale, was payable by the Shareholder to the Company but which was not realised and repaid to the Company as a result of the sale;

- (d) the Company must register the purchaser as holder of the Shares that are transferred;
- (e) the purchaser's title to the Shares is not affected by any irregularity or invalidity in the sale;
- (f) the remedy of any person aggrieved by the sale is in damages only and against the Company exclusively; and
- (g) if the certificate for the Shares is not delivered to the Company, the Board may issue a new certificate distinguishing it as the Board thinks fit from the certificate not delivered.

8. Distributions to Shareholders

- 8.1 The Board may authorise a distribution by the Company to Shareholders in accordance with the Act and this Constitution.
- 8.2 All dividends on Shares not fully paid up must be authorised by the Board and paid in proportion to the amount paid up. This provision is subject to the terms of issue of any Shares with special rights to dividends.
- 8.3 Any money payable in cash in respect of Shares will be paid electronically.
- 8.4 Any one of two or more joint holders may give good receipts for any money payable in respect of their Shares.
- 8.5 No interest is payable by the Company on any dividend.
- 8.6 All dividends unclaimed for one year after being authorised may be used by the Board for the benefit of the Company until claimed.
- 8.7 All dividends unclaimed for five years after being authorised may be forfeited by the Board for the benefit of the Company.
- 8.8 The Board may annul any forfeiture and agree to pay a claimant who produces evidence to the Board's satisfaction of entitlement to forfeited dividends.

9. Company acquiring its own Shares

- 9.1 The Company may purchase or otherwise acquire its own Shares. Subject to clause 9.2, these Shares will be deemed to be cancelled immediately on acquisition.
- 9.2 The Company may hold its own Shares uncanceled but only in accordance with sections 67A, 67B and 67C of the Act.
- 9.3 Any Shares reissued by the Company must be treated as the issue of new Shares.
- 9.4 The Company must comply with the Act when it purchases or acquires Shares issued by it.

10. Assistance by Company for Share purchase

The Company may directly or indirectly give financial assistance to a person for the purpose of the purchase of a Share issued or to be issued by the Company.

11. Shareholders' meetings

Annual and special meetings

11.1 The Board must, in accordance with section 120 of the Act, call an annual meeting of Shareholders to be held no later than six months after the balance date of the Company.

11.2 Subsequent annual meetings must be held within 15 months of the previous annual meeting.

11.3 A special meeting of Shareholders entitled to vote on an issue:

- (a) may be called at any time by the Board; and
- (b) must be called by the Board on the written request of Shareholders holding Shares carrying together at least 5% of the voting rights entitled to be exercised on the issue.

11.4 The provisions of Schedule 1 of the Act, as modified by this Constitution will govern proceedings at meetings of Shareholders.

Resolutions in lieu of meeting

11.5 A written resolution, signed by all of the Shareholders who would be entitled to vote on that resolution at a meeting of Shareholders and who together hold all of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those Shareholders.

11.6 A written resolution may consist of several documents (including electronic mail or other similar means of communication) in like form each signed or assented to by one or more Shareholders.

Chairperson

11.7 If the Independent Chairperson is present at the meeting, the Independent Chairperson must chair the meeting.

11.8 If the Independent Chairperson is not present at the meeting within 15 minutes of the start time, the Directors present may elect a chairperson for that meeting.

11.9 If a chairperson is not elected as above the Shareholders present may elect a chairperson for that meeting.

Notice of meetings

11.10 Every Shareholder entitled to receive notice of the meeting and every Director must be sent written notice of the time and place of each annual or special meeting.

- 11.11 The notice must be sent at least 20 Working Days before the meeting.
- 11.12 The notice must state:
- (a) the nature of the business to be discussed at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it;
 - (b) the text of any Unanimous Resolution to be put to the meeting; and
 - (c) whether postal votes are authorised
- 11.13 If a meeting is adjourned for 20 Working Days or more, notice of the adjourned meeting must be given as in the case of an original meeting. It is not otherwise necessary to give any new notice for an adjourned meeting.
- 11.14 The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person entitled to receive notice does not invalidate the proceedings at that meeting.
- 11.15 An irregularity in a notice of a meeting is waived if:
- (a) all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity; or
 - (b) if all those Shareholders agree to the waiver.

Methods of holding meetings

- 11.16 A meeting of Shareholders may be held either:
- (a) at the place, date, and time appointed for the meeting; or
 - (b) by means of audio, or audio and visual, communication. The Shareholders participating must all be able to simultaneously hear each other throughout the meeting.

Quorum

- 11.17 No business may be transacted at a meeting of Shareholders unless a quorum is present.
- 11.18 A quorum for a meeting of Shareholders is present if there is, in person, by proxy or by authorised representative, a representative of every Shareholder.
- 11.19 If a quorum is not present within the 30 minutes after the start time for the meeting:
- (a) if the meeting is called under section 121(b) of the Act, the meeting is dissolved;
 - (b) for any other meeting, the meeting is adjourned to:
 - (i) the same day in the following week at the same time and place, or
 - (ii) a date, time and place to be fixed by the Directors.

If a quorum is not present for the adjourned meeting within 30 minutes after the start time the Shareholders (or their proxies) present are a quorum.

Adjournments

- 11.20 The chairperson may adjourn the meeting from time to time and from place to place. It must adjourn if directed to do so by the meeting.
- 11.21 No business can be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

Voting

- 11.22 Unless a poll is demanded, voting at meetings will be by:
- (a) voting by voice; or
 - (b) voting by show of hands.
- The chairperson of the meeting will decide which method is used.
- 11.23 A declaration by the chairperson of the meeting that a resolution is carried by the necessary majority is conclusive evidence of that fact unless a poll is demanded.
- 11.24 Subject to any rights or restrictions attached to any class of Shares, every Shareholder present in person or by proxy and voting by voice or on a show of hands has one vote.
- 11.25 At a meeting of Shareholders a poll may be demanded by:
- (a) a Shareholder or Shareholders representing at least 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or
 - (b) by a Shareholder or Shareholders holding Shares in the Company that confer a right to vote at the meeting and on which the aggregate amount paid up is at least 10% of the total amount paid up on all Shares that confer that right; or
 - (c) the chairperson of the meeting,
- either before or after the vote is taken on a resolution.
- 11.26 If a poll is demanded, votes must be counted according to the votes attached to the Shares of each Shareholder present in person or by proxy and voting.
- 11.27 The chairperson of the meeting is not entitled to a second or casting vote.
- 11.28 The chairperson may demand a poll on a resolution, either before or after a vote on the resolution, by voice or on show of hands.
- 11.29 The demand for a poll may be withdrawn.
- 11.30 Except as provided in clause 11.31, if a poll is demanded it must be taken in the manner directed by the chairperson. The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 11.31 A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately. A poll demanded on any other question may be taken at

a time and place fixed by the chairperson. Any other business may be proceeded with pending the taking of the poll.

Proxies

- 11.32 A Shareholder may exercise the right to vote either by being present in person or by proxy.
- 11.33 Subject to the following clauses, a proxy for a Shareholder may attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.
- 11.34 A proxy must be appointed by written notice signed by the Shareholder in the form attached as schedule 1. The notice must state whether the appointment is for a particular meeting or a specified period.
- 11.35 A proxy will not be valid at a meeting of Shareholders unless it is produced to the registered office of the Company (or any other address nominated by the Board) at least 48 hours before the start time for the meeting.
- 11.36 The Board or Independent Chairperson may require satisfactory evidence of authority if the proxy is signed on behalf of the Shareholder making the appointment.
- 11.37 The Board must promptly make proxy forms available to any Shareholder who requests them.
- 11.38 The cancellation of the appointment of a proxy or transfer of relevant Shares by a Shareholder will all revoke any previous appointment of a proxy by that Shareholder.

Postal votes

- 11.39 Shareholders may not cast a postal vote at a Shareholders meeting unless the Board has previously authorised postal votes for that meeting.
- 11.40 Postal voting must be carried out in accordance with clause 7 of Schedule 1 of the Act.

Minutes

- 11.41 The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.
- 11.42 Minutes which have been signed correctly by the chairperson of the meeting are prima facie evidence of the proceedings.

Shareholders' proposals

- 11.43 A Shareholder may give written notice (**Shareholder's Notice**) to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote.
- 11.44 If the Shareholder's Notice is received by the Board:
 - (a) at least five Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must

give notice of the Shareholder's proposal and the text of any proposed resolution (**Proposal Notice**) to all Shareholders entitled to receive notice of the meeting;

- (b) less than five Working Days before that last day, the Board must give the Proposal Notice to Shareholders if it is practicable to do so.

- 11.45 The Shareholder must pay the costs of the Proposal Notice unless the Shareholder's Notice is received by the Board at least 20 Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board. In that case the Company must pay the cost.
- 11.46 The Directors must give the proposing Shareholder the right to include a statement in support of the proposal with the Proposal Notice. The name and address of the proposing Shareholder must be included with the statement.
- 11.47 The board is not required to include with the Proposal Notice:
- (a) any part of a statement prepared by a Shareholder that the Directors consider to be defamatory, frivolous, or vexatious; or
 - (b) any part of a proposal or resolution prepared by a Shareholder that the Directors consider to be defamatory.
- 11.48 If the proposing Shareholder must pay the costs of giving the Proposal Notice, the proposing Shareholder must deposit with the Company or tender to the Company a sum sufficient to meet those costs when giving the Shareholder's Notice.

Corporations may act by representatives

- 11.49 A body corporate that is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner it could appoint a proxy.

Votes of joint holders

- 11.50 Where two or more persons are registered as the holder of a Share, the vote of the person named first in the Share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

Loss of voting rights if calls unpaid

- 11.51 Subject to this Constitution, if a sum due to a Company in respect of a Share has not been paid, that Share may not be voted at a Shareholder's meeting other than a meeting of an interest group.

Local authorities as shareholders

- 11.52 Each Shareholder that is a local authority may by resolution of its relevant council or other appropriate governing body authorise such person as it thinks fit to act as its representative at any Shareholders' meeting of the Company, or of any class of Shareholders, or at all such meetings until notice of revocation of such authority has been given to the Company. Any such person so authorised is entitled to exercise

the same powers on behalf of the relevant Shareholder which he or she represents as that Shareholder could exercise if it were an individual person.

Other proceedings

- 11.53 Except as provided in this Constitution, a meeting of Shareholders may regulate its own procedure.

12. Directors

- 12.1 The Company will have a minimum number of three Directors and a maximum number of six Directors, provided that any Directors appointed in accordance with clause 12.7(b) will not be taken into account when determining whether such minimum or maximum has been exceeded.

Independent Chairperson

- 12.2 The Shareholders shall by Unanimous Resolution appoint an Independent Chairperson to the Board and may likewise remove and/or replace the Independent Chairperson at any time by notice in writing to the Company.
- 12.3 The Independent Chairperson will be counted when determining whether the minimum or maximum number of Directors has been exceeded.

Appointment and removal

- 12.4 The Shareholders shall together be entitled to appoint up to six Directors at any time and may likewise remove and/or replace any of those Directors at any time by notice in writing to the Company.
- 12.5 A notice given under clauses 12.4 takes effect upon receipt of it at the registered office of the Company (including receipt by way of letter, electronic mail, or other similar means of communication) unless the notice specifies a later time at which the notice will take effect (in which case it takes effect at such later time so specified).
- 12.6 A Director (including, for the avoidance of doubt, the Independent Chairperson) holds office until his or her resignation, retirement, disqualification or removal in accordance with this Constitution.

Temporary vacancy

- 12.7 In addition to the appointment or removal of directors under clause 12.4, the Board may:
- (a) appoint any person to be a Director to fill a temporary vacancy in (and only in) circumstances where the number of Directors falls below the minimum number set out in clause 12.1 and with written approval of the Shareholders by Unanimous Resolution; and/or

(b) at any time during the three-month period prior to the Company's next annual general meeting (but not otherwise) appoint up to two persons to be Directors.

12.8 Subject to their earlier resignation, retirement, disqualification or removal in accordance with this Constitution, any Director appointed under clause 12.7 will cease to hold office at the commencement of the next annual meeting of the Company or at the next special meeting of the Company, whichever is earlier.

12.9 Subject to the Act and this Constitution, any Director appointed under clause 12.7 will be eligible for re-appointment as a Director.

Rotation

12.10 Subject to clause 12.12, at the annual meeting of the Company in each year, one third of the Directors for the time being, or if their number is not a multiple of three then the number nearest to one third, must retire from office. A retiring Director will hold office until the dissolution or adjournment of the annual meeting. A retiring Director is eligible for re-appointment unless he or she is disqualified under this Constitution.

12.11 Subject to clause 12.12, the Directors to retire at an annual meeting will be those Directors who have been longest in office since their last appointment. As between persons who became Directors on the same day, those who retire will, unless they otherwise agree among themselves, be determined by lot.

12.12 The Shareholders may, by way of a notice in writing to the Company, jointly direct that the retirement procedure set out in clauses 12.10 and 12.11 be varied in respect of one or more annual meetings (for example, by directing that a particular Director will not be required to retire by rotation at a particular annual meeting) and such notice is effective and binding upon the Company and its Directors notwithstanding clauses 12.10 and 12.11.

Disqualification of Directors

12.13 A person will be disqualified from holding the office of Director if he or she:

- (a) is or becomes disqualified from being a director under any provision of the Act; or
- (b) dies; or
- (c) becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
- (d) is or becomes an undischarged bankrupt; or
- (e) is or becomes an employee or elected member of any Shareholder which is a local authority.

12.14 A person will be disqualified from holding the office of Independent Chairperson if, in the sole opinion of a simple majority of Shareholders who must provide notice in writing to the Company, he or she is not, or ceases to be, Independent.

Proceedings of the Board

- 12.15 Proceedings at meetings of Directors are governed by the Act, as modified by this Constitution.

Self-interested transactions

- 12.16 A Director (**Interested Director**) is interested in a transaction if section 139 of the Act applies. After becoming aware that they may be interested, an Interested Director must disclose the particulars of their interest to the Board and enter the particulars in the Interests Register of the Company as required by the Act.

Best interests

- 12.17 In accordance with section 131(1) of the Act, a Director must act in good faith and in a manner which that Director believes to be in the best interests of the Company.

Authority to bind Company

- 12.18 The Board may authorise any person or class of persons to enter into a contract on behalf of the Company. However, it may not do so where the contract must be signed as a deed if entered by a natural person.

Indemnity and insurance of directors and employees

- 12.19 The Company may indemnify and effect insurance in accordance with any part or all of section 162 of the Act.
- 12.20 The Board must immediately enter in the interests register the particulars of any indemnity given to, or insurance taken out for, any Director, former director, employee, or former employee of the Company or any related company.
- 12.21 The Board may impose any condition in relation to any indemnity or insurance if the condition does not contravene the Act.

Remuneration of Directors

- 12.22 The remuneration payable to the Directors in their capacities as directors will be the sum so determined by the Shareholders from time to time or such lesser sum as the Directors from time to time determine.

Notice of meeting

- 12.23 A Director or, if requested by a Director to do so, an employee of the Company may convene a meeting of the Board by giving notice in accordance with this clause.
- 12.24 At least two Working Days' notice of a meeting of the Board must be given to every Director who is in New Zealand. The notice must include the date, time, method and place of the meeting and the matters to be discussed.
- 12.25 An irregularity in the notice of the meeting is waived if all Directors attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

12.26 Notice of a meeting may be given by any means, including by email or telephone. Notice given by a letter addressed to a Director at his or her last known residential address in New Zealand will be deemed to have been given on the next day after the letter is posted.

Method of holding meetings

12.27 A meeting of the Board may be held either:

- (a) by a quorum of Directors gathered together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual communication. The Directors participating must constitute a quorum and must all be able to simultaneously hear each other throughout the meeting.

Chairperson

12.28 If the Independent Chairperson is present at a meeting of the Board, the Independent Chairperson must chair the meeting.

12.29 If at a meeting of the Board the Independent Chairperson is not present within 15 minutes after the start time, the Directors present may choose one of their number to chair the meeting.

Quorum

12.30 A quorum for a meeting of Directors is a majority of the Directors.

12.31 No business may be transacted at a meeting of Directors unless a quorum is present.

Voting

12.32 Every Director, including, for the avoidance of doubt, the Independent Chairperson, has one vote.

12.33 A Director who abstains from voting is not presumed to have voted in favour of the relevant resolution of the Board.

12.34 The chairperson will not have a casting vote.

12.35 A resolution of the Board is passed if a majority of the votes cast on it are in favour of it.

12.36 Subject to clause 12.16, a Director may vote in respect of any transaction in which they are an Interested Director. If the Director does so, the Director's vote will be counted and the Director will be counted in the quorum present at the meeting.

Minutes

12.37 The Board must ensure minutes are kept of all proceedings at meetings of the Board.

Resolutions

- 12.38 A resolution in writing, signed or assented to by all Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 12.39 A resolution may consist of several documents (including electronic mail or other similar means of communication) in like form each signed or assented to by one or more Directors.
- 12.40 A copy of all resolutions must be entered in the minute book of Board proceedings.

No notice to Directors outside New Zealand

- 12.41 It is not necessary to give notice of a meeting of the Board to any Director temporarily absent from New Zealand.

Major transactions

- 12.42 The Board may not procure or permit the Company to enter into a “major transaction” (as defined in the Act) unless the transaction is approved by Unanimous Resolution or made contingent on approval by Unanimous Resolution.

Other proceedings

- 12.43 Except as provided in this Constitution or any other legislation regulating the Company, the Board may regulate its own procedure.

13. In specie distribution on liquidation

- 13.1 Subject to the terms of issue of any Shares, if the Company is liquidated any assets remaining after payment of the debts and liabilities of the Company, and the costs of liquidation, must be distributed among each Shareholder in proportion to the total amount paid up on all their Shares.
- 13.2 If the Shareholders agree by Unanimous Resolution, a liquidator may:
- (a) divide any part of the Company’s assets between the Shareholders in kind;
 - (b) fix the value of the assets divided;
 - (c) decide how the division will be carried out between Shareholders and/or different classes of Shareholders; and
 - (d) vest any part of the assets in trustees to hold on trust for the Shareholders on terms fixed by the liquidator.
- 13.3 Different Shareholders may receive different assets.
- 13.4 No Shareholder is obliged to accept any asset which is subject to any liability including any contingent liability.

14. **Audit**

The Company shall be audited, and the auditor of the Company shall be the Auditor General, in accordance with the Local Government Act 2002.

15. **Amendment**

This Constitution may only be amended by way of a Unanimous Resolution.

Schedule 1 – Form of appointment of proxy

To: Infrastructure Holdings Limited

Appointment of Proxy

I/We _____

of _____

appoint _____ [print name of proxy]

of _____

or failing him/her _____ of _____

as my/our proxy to vote for me/us on my/our behalf at the meeting of the company to be held

at _____

on _____ commencing at _____ am/pm

[or all meetings of the company held within 12 months of the date of this proxy] and at any adjournment of the meeting.

« I/We direct my/our proxy to vote in the following manner

Vote with a tick

| | | |
|-------------|-----|---------|
| Resolutions | For | Against |
|-------------|-----|---------|

| | | |
|----|-------|-------|
| 1. | _____ | _____ |
|----|-------|-------|

| | | |
|----|-------|-------|
| 2. | _____ | _____ |
|----|-------|-------|

« (delete if not required)

Signed on _____ [date]

[Usual signature/s]