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### **Request from:**

**For:** Copy of the proposed Constitution for Port Nelson

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### **Response by:**

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Group Manager Corporate Services

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# CONSTITUTION OF PORT NELSON LIMITED

## CERTIFICATE

I certify that this document was adopted as the Constitution of Port Nelson Limited by Special  
Resolution on February 18<sup>th</sup>, 2016

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Company Secretary

**PITT & MOORE**  
Solicitors  
Nelson

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# CONSTITUTION OF PORT NELSON LIMITED

## pursuant to the Companies Act 1993

### PART I

#### INTERPRETATION

##### 1. DEFINITIONS

1.1 In this constitution unless the context otherwise requires the following words and expressions have the meanings given to them in this clause:

"**Act**" means the Companies Act 1993 and includes amendments and any act in substitution.

"**amalgamation**" means the completed act of the company and another company amalgamating to form a new company in their place. **[Section 219 of the Act]**

"**assets**" include property of any kind, whether tangible or intangible.

"**balance date**" means the close of 31 March or such other date as the board adopts as the company's balance date. **[Section 41 of the Financial Reporting Act 2013]**

"**call**" means a resolution of the board pursuant to clause 15 of this constitution requiring shareholders to pay all or part of the unpaid amount of the issue price of any shares referred to in the resolution held by the shareholder, and where the context requires means the obligation of a shareholder to meet the amount due pursuant to such a resolution.

"**chairperson**" means the chairperson of the board elected pursuant to clause 1 of Schedule 2 of this constitution.

"**company**" means Port Nelson Limited.

"**director**" means a person appointed and continuing in office for the time being, in accordance with this constitution, as a director of the company.

"**general meeting**" means any meeting of shareholders, other than a meeting of an interest group.

"**major transaction**" means:

- a. the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the company's assets before the acquisition; or
- b. the disposition of, or an agreement to dispose of, whether contingent or not, assets of the company the value of which is more than half the value of the company's assets before the disposition; or
- c. a transaction that has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the company's assets before the transaction. **[Section 129(2) of the Act]**

"**month**" means calendar month.

**"office"** means the registered office for the time being of the company.

**"ordinary share"** means a share which confers on the holder:

- (a) the right to vote at meetings of shareholders and on a poll to cast one vote for each share held; and
- (b) subject to the rights of any other class of shares, the right to an equal share in dividends and other distributions made by the company; and
- (c) subject to the rights of any other class of shares, the right to an equal share in the distribution of the surplus assets of the company on its liquidation.

**"share"** means a share in the capital of the company the issue of and rights attaching to which are provided for by this constitution.

**"shareholder"** means a person:

- (a) registered in the share register as the holder of one or more shares; and
- (b) until such time as his, her or its name is entered in the share register, a person named as a shareholder in the application for registration of the company at the time of the incorporation of the company; and
- (c) until such time as his, her or its name is entered in the share register, a person who is entitled to have that person's name entered in the share register under a registered amalgamation proposal as a shareholder in an amalgamated company.

**"shareholding local authority"** means any territorial authority, regional authority or unitary authority that, directly or indirectly, holds any equity securities (as defined in the Financial Markets Conduct Act 2013) in the company in any class that confers the right to vote at any general meeting of the company.

**"working day"** means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day and Waitangi Day; and
- (b) if Anzac Day or Waitangi Day fall on a Saturday or Sunday, the following Monday; and
- (c) A day in the period commencing on 25 December in any year and ending on 2 January in the following year; and
- (d) If the 1st day of January in any year falls on a Friday, the following Monday; and
- (e) If the 1st day of January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

1.2 **"writing"** includes all modes of representing or reproducing words, figures or symbols in a visible form including reproduction by facsimile machine, by electronic mail, or other similar means of communication.

1.3 Words importing the singular number also include the plural number and vice versa.

1.4 A reference to a person includes any firm, company or other body corporate.

- 1.5 Words importing one gender include the other genders.
- 1.6 Expressions contained in this constitution bear the same meaning as in the Act at the date on which this constitution becomes binding on the company.
- 1.7 A reference to a clause means a clause of this constitution.
- 1.8 Except to the extent modified by this constitution the Act applies to the company.

## 2. **PORT COMPANIES ACT**

- 2.1 This company is a port company within the provisions of the Port Companies Act 1988 and all the obligations and duties of the Board (in the Port Companies Act 1988 called "the directorate") and any other person under that Act shall continue in full force and effect. The Board shall so manage the company as to achieve the principal objectives described in Section 5 of the Port Companies Act 1988.

## **PART II CAPITAL SHARES AND DIVIDENDS**

### 3. **CLASSES OF SHARES**

- 3.1 Different classes of shares may be issued including without limitation shares which:
  - (a) are redeemable within the meaning of the Act; or
  - (b) confer preferential rights to distributions of capital or income; or
  - (c) confer special, limited, or conditional voting rights; or
  - (d) do not confer voting right. **[Section 37 of the Act]**
- 3.2 The company has the power to 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 specified or to be calculated by reference to a formula or required to be fixed by a suitably qualified person who is not associated with or interested in the company.

### 4. **SHARE ISSUES AND CONSIDERATION**

- 4.1 The issue of shares by the company, including the consideration for any share issue and certain matters which the board must attend to in relation to every proposed share issue, are governed by sections 42 to 51 (inclusive) and section 107 of the Act.

## 5. AMOUNT OWING ON ISSUE OF SHARES

- 5.1 Where money or other consideration is due to the company on shares in accordance with their terms of issue such an amount does not comprise a call and no notice is required to be given to the holder or other person liable under the terms of issue in order for the company to enforce payment of the amount due. **[Sections 97 to 100 of the Act]**

## 6. BONUS SHARES

- 6.1 The board may authorise the allotment to shareholders of shares issued as fully or partly paid up from the assets of the company.

## 7. COMPANY PAYING UP PARTLY PAID SHARES

- 7.1 Subject to the company being able to meet the solvency test immediately after the distribution, the board may authorise payment from the assets of the company of any amount unpaid on shares already issued by the company.

## COMPANY PURCHASING ITS OWN SHARES

### 8. PURCHASE BY COMPANY OF ITS OWN SHARES

- 8.1 The company may, in accordance with and subject to sections 52, 59 to 66, 107 and 110 to 112 of the Act, purchase or otherwise acquire and hold its own shares and, subject to section 60 of the Act, offer to acquire its own shares. **[Sections 58 and 59 of the Act]**
- 8.2 The Board may purchase or otherwise acquire shares issued by the company from such shareholders and in such numbers or proportions as it thinks fit and on terms and conditions which it considers to be in the interest of the company.

### 9. TREASURY STOCK

- 9.1 Shares acquired by the company under clause 8 of this constitution may be held by the company in accordance with section 67A-67C of the Act. **[Section 67A-67C of the Act]**

## TRANSFER OF SHARES

### 10. TRANSFERS OF SHARES

- 10.1 Section 84 of the Act governs the transfer of shares in the company, including requirements as to the execution of any form of transfer.

### 11. BOARD'S RIGHT TO REFUSE REGISTRATION OF TRANSFER

- 11.1 The board may, within 30 working days of the receipt of a transfer of shares by the company, refuse or delay the registration of the transfer if:
- (a) The holder of the shares has failed to pay an amount due to the company in respect of those shares; or



- (b) The board considers that to effect the transfer would result in a breach of the law; or
- (c) The board considers that it is not in the best interests of the company to register the transfer; or
- (d) The board considers that 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);
- (e) Section 95 of the Act has not been complied with, or the share transfer has not been properly executed or does not comply with section 84(2) of the Act.

11.2 Any resolution of the board to refuse or delay the registration of a transfer of shares must set out in full the reason under clause 11.1 of this constitution for doing so, and must be sent to the transferor and transferee within 5 working days of the date of the resolution. **[Section 84(4)(b) of the Act]**

## 12. REGISTRATION OF TRANSFER

12.1 Subject to clause 11 (board's right to refuse registration of transfer) of this constitution, on receipt of a duly completed form of transfer the company must enter the name of the transferee on the share register as holder of the shares. **[Section 84(4) of the Act]**

## 13. SHARE REGISTER AND SHARE CERTIFICATES

13.1 The Company must maintain a share register in accordance with sections 87 to 94 (inclusive) of the Act.

13.2 The Company must issue and deal with share certificates in accordance with section 95 of the Act.

## TRANSMISSION OF SHARES

### 14. TRANSMISSION

14.1 In the event of the death of a shareholder the survivor, where the deceased was a joint holder, or the legal personal representative of the deceased, where the deceased was a sole holder, will be the only persons recognised by the company as having any title to the deceased's interest in the shares. Nothing contained in this clause 14.1 will release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by the deceased with other persons.

## CALLS ON SHARES

### 15. BOARD MAY MAKE CALLS

15.1 Subject to the terms of issue of any shares the board may resolve to require the holders of unpaid or partly paid shares to pay all or part of the amount unpaid on the shares. The terms of the resolution of the board will constitute the terms of the obligation to pay the call including payment by instalments. The call may be revoked or postponed at any time by the board.

## 16. NOTICE OF CALLS

- 16.1 Subject to the terms of issue of any class of shares and to clause 18 of this constitution, unless all the holders of a class of shares subject to a call unanimously agree, a call or the postponement or revocation of a call will apply to all the holders of shares of the class equally.
- 16.2 Notice of the call must be given to the shareholders at the time of the call, or to a subsequent holder. Failure to give notice to a shareholder will not invalidate a call but it will not be payable by that shareholder until the notice has been served on the shareholder.
- 16.3 Notice of a call sent by post to a shareholder to the address recorded in the share register as the address of the shareholder will be deemed to have been received by the shareholder 48 hours following the date of the posting of the notice.

## 17. LIABILITY FOR CALLS

- 17.1 The joint holders of shares are jointly and severally liable to pay all calls in respect of the shares.
- 17.2 If a call is not paid before or on the day appointed for payment the person from whom the sum is due will be liable to pay interest on the sum from the day appointed for payment to the time of actual payment at such rate as the board determines either at the time of the call or subsequently.
- 17.3 The liability for a call which has become due and payable attaches to the shareholder for the time being recorded in the share register and not a prior shareholder, notwithstanding that at the date of the call, or the date the call fell due for payment, another person was the shareholder or that the notice of the call was served on the previous and not the current shareholder. **[Section 100 of the Act]**
- 17.4 Following the registration in the share register of a change of ownership of shares in respect of which a call has been made, a notice of the call is not required to be served on the new shareholder.

## 18. AGREEMENT TO DIFFERENTIATE CALLS

- 18.1 The board may, on the issue of shares, by agreement with the shareholders concerned, differentiate between the shareholders of the same class as to the amount to be paid on the shares and the times of payment.

## SUSPENSION OF RIGHT TO DIVIDENDS AND LIEN

### 19. NOTICE OF SUSPENSION OF RIGHTS TO DIVIDEND

- 19.1 If a shareholder fails to pay any call or instalment of a call on the day appointed for payment, the board may, at any time after that date, while any part of the call or instalment payable by the shareholder remains unpaid, serve a notice on the shareholder requiring payment of so much of the call or instalment as is unpaid together with any interest which may have accrued and all expenses that may have been incurred by the company by reason of such non-payment.

- 19.2 The notice must state a further date (not earlier than the expiration of 5 days from the date of service of the notice) on or before which the payment required by the notice is to be made and state that, in the event of non-payment at or before the time appointed, the right to dividends in respect of the shares subject to the call will be suspended.

## **20. APPLICATION OF SUSPENDED DIVIDENDS**

- 20.1 All dividends which would have been payable in respect of shares which are subject to a suspension of the right to dividends must be withheld and applied by the company to reduce the amount owing under the call.
- 20.2 The amount owing under the call, for the purposes of clauses 20 and 22 of this constitution may include any interest which may have accrued and all expenses which may have been incurred by the company by reason of non-payment by the shareholder under the call.

## **21. LIABILITY NOT DISCHARGED BY SUSPENSION OF RIGHT TO DIVIDENDS OR TRANSFER OF SHARES**

- 21.1 A shareholder whose shares are the subject of a suspension of the right to dividends remains liable to the company for all money owing under the call, and that liability is not extinguished by a transfer of the shares subject to the suspension to a third party.

## **22. LIFTING OF SUSPENSION OF RIGHT TO DIVIDENDS**

- 22.1 When the total dividends withheld and applied under clause 20 of this constitution equal the total amount owing under the call, including amounts owing under clause 20.2 of this constitution, or when the shares are transferred to a third party, the suspension of the right to dividends will be lifted and all rights to be paid dividends on the shares will resume.

## **23. LIENS**

- 23.1 The company has a first and paramount lien upon every share registered in the name of a shareholder (whether solely or jointly with others) and upon the proceeds of sale of those shares, for all money (whether presently payable or not) payable in respect of shares held by the shareholder, and for all other money presently payable by the shareholder to the company on any account whatever, and also for such amounts (if any) as the company may be called upon to pay under any statute or regulation in respect of shares of a deceased or other shareholder, whether the period for the payment, fulfilment or discharge respectively has actually arrived or not.
- 23.2 The lien extends to all dividends from time to time declared in respect of the shares.

## **24. SALE ON EXERCISE OF LIEN**

- 24.1 The company may sell, in such manner as the board thinks fit, any shares on which the company has a lien, but no sale may be made unless a sum in respect of which the lien exists is due and payable, nor until the expiration of 14 days after a notice in writing, which states and demands payment of the amount due and payable in respect of which the lien exists, has been given to the registered shareholder for the time being or the person entitled to that share by reason of the registered shareholder's death or bankruptcy.

- 24.2 The net proceeds of the sale of any shares sold for the purpose of enforcing a lien is to be applied in or towards satisfaction of any unpaid calls, instalments or any other money payable by the shareholder in respect of which the lien existed. The residue, if any, is to be paid to the former shareholder.
- 24.3 A certificate signed by a director stating that the power of sale provided in this clause 24 of this constitution has arisen and is exercisable by the company under this constitution will be conclusive evidence of the facts stated in the certificate.
- 24.4 In order to give effect to any sale enforcing the lien in the exercise of the powers given to it under clause 24.1 of this constitution the board may authorise any person to execute a transfer of the shares to the purchaser. The purchaser will be registered as the shareholder of the shares which are transferred, and will not be bound to see to the application of the purchase money. The purchaser's title to the shares will not be affected by any irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale will be in damages only and against the company exclusively. If the certificate for the shares is not delivered up to the company the board may issue a new certificate distinguishing it as the board thinks fit from the certificate not delivered up.

## DISTRIBUTIONS

### 25. SOLVENCY TEST

- 25.1 Subject to clause 26 of this constitution, the board may authorise a distribution by the company at a time, and of an amount, and to any shareholders it thinks fit if it is satisfied on reasonable grounds that the company will, immediately after the distribution, satisfy the solvency test. **[Sections 4 and 52(4) of the Act]**
- 25.2 The directors who vote in favour of a distribution must sign a certificate stating that in their opinion the company will, immediately after the distribution, satisfy the solvency test and stating the grounds for that opinion. **[Sections 4 and 52 of the Act]**
- 25.3 For the purpose of this clause in applying the solvency test "debts" and "liabilities" have the meaning given to them in section 52(4) of the Act.

### 26. DIVIDENDS PAYABLE PARI PASSU

- 26.1 Subject to clause 26.3 of this constitution the board must not authorise a dividend:

- (a) In respect of some but not all the shares in a class; or
- (b) That is of a greater value per share in respect of some shares of a class than it is in respect of other shares in that class,

unless the amount of the dividend in respect of a share of that class is in proportion to the amount paid to the company in satisfaction of the liability of the shareholder under the constitution of the company or under the terms of issue of the share or is required, for a portfolio tax rate entity, as a result of section HL 7 of the Income Tax Act 2004.

**[Section 53 of the Act]**

- 26.2 A shareholder may, by notice in writing signed by or on behalf of the shareholder and given to the company, waive his or her entitlement to receive a dividend. **[Section 53(3) of the Act]**

26.3 If all the shareholders of the same class have agreed or concur in writing, a dividend may be authorised otherwise than in accordance with clause 26.1 of this constitution. **[Section 107(1) of the Act]**

## 27. SHARES IN LIEU OF DIVIDEND AND SHAREHOLDER DISCOUNTS

27.1 The board may issue shares in lieu of a proposed dividend or proposed future dividends and may offer shareholders discounts in respect of some or all of the goods sold or services provided by the company in accordance with sections 54 and 55 of the Act respectively.

## 28. FINANCIAL ASSISTANCE ON ACQUISITION OF SHARES

28.1 The company may, subject to and in accordance with sections 52, 76, 77, 78 and 107(1)(e) of the Act, give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, or by its holding company, whether directly or indirectly. **[Section 76 of the Act]**

# PART III SHAREHOLDERS' RIGHTS AND OBLIGATIONS

## EXERCISE OF POWERS RESERVED TO SHAREHOLDERS

### 29. POWERS RESERVED TO SHAREHOLDERS

29.1 Powers reserved to shareholders of the company by the Act or by this constitution may be exercised:

- (a) At an annual meeting or a special meeting; or
- (b) By a resolution in lieu of a meeting pursuant to clause 35. **[Section 104 of the Act]**

29.2 Unless otherwise specified in the Act or this constitution, a power reserved to shareholders may be exercised by an ordinary resolution. **[Section 105 of the Act]**

### 30. SPECIAL RESOLUTIONS

30.1 When shareholders exercise a power to approve any of the following, that power may only be exercised by a special resolution:

- (a) An alteration to or the revocation of this constitution or the adoption of a new constitution; or
- (b) A major transaction; or
- (c) An amalgamation; or
- (d) The liquidation of the company.

30.2 Any decision made by special resolution pursuant to subclauses a. b. and c. of this clause may be rescinded only by a special resolution; a decision made by special resolution pursuant to subclause d. of this clause cannot be rescinded. **[Section 106 of the Act]**

### 31. MANAGEMENT REVIEW BY SHAREHOLDERS

31.1 The chairperson of a meeting of shareholders of the company must allow a reasonable opportunity for shareholders at the meeting to question, discuss, or comment on the management of the company.

31.2 Notwithstanding anything in the Act or any other clause of this constitution, and subject to clause 31.3 of this constitution, a meeting of shareholders may pass a resolution relating to the management of the company.

31.3 A resolution relating to the management of the company passed at a meeting of shareholders is not binding on the board. **[Section 109 of the Act]**

## MEETING OF SHAREHOLDERS

### 32. ANNUAL MEETING

32.1 The board must, in accordance with Section 120 (Annual meeting of shareholders) of the Act, call an annual meeting of shareholders to be held:

- (a) Once in each calendar year other than the year of its registration; and
- (b) Not later than 6 months after the balance date of the company; and
- (c) Not later than 15 months after the previous annual meeting, or in respect of its first annual meeting not later than 18 months after its date of registration.

32.2 The company must hold the annual meeting on the date on which it is called to be held. **[Section 120 of the Act]**

### 33. SPECIAL MEETINGS

33.1 A special meeting of shareholders entitled to vote on an issue:

- (a) May be called at any time by the board or a person who is authorised by this constitution to call the meeting; and
- (b) Must be called by the board on the written request of shareholders holding not less than 5% of the voting rights entitled to be exercised on the issue. **[Section 121 of the Act]**

### 34. PROCEEDURE FOR MEETINGS OF SHAREHOLDERS

34.1 The provisions of Schedule 1 to this constitution govern proceedings at and in relation to meetings of shareholders of the company. Schedule 1 of the Act shall accordingly not apply to the Company.

### 35. RESOLUTION IN LIEU OF MEETING

- 35.1 Subject to sections 122(2) and (3) of the Act, a resolution in writing signed by not less than 75% of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders who together hold not less than 75% 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. Such a resolution may consist of several documents in like form (including letters, facsimiles, electronic mail, or other similar means of communication), each signed by one or more shareholders. **[Section 122 of the Act]**

## PART IV THE BOARD

### POWERS AND DUTIES OF THE BOARD

#### 36. POWERS OF THE BOARD

- 36.1 The business and affairs of the company must be managed by or under the direction or supervision of the board.
- 36.2 The board has, and may exercise, all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company, except to the extent that this constitution or the Act expressly requires those powers to be exercised by the shareholders or any other person. **[Section 128 of the Act]**

#### 37. DELEGATION BY THE BOARD

- 37.1 The board may delegate to a committee of directors, a director, or an employee of the company, or any other person, any one or more of its powers other than the following powers:
- (a) Section 23(1)(c) (change of company names):
  - (b) Section 42 (issue of shares):
  - (c) Section 44 (shareholder approval to the issue of shares):
  - (d) Section 47 (consideration for the issue of shares):
  - (e) Section 49 (consideration in relation to issue of options and convertible financial products):
  - (f) Section 52 (distributions):
  - (g) Section 54 (issue of shares in lieu of dividends):
  - (h) Section 55 (shareholder discounts):
  - (i) Section 60 (offers to acquire shares):
  - (j) Section 61 (special offers to acquire shares):
  - (k) Section 63 (stock exchange acquisitions subject to prior notice to shareholders):
  - (l) Section 65 (stock exchange acquisitions not subject to prior notice to shareholders):
  - (m) Section 69 (redemption of shares at the option of a company):

- (n) Section 71 (special redemptions of shares):
- (o) Section 76 (provision of financial assistance):
- (p) Section 78 (special financial assistance):
- (q) Section 80 (financial assistance not exceeding 5 percent of shareholders' funds):
- (r) Section 84(4) (transfer of shares):
- (s) Section 187 (change of registered office):
- (t) Section 193 (change of address for service):
- (u) Section 221 (manner of approving an amalgamation proposal):
- (v) Section 222 (short form amalgamations).

**[Section 130 and Second Schedule to the Act]**

- 37.2 The board is responsible for the exercise by any delegate of a power delegated under this clause 37 as if the power had been exercised by the board, unless the board:
- (a) Believed on a reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the directors by the Act and this constitution; and
  - (b) Has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate. **[Section 130 of the Act]**

**38. DIRECTORS TO ACT IN GOOD FAITH**

- 38.1 A director, when exercising powers or performing duties, must act in good faith and in what the director believes to be [in](#) the best interests of the company.
- 38.2 If the company is a wholly-owned subsidiary, a director may, when exercising the powers or performing duties as a director, act in a manner which he or she believes is in the best interests of the company's holding company even though it may not be in the best interests of the company.
- 38.3 If the company is a subsidiary (but not a wholly-owned subsidiary) a director may, when exercising powers or performing duties as a director, with the prior agreement of the shareholders (other than its holding company), act in a manner which he or she believes is in the best interests of the company's holding company even though it may not be in the best interests of the company.
- 38.4 If the company is incorporated to carry out a joint venture between its shareholders the director may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, act in a manner which he or she believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company. **[Section 131 of the Act]**

**39. MAJOR TRANSACTIONS**

- 39.1 The board may not procure or permit the company to enter into a major transaction unless the transaction is:
- (a) Approved by special resolution; or
  - (b) Contingent on approval by special resolution. **[Section 129 of the Act]**



## 40. PROCEEDINGS OF BOARD

- 40.1 The provisions of Schedule 2 to this constitution govern proceedings at and in relation to meetings of the board. Schedule 3 of the Act shall accordingly not apply to the company.

## DIRECTORS

### 41. NUMBER OF DIRECTORS

- 41.1 The minimum number of directors is six (6) and the maximum number is seven (7), provided that any directors appointed in accordance with clause 46.1(b) shall not be taken into account when determining whether such minimum or maximum has been exceeded.

### 42. EXISTING DIRECTORS TO CONTINUE

- 42.1 The persons holding office as directors on the date of adoption of this constitution continue in office and are deemed to have been appointed as directors pursuant to this constitution.

### 43. QUALIFICATION OF DIRECTOR

- 43.1 Not more than two directors may be members or employees of any shareholding local authority at the same time as they hold office as directors of the company.

### 44. APPOINTMENT AND REMOVAL BY NOTICE

- ~~44.1 Subject to clauses 42, 45 and 46 of this constitution the directors are the persons appointed from time to time as directors by a notice in writing signed by the holders of the majority of the ordinary shares, who have not been removed or been disqualified or resigned from office under this constitution.~~

~~**[Section 153 of the Act]**~~

- ~~44.2 A director may be removed from office at any time by a notice in writing signed by the holders of the majority of the ordinary shares.~~

~~**[Section 156 of the Act]**~~

~~The Nelson City Council shall be entitled to appoint and remove one director at any time by notice in writing given pursuant to a resolution of the Nelson City Council and signed by an authorised officer of the Nelson City Council, addressed to the company ("the NCC Director").~~

~~The Tasman District Council shall be entitled to appoint and remove one director at any time by notice in writing given pursuant to a resolution of the Tasman District Council and signed by an authorised officer of the Tasman District Council, addressed to the company ("the TDC Director").~~

~~Directors may only be appointed or removed pursuant to sub-clauses (44.3) and (44.4) of this clause by each of the Councils in accordance with the provisions of the Directors/Trustees Appointments Policy of the Council appointing or removing a Director in place at the time of such appointment or removal is made.~~

- ~~The balance of directors (three to four directors) shall be neither members nor employees of the Nelson City Council or the Tasman District Council and may be appointed and removed by an ordinary resolution of shareholders.~~
- ~~44.3 A notice given under clauses 44.1 or 44.2 of this constitution takes effect upon receipt of it at the registered office of the company (including receipt by way of letter, facsimile, electronic mail, or other similar means of communication) unless the notice specifies a later time at which the notice will take effect. The notice may comprise one or more similar documents separately signed by shareholders giving the notice.~~
- ~~44.1 The Nelson City Council shall be entitled to appoint one (1) director at any time and may likewise remove and/or replace that one (1) director at any time, in each case by notice in writing to the Company signed by a duly authorised officer of the Nelson City Council.~~
- ~~44.2 The Tasman District Council shall be entitled to appoint one (1) director at any time and may likewise remove and/or replace that one (1) director at any time, in each case by notice in writing to the Company signed by a duly authorised officer of the Tasman District Council.~~
- ~~44.3 The Nelson City Council and the Tasman District Council shall be jointly entitled to appoint, remove and replace up to five (5) directors at any time by notice in writing to the Company signed by both a duly authorised officer of the Tasman District Council and a duly authorised officer of the Nelson City Council.~~
- ~~44.4 A notice given under clauses 44.1, 44.2 or 44.3 of this constitution takes effect upon receipt of it at the registered office of the company (including receipt by way of letter, facsimile, 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). The notice may comprise one or more similar documents separately signed by shareholders giving the notice.~~
- ~~44.444.5 A director holds office until his or her resignation, retirement, disqualification or removal in accordance with this constitution.~~  
**[Section 157 of the Act]**
- 45. NO APPOINTMENT AND OR REMOVAL OF DIRECTORS BY RESOLUTION**
- ~~45.1 In addition to the appointment or removal of directors under clause 44 of this constitution, a director may be appointed or removed from office by an ordinary resolution.~~
- ~~45.2 A resolution to appoint 2 or more directors may be voted on as one resolution without each appointment being voted individually. **[Section 155 of the Act]**~~
- ~~45.3 A notice of a meeting at which the removal of a director will be considered must state that the purpose of the meeting is the removal of the director. **[Section 156(2) of the Act]**~~
- ~~45.1 Directors may not be appointed or removed by a resolution of Shareholders.~~  
**[Section 155 and section 156 of the Act]**

**46. APPOINTMENT OF DIRECTORS TO FILL TEMPORARY VACANCY**

- ~~46.1 In addition to the appointment or removal of directors under clauses 44 and 45 of this constitution, 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 41 above and with written approval of the shareholders holding in aggregate a majority of the voting shares; and/or-

(a)(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.

46.2 Subject to their earlier resignation, retirement, disqualification or removal in accordance with this constitution, any director appointed under this clause 46 will cease to hold office at the commencement of the next annual meeting of the company or at the next special general meeting whichever is earlier.

46.3 Subject to the Act and this constitution that director will be eligible for ~~election-re-~~appointment as a director.

## 47. ROTATION

### 47.1 Number to Retire

Subject to clause 47.3, Aat the annual general 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, shall retire from office. A retiring director shall hold office until the dissolution or adjournment of the annual general meeting ~~at which his/her successor is elected~~. A retiring director shall be eligible for re-~~election-~~appointment unless he/she is disqualified under this constitution.

### 47.2 Directors to Retire

Subject to clause 47.3, The directors to retire at an annual general meeting shall be those directors who have been longest in office since their last ~~election-~~appointment. As between persons who became directors on the same day those who retire shall, unless they otherwise agree among themselves, be determined by lot.

### 47.3 Exceptions to Rotation Policy

The Nelson City Council and Tasman District Council may, by way of a notice in writing to the company signed by both a duly authorised officer of the Tasman District Council and a duly authorised officer of the Nelson City Council, jointly direct that the retirement procedure set out in clauses 47.1 and 47.2 be varied in respect of one or more annual general meetings (for example, by directing that a particular director shall not be required to retire by rotation at a particular annual general meeting) and such notice shall be effective and binding upon the company and its directors notwithstanding clauses 47.1 and 47.2.

### ~~47.3 Re-election of Retiring Directors~~

~~The company at the meeting at which a director retires may fill the vacated office by electing a person to it and in default the retiring director shall if offering himself/herself for re-election be deemed to have been re-elected unless at that meeting it is expressly resolved not to fill the vacated office or unless a resolution for the re-election of that director is put to the meeting and lost.~~

### ~~47.4 Nomination of Directors~~

No person, other than a director retiring at the meeting, shall be eligible for election to the office of director at any general meeting unless the person has been nominated by a shareholder or the directors and not later than ten days before the date appointed for the meeting there has been left at the office notice in writing, signed by the shareholder qualified to attend and vote at the meeting for which the notice is given, nominating a person for election, together with notice in writing signed by that person expressing the person's willingness to be elected.

#### ~~47.5~~ **Notice of Nominations to be Sent to Members**

~~Notice of every valid nomination for the office of director shall either be included in the notice of the meeting or be sent by the company to each person entitled to receive notice of the meeting not less than 7 days before the meeting. Failure to give the notice shall not invalidate the nomination, but if notice of nomination is not given as required by this clause the meeting, so far as election of directors is concerned, shall stand adjourned until some later date to be fixed by the chairman of the meeting. Not less than 7 days' notice of the nomination shall be given before any adjourned meeting may proceed to elect directors.~~

#### ~~47.6~~ **Change in Rotation**

~~The company may from time to time by ordinary resolution change the provisions of these clauses dealing with rotation of directors but at no time shall the number of directors be reduced to less than six (6).~~

### **48. DISQUALIFICATION AND REMOVAL**

48.1 A person will be disqualified from holding the office of director if he or she is removed under clause 44, ~~45~~ or 46 of this constitution or he or she:

- (a) Dies; or
- (b) Becomes subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988; or
- ~~(c)~~ ~~Attains or is over the age of 70 years; or~~
- ~~(d)~~ ~~Is under 18 years of age; or~~
- ~~(e)~~(c) Is an undischarged bankrupt; or
- ~~(f)~~(d) Is prohibited by the Companies Act 1955 from being a director or officer or promoter or would be so prohibited but for the repeal of that Act; or
- ~~(g)~~(e) Is prohibited by the Companies Act 1993 from being a director or officer or promoter or taking part in the management of the company; or
- ~~(h)~~(f) Resigns in writing; or
- ~~(i)~~(g) Is absent without permission of the directors from three (3) consecutive meetings of the directors; or
- ~~(j)~~(h) Becomes a member or employee of any shareholding local authority if there are already two directors who are members or employees of shareholding local authorities. Where two (2) or more directors are elected as members of shareholding local authorities at the same election and the effect is that there

would be more than two directors who are also members or employees of shareholding local authorities, the directors so elected to the shareholding local authorities shall determine which of them is or are not to hold office as directors or are to vacate membership of the shareholding local authorities. In the absence of agreement the matter shall be determined by lot with the losing director or directors having the option to relinquish either the directorship of the company or the membership of the local authority or local authorities concerned: or

~~(k)(i)~~ He or she is an executive director and ceases to be employed by the company.

#### 49. **SHAREHOLDING OUALIFICATION**

49.1 A director is not required to hold shares.

#### 50. **INDEMNITY OF DIRECTORS AND EMPLOYEES**

50.1 For the purpose of clauses 50 and 51 "director" includes a former director and "employee" includes a former employee.

50.2 The board may cause the company to indemnify a director or employee of the company or a related company for any costs incurred by him or her in any proceeding:

- (a) That relates to liability for any act or omission in his or her capacity as a director or employee; and
- (b) In which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.  
**[Section 162(3) of the Act]**

50.3 The board may cause the company to indemnify a director or an employee of the company or a related company in respect of:

- (a) Liability to any person other than the company or a related company for any act or omission in his or her capacity as a director or employee; or
- (b) Costs incurred by the director or employee in defending or settling any claim or proceeding relating to any liability under subparagraph a. above not being criminal liability or liability in respect of a breach, in the case of a director, of the duty specified in section 131 of the Act or, in the case of an employee, of any fiduciary duty owed to the company or related company. **[Section 162(4) of the Act]**

#### 51. **INSURANCE OF DIRECTORS AND EMPLOYEES**

51.1 The board may, subject to section 162 of the Act, cause the company to effect insurance for a director or for an employee of the company or a related company in respect of:

- (a) Liability, not being criminal liability for any act or omission in his or her capacity as a director or employee; or
- (b) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability under subclause a.; or
- (c) Costs incurred by that director or employee in defending any criminal proceedings in which he or she was acquitted. **[Section 162(5) of the Act]**

- 51.2 The directors who vote in favour of authorising the effecting of insurance under clause 52.1 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the company. **[Section 162(6) of the Act]**
- 51.3 The board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the company or related company, are forthwith entered in the company's interests register. **[Section 162(7) of the Act]**.

## REMUNERATION OF DIRECTORS

### 52. AUTHORITY TO REMUNERATE DIRECTORS

- 52.1 The Board may not exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section to or in respect of a Director in his or her capacity as such, without the prior approval of all Shareholders. For the avoidance of doubt, such approval may express the Directors' remuneration as either:
- (a) a monetary sum per annum payable to all Directors taken together; or
  - (b) a monetary sum per annum payable to each person from time to time holding office as a Director.
- 52.2 The Board must ensure that it complies with the provisions of section 161 of the Act whenever it exercises a power conferred by that section to authorise any payment or other benefit of the kind referred to in that section.

### 53. OTHER OFFICES WITH COMPANY HELD BY DIRECTOR

- 53.1 Any director may act by himself or herself or by the director's firm in a professional capacity for the company, and the director or the director's firm will be entitled to remuneration for professional services as if the director were not a director. Nothing in this clause authorises a director or the director's firm to act as auditor to the company.
- 53.2 A director may hold any other office or place of profit in the company (other than the office of auditor) in conjunction with the director's office of director for such period and on such terms (as to remuneration and otherwise) as the board may determine.
- 53.3 Other than as provided in clause 54 a director is not disqualified by virtue of his or her office from entering into any transaction with the company. Any such transaction will be valid and enforceable to the same extent as if he or she were not a director and not in a fiduciary relationship with the company.

## INTERESTED DIRECTORS

### 54. NOTICE OF INTEREST TO BE GIVEN

- 54.1 A director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the company, cause to be entered in the interests register, and, if the company has more than one director, disclose to the board of the company:

- (a) If the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
- (b) If the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.

54.2 For the purposes of clause 54.1 a general notice entered in the interests register or disclosed to the board to the effect that a director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction. **[Section 140 of the Act]**

## 55. **RIGHT OF INTERESTED DIRECTOR TO VOTE**

55.1 A director may vote in respect of any transaction in which the director is interested, and 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.  
**[Section 144 of the Act]**

## MISCELLANEOUS

### 56. **DIRECTORS NOT TO SELL MAIN UNDERTAKING**

56.1 Without limiting Section 129 of the Act (which requires approval of a major transaction by a special resolution) the directors shall not sell, lease, let, exchange or otherwise dispose of (other than by way of charge) twenty percent (20%) or more of the total assets in aggregate of the company either absolutely or conditionally without the prior approval of the company in general meeting.

### 57. **RESTRICTION ON CERTAIN DEALINGS WITH ASSETS**

57.1 Without limiting Section 129 of the Act (which requires approval of a major transaction by a special resolution) neither the company nor any of its subsidiaries shall, without the prior approval of the company in general meeting, enter into any agreement for the acquisition or disposition of assets with a value in excess of twenty percent (20%) of the total assets in aggregate of the company at the date to which the last audited accounts were made up where the vendor or purchaser is or was at any time during the six months immediately preceding the date of the agreement:

- (a) a director or officer of the company or any of its subsidiaries; or
- (b) the beneficial owner of 10% or more of the company's issued voting capital; or
- (c) a person or company associated with either the company or any of its subsidiaries or any of their directors or officers.

The notice of meeting containing the resolution to approve any intended transaction of this kind shall contain all reports, valuations and other material prepared by independent experts as are necessary to enable the shareholders to decide whether the transaction price is a fair price. Nothing in this clause shall apply to the transfer of financial instruments, stock in trade, or current assets between a bank and any company related to that bank.

### 58. **AUDIT**

58.1 The auditors of the company shall be the Auditor General as provided in Section 19 of the Port Companies Act 1988 or such other auditor as may be permitted by legislation regulating the company.



## 59. NOTICES

### 59.1 Service

Notice may be served by the company upon any director or shareholder, either personally by pre-paid courier delivery, by post or by fastpost in a pre-paid envelope or package addressed to such director or shareholder at such person's last known address or by delivery to a document exchange or by facsimile to the facsimile number of such director or shareholder or by electronic means.

### 59.2 Time of Service by Facsimile

A notice served by facsimile is deemed to have been served on the day following completion of its transmission.

### 59.3 Time of Service by Post

A notice sent by post or delivered to a document exchange is deemed to have been served:

- (a) In the case of a person whose last known address is in New Zealand, at the end of 48 hours after the envelope or package containing the same was posted or delivered in New Zealand; and
- (b) In the case of a person whose last known address is outside New Zealand, at the expiration of 7 days after the envelope or package containing the same was posted by fastpost in New Zealand.

### 59.4 Time of service by electronic means

A notice sent by electronic means is deemed to have been served when an acknowledgement of receipt sent by the recipient of the notice and transmitted by electronic means has been received.

### 59.5 Proof of Service

In proving service by post or delivery to a document exchange, it is sufficient to prove that the envelope or package containing the notice was properly addressed and posted or delivered with all attached postal or delivery charges paid. In proving service by facsimile, it is sufficient to prove that the document was properly addressed and sent by facsimile. In proving service by electronic means, the acknowledgement of receipt from the recipient of the notice is sufficient proof of service.

### 59.6 Service on Joint Holders

A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the share register in respect of the share.

### 59.7 Service of Representatives

A notice may be given by the company to a person or persons entitled to a share in consequence of the death or bankruptcy of a shareholder by addressing it to such person or persons by name or by title or by any appropriate description, at the address (if any) within New Zealand supplied for the purpose by the person or persons claiming to be so entitled, or (until such time an address has been supplied) by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

## 60. REMOVAL FROM THE NEW ZEALAND REGISTER

60.1 In the event that:

- (a) The company has ceased to carry on business has discharged in full its liabilities to all known creditors and has distributed its surplus assets in accordance with this constitution and the Act; or
- (b) The company has no surplus assets after paying its debts in full or in part and no creditor has applied to the Court under section 241 of the Act for an order putting the company into liquidation:

the board of directors may, in the prescribed form, request the Registrar of Companies to remove the company from the New Zealand register.

## 61. METHOD OF CONTRACTING

61.1 A contract or other enforceable obligation may be entered into by a company as follows:

- (a) An obligation which, if entered into by a natural person, would, by law, be required to be by deed may be entered into on behalf of the company in writing signed under the name of the company by:
  - (i) two or more directors of the company; or
  - (ii) if there is only one director, by that director whose signature must be witnessed; or
  - (iii) a director, or other person or class of persons whose signature or signatures must be witnessed, provided that such persons signing on behalf of the company must first be approved by the board; or
  - (iv) one or more attorneys appointed by the company in accordance with section 181 of the Act.
- (b) An obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the company in writing by a person acting under the company's express or implied authority:
- (c) An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the company in writing or orally by a person acting under the company's express or implied authority. **[Section 180 of the Act]**

61.2 Clause 61.1 applies to a contract or other obligation:

- (a) whether or not that contract or obligation was entered into in New Zealand; and
- (b) whether or not the law governing the contract or obligation is the law of New Zealand.

## 62. APPOINTMENT OF ATTORNEY

- 62.1 The company may by instrument in writing executed in accordance with section 180(1)(a) of the Act appoint a person as its attorney either generally or in relation to a specified matter and the provisions of section 181 of the Act will apply. **[Section 181 of the Act]**

## **SCHEDULE 1 PROCEEDINGS FOR MEETINGS OF SHAREHOLDERS**

### **1. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS**

- 1.1 The chairperson of the board, if one has been elected and is present at a meeting of shareholders, must chair the meeting.
- 1.2 If no chairperson has been elected or if, at any meeting of shareholders, the chairperson is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of their number to chair the meeting.

### **2. NOTICE OF MEETINGS**

- 2.1 Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting, and to every director and an auditor of the company not less than 10 working days before the meeting. With the consent of all shareholders entitled to attend and vote at a meeting, it may be convened by such shorter notice and in such manner including the contents of the notice as those shareholders agree.

### **3. CONTENTS OF NOTICE**

- 3.1 The notice referred to in clause 2 of this Schedule must state:
- (a) The nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
  - (b) The text of any resolution to be submitted to the meeting; and
  - (c) The postal address to which postal votes may be sent and the name or office of the person to whom they may be sent; and
  - (d) That the postal vote must be received by the person referred to in paragraph c. at least 48 hours prior to the time of the meeting.

### **4. IRREGULARITIES IN NOTICE**

- 4.1 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceeding of that meeting.
- 4.2 Notwithstanding clause 3 of this Schedule, an irregularity in a notice of a meeting required by clause 2 of this Schedule is waived if all the shareholders entitled to attend and vote at the meeting do attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.

## 5. METHOD OF HOLDING MEETING

- 5.1 A meeting of shareholders, where notice of the meeting has been given, may be held either:
- (a) By a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
  - (b) By means of audio, audio and visual, or electronic communication by which all shareholders participating and constituting a quorum can simultaneously hear each other throughout the meeting; or
  - (c) By a combination of both of the methods described in sub-clauses (a) and (b) above.

## 6. ADJOURNMENTS

- 6.1 If a meeting of shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned provided that except for adjournments later that same day any director not present is to be advised of the date, time, place and business left unfinished which is to be transacted at the adjourned meeting.

## 7. MINUTES

- 7.1 The board must ensure that minutes are kept of all proceedings at meetings of shareholders.
- 7.2 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

## 8. QUORUM

- 8.1 A quorum for a meeting of shareholders is present if those shareholders or their proxies who are present or who have cast postal votes are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.
- 8.2 No business may be transacted at a meeting of shareholders if a quorum is not present.
- 8.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) In the case of a meeting called pursuant to a requisition of shareholders under clause 33.1(b) of this constitution the meeting is dissolved;
  - (b) In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the directors may appoint, and if at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present or their proxies are a quorum.
- 8.4 To avoid doubt, a shareholder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.

## 9. VOTING

- 9.1 In the case of a meeting of shareholders held under clause 5.1(a) of this Schedule, unless a poll is demanded, voting at the meeting must be by whichever of the following methods is determined by the chairperson of the meeting:
- (a) Voting by voice; or
  - (b) Voting by show of hands.
- 9.2 In the case of a meeting of shareholders held under clause 5.1(b) or 5.1(c) of this Schedule, unless a poll is demanded, voting at the meeting must be by the shareholders signifying individually their assent or dissent by voice.
- 9.3 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 9.4 of this Schedule.
- 9.4 At a meeting of shareholders a poll may be demanded by:
- (a) The chairperson; or
  - (b) Not less than 5 shareholders having the right to vote at the meeting; or
  - (c) A shareholder or shareholders representing not less than 10% of the total voting rights of all shareholders having the right to vote at the meeting; or
  - (d) By a shareholder or shareholders holding the shares that confer a right to vote at a meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all shares that confer that right.
- 9.5 A poll may be demanded either before or after the vote is taken on a resolution.
- 9.6 If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present in person or by proxy and voting.
- 9.7 The chairperson of a shareholders' meeting is not entitled to a casting vote.

## 10. PROXIES AND REPRESENTATIVES

- 10.1 A shareholder may exercise the right to vote either by being present in person or by proxy.
- 10.2 A proxy for a shareholder is entitled to attend, be heard and vote at a meeting of shareholders as if the proxy were the shareholder.
- 10.3 A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months. The notice must (so far as the subject matter and form of the resolutions to be passed at the relevant meeting reasonably permit) provide for either way voting on all resolutions, enabling the appointor to instruct the proxy as to the casting of the vote.
- 10.4 The company shall send a form of notice of appointment of proxy to every shareholder entitled to attend and vote at a meeting with the notice convening the meeting.

- 10.5 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the person referred to in clause 3.1(c) of this Schedule at least 48 hours before the start of the meeting. The chairperson may generally or in respect of any particular shareholder waive the requirements of this clause 10.5.
- 10.6 A body corporate which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy.

## 11. **POSTAL VOTES**

- 11.1 A shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this clause 11.
- 11.2 To avoid doubt, a postal vote may be cast using electronic means permitted by the board.
- 11.3 The notice of a meeting at which shareholders are entitled to cast a postal vote must state the name of the person authorised by the board to receive and count postal votes at that meeting.
- 11.4 If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.
- 11.5 A shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which the shareholders' shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.
- 11.6 Any person authorised to receive and count postal votes at a meeting:
- (a) Must collect together all postal votes received by him or her or by the company; and
  - (b) In relation to each resolution to be voted on at a meeting, must count:
    - (i) The number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and
    - (ii) The number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution; and
  - (c) Must sign a certificate that he or she has carried out the duties set out in paragraphs a. and b. of this clause and which sets out the results of the counts required by paragraph b. of this clause; and
  - (d) Must ensure that the certificate required by paragraph c. of this clause is presented to the chairperson of the meeting.
- 11.7 If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must:
- (a) On a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution; and

- (b) On a poll count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.

- 11.8 The chairperson of a meeting must call for a poll on a resolution on which the chairperson receives the certificate provided in clause 11.6.d indicating sufficient postal votes that the chairperson believes that if a poll were taken the result could differ from that obtained on a show of hands.
- 11.9 The chairperson of a meeting must ensure that a certificate of postal vote held by the chairperson is annexed to the minutes of the meeting.

## **12. SHAREHOLDER PROPOSALS**

- 12.1 A shareholder may give written notice to the board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of the shareholders at which the shareholder is entitled to vote.
- 12.2 The notice must be received by the board not less than 10 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board.
- 12.3 The board must give notice of a shareholder proposal and the text of a proposed resolution received by it under clause 12.1 of this Schedule in the notice of the meeting given to shareholders, and, if the directors intend that shareholders may vote on that proposal by proxy or by postal vote, they must give the proposing shareholder the right to include in the notice of meeting a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.
- 12.4 The costs incurred or to be incurred by the board under clause 12.3 of this Schedule must be met by the proposing shareholder by depositing with or tendering to the company a sum sufficient to meet those costs.
- 12.5 The board is not required to include in the notice of meeting a statement prepared by a shareholder which the board considers to be defamatory, frivolous or vexatious

## **13. VOTES OF JOINT HOLDERS**

- 13.1 Where 2 or more persons are recorded in the register as the holder of a share, the vote of the person named first in the register and voting on a resolution will be accepted to the exclusion of the votes of the other joint holders.

## **14. UNPAID SHARES**

- 14.1 If a sum due to the company in respect of a share has not been paid, that share may not be voted at a shareholders' meeting other than at a meeting of an interest group.

## **15. OTHER PROCEEDINGS**

- 15.1 Except as provided in this Schedule, and subject to the constitution of the company, a meeting of shareholders may regulate its own procedure.



**16. SHAREHOLDER PARTICIPATION BY ELECTRONIC MEANS**

- 16.1 For the purposes of this Schedule, a shareholder, or the shareholder's proxy or representative, may participate in a meeting by means of audio, audio and visual, or electronic communication if—
- (a) the board approves those means; and
  - (b) the shareholder, proxy, or representative complies with any conditions imposed by the board in relation to the use of those means (including, for example, conditions relating to the identity of the shareholder, proxy, or representative and that person's approval or authentication (including electronic authentication) of the information communicated by electronic means).
- 16.2 To avoid doubt, participation in a meeting includes participation in any manner specified in this schedule or permitted by the remainder of this constitution.

## **SCHEDULE 2 PROCEEDINGS FOR MEETINGS OF THE BOARD**

### **1. CHAIRPERSON**

- 1.1 The directors may elect one of their number as chairperson of the board and determine the period for which the chairperson is to hold office.
- 1.2 The director elected as chairperson holds that office until he or she dies or resigns or the directors elect a chairperson in his or her place.
- 1.3 If no chairperson is elected, or if at a meeting of the board the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the deputy chairperson (if elected and present) shall be chairperson of the meeting, or if a deputy chairperson has not been elected or is not present the directors present may choose one of their number to be chairperson of the meeting.

### **2. DEPUTY CHAIRPERSON**

- 2.1 The directors may elect one of their number as deputy chairperson of the board and determine the period for which the deputy chairperson is to hold office.
- 2.2 The director elected as deputy chairperson holds that office until he or she dies or resigns or the directors elect a deputy chairperson in his or her place.

### **3. NOTICE OF MEETING**

- 3.1 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 3 of this Schedule 2.
- 3.2 Not less than 2 days' notice of a meeting of the board must be given to every director who is in New Zealand, and the notice must include the date, time and place of the meeting and the matters to be discussed.
- 3.3 An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.
- 3.4 Notice of a meeting may be given by any means, including by telephone. Notice given by a letter addressed to a director at his or her last known residential address will be deemed to have been received by the director the day following the date the letter is posted.

### **4. MEETINGS OF BOARD**

- 4.1 A meeting of the board may be held either:
  - (a) By a number of directors sufficient to form a quorum being assembled together at the place, date and time appointed for the meeting; or

- (b) By means of audio, or audio and visual communication by which all the directors participating in the meeting and constituting a quorum can simultaneously hear each other throughout the meeting; or
- (c) by a combination of both of the methods described in sub-clauses (a) and (b) above.

## 5. QUORUM

- 5.1 A quorum for a meeting of the board is a majority of the directors.
- 5.2 No business may be transacted at a meeting of directors if a quorum is not present.

## 6. VOTING

- 6.1 Every director has one vote.
- 6.2 The chairperson does not have a casting vote.
- 6.3 A resolution of the board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it.
- 6.4 A director present at a meeting of the board is presumed to have agreed to, and to have voted in favour of, a resolution of the board unless he or she expressly dissents from or votes against the resolution at the meeting.

## 7. MINUTES

- 7.1 The board must ensure that full and accurate minutes are kept of all proceedings at meetings of the board.

## 8. UNANIMOUS RESOLUTION

- 8.1 A resolution in writing, signed or assented to by all directors is as valid and effective as if it had been passed at a meeting of the board duly convened and held.

Any such resolution may consist of several documents (including letters, facsimiles, electronic mail, or other similar means of communication) in like form each signed or assented to by one or more directors. A copy of any such resolution must be entered in the minute book of board proceedings.

## 9. CONTINUING DIRECTORS

- 9.1 Notwithstanding any vacancy in the number of directors, the board will continue to comprise the continuing directors, but, if their number is reduced below the number fixed by or pursuant to this constitution as the minimum number of directors, the continuing directors may act only for the purpose of increasing the number of directors to the minimum number, or for summoning a general meeting of the company.

## 10. OTHER PROCEEDINGS

- 10.1 Except as provided in clauses 1 to 9 of this Schedule 2 the board may regulate its own procedure.

## **(c) CONSTITUTION OF PORT NELSON LIMITED**

### **(d) CERTIFICATE**

I certify that this document was adopted as the Constitution of Port Nelson Limited by Special Resolution on **February 18<sup>th</sup>, 2016**

---

Company Secretary

**PITT & MOORE**  
Solicitors  
Nelson

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## CONSTITUTION OF PORT NELSON LIMITED pursuant to the Companies Act 1993

### PART I

#### INTERPRETATION

##### 1. DEFINITIONS

1.1 In this constitution unless the context otherwise requires the following words and expressions have the meanings given to them in this clause:

"**Act**" means the Companies Act 1993 and includes amendments and any act in substitution.

"**amalgamation**" means the completed act of the company and another company amalgamating to form a new company in their place. [**Section 219 of the Act**]

"**assets**" include property of any kind, whether tangible or intangible.

"**balance date**" means the close of 31 March or such other date as the board adopts as the company's balance date. [**Section 41 of the Financial Reporting Act 2013**]

"**call**" means a resolution of the board pursuant to clause 15 of this constitution requiring shareholders to pay all or part of the unpaid amount of the issue price of any shares referred to in the resolution held by the shareholder, and where the context requires means the obligation of a shareholder to meet the amount due pursuant to such a resolution.

"**chairperson**" means the chairperson of the board elected pursuant to clause 1 of Schedule 2 of this constitution.

"**company**" means Port Nelson Limited.

"**director**" means a person appointed and continuing in office for the time being, in accordance with this constitution, as a director of the company.

"**general meeting**" means any meeting of shareholders, other than a meeting of an interest group.

"**major transaction**" means:

- a. the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the company's assets before the acquisition; or
- b. the disposition of, or an agreement to dispose of, whether contingent or not, assets of the company the value of which is more than half the value of the company's assets before the disposition; or
- c. a transaction that has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the company's assets before the transaction. [**Section 129(2) of the Act**]

"**month**" means calendar month.

**"office"** means the registered office for the time being of the company.

**"ordinary share"** means a share which confers on the holder:

- (a) the right to vote at meetings of shareholders and on a poll to cast one vote for each share held; and
- (b) subject to the rights of any other class of shares, the right to an equal share in dividends and other distributions made by the company; and
- (c) subject to the rights of any other class of shares, the right to an equal share in the distribution of the surplus assets of the company on its liquidation.

**"share"** means a share in the capital of the company the issue of and rights attaching to which are provided for by this constitution.

**"shareholder"** means a person:

- (a) registered in the share register as the holder of one or more shares; and
- (b) until such time as his, her or its name is entered in the share register, a person named as a shareholder in the application for registration of the company at the time of the incorporation of the company; and
- (c) until such time as his, her or its name is entered in the share register, a person who is entitled to have that person's name entered in the share register under a registered amalgamation proposal as a shareholder in an amalgamated company.

**"shareholding local authority"** means any territorial authority, regional authority or unitary authority that, directly or indirectly, holds any equity securities (as defined in the Financial Markets Conduct Act 2013) in the company in any class that confers the right to vote at any general meeting of the company.

**"working day"** means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day and Waitangi Day; and
- (b) if Anzac Day or Waitangi Day fall on a Saturday or Sunday, the following Monday; and
- (c) A day in the period commencing on 25 December in any year and ending on 2 January in the following year; and
- (d) If the 1st day of January in any year falls on a Friday, the following Monday; and
- (e) If the 1st day of January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

1.2 **"writing"** includes all modes of representing or reproducing words, figures or symbols in a visible form including reproduction by facsimile machine, by electronic mail, or other similar means of communication.

1.3 Words importing the singular number also include the plural number and vice versa.

1.4 A reference to a person includes any firm, company or other body corporate.



- 1.5 Words importing one gender include the other genders.
- 1.6 Expressions contained in this constitution bear the same meaning as in the Act at the date on which this constitution becomes binding on the company.
- 1.7 A reference to a clause means a clause of this constitution.
- 1.8 Except to the extent modified by this constitution the Act applies to the company.

## 2. **PORT COMPANIES ACT**

- 2.1 This company is a port company within the provisions of the Port Companies Act 1988 and all the obligations and duties of the Board (in the Port Companies Act 1988 called "the directorate") and any other person under that Act shall continue in full force and effect. The Board shall so manage the company as to achieve the principal objectives described in Section 5 of the Port Companies Act 1988.

## **PART II CAPITAL SHARES AND DIVIDENDS**

### 3. **CLASSES OF SHARES**

- 3.1 Different classes of shares may be issued including without limitation shares which:

- (a) are redeemable within the meaning of the Act; or
- (b) confer preferential rights to distributions of capital or income; or
- (c) confer special, limited, or conditional voting rights; or
- (d) do not confer voting right. **[Section 37 of the Act]**

- 3.2 The company has the power to 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 specified or to be calculated by reference to a formula or required to be fixed by a suitably qualified person who is not associated with or interested in the company.

### 4. **SHARE ISSUES AND CONSIDERATION**

- 4.1 The issue of shares by the company, including the consideration for any share issue and certain matters which the board must attend to in relation to every proposed share issue, are governed by sections 42 to 51 (inclusive) and section 107 of the Act.

## 5. AMOUNT OWING ON ISSUE OF SHARES

- 5.1 Where money or other consideration is due to the company on shares in accordance with their terms of issue such an amount does not comprise a call and no notice is required to be given to the holder or other person liable under the terms of issue in order for the company to enforce payment of the amount due. **[Sections 97 to 100 of the Act]**

## 6. BONUS SHARES

- 6.1 The board may authorise the allotment to shareholders of shares issued as fully or partly paid up from the assets of the company.

## 7. COMPANY PAYING UP PARTLY PAID SHARES

- 7.1 Subject to the company being able to meet the solvency test immediately after the distribution, the board may authorise payment from the assets of the company of any amount unpaid on shares already issued by the company.

## COMPANY PURCHASING ITS OWN SHARES

### 8. PURCHASE BY COMPANY OF ITS OWN SHARES

- 8.1 The company may, in accordance with and subject to sections 52, 59 to 66, 107 and 110 to 112 of the Act, purchase or otherwise acquire and hold its own shares and, subject to section 60 of the Act, offer to acquire its own shares. **[Sections 58 and 59 of the Act]**
- 8.2 The Board may purchase or otherwise acquire shares issued by the company from such shareholders and in such numbers or proportions as it thinks fit and on terms and conditions which it considers to be in the interest of the company.

### 9. TREASURY STOCK

- 9.1 Shares acquired by the company under clause 8 of this constitution may be held by the company in accordance with section 67A-67C of the Act. **[Section 67A-67C of the Act]**

## TRANSFER OF SHARES

### 10. TRANSFERS OF SHARES

- 10.1 Section 84 of the Act governs the transfer of shares in the company, including requirements as to the execution of any form of transfer.

### 11. BOARD'S RIGHT TO REFUSE REGISTRATION OF TRANSFER

- 11.1 The board may, within 30 working days of the receipt of a transfer of shares by the company, refuse or delay the registration of the transfer if:
- (a) The holder of the shares has failed to pay an amount due to the company in respect of those shares; or
  - (b) The board considers that to effect the transfer would result in a breach of the law; or

- (c) The board considers that it is not in the best interests of the company to register the transfer; or
- (d) The board considers that 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);
- (e) Section 95 of the Act has not been complied with, or the share transfer has not been properly executed or does not comply with section 84(2) of the Act.

11.2 Any resolution of the board to refuse or delay the registration of a transfer of shares must set out in full the reason under clause 11.1 of this constitution for doing so, and must be sent to the transferor and transferee within 5 working days of the date of the resolution. **[Section 84(4)(b) of the Act]**

## 12. REGISTRATION OF TRANSFER

12.1 Subject to clause 11 (board's right to refuse registration of transfer) of this constitution, on receipt of a duly completed form of transfer the company must enter the name of the transferee on the share register as holder of the shares. **[Section 84(4) of the Act]**

## 13. SHARE REGISTER AND SHARE CERTIFICATES

13.1 The Company must maintain a share register in accordance with sections 87 to 94 (inclusive) of the Act.

13.2 The Company must issue and deal with share certificates in accordance with section 95 of the Act.

## TRANSMISSION OF SHARES

### 14. TRANSMISSION

14.1 In the event of the death of a shareholder the survivor, where the deceased was a joint holder, or the legal personal representative of the deceased, where the deceased was a sole holder, will be the only persons recognised by the company as having any title to the deceased's interest in the shares. Nothing contained in this clause 14.1 will release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by the deceased with other persons.

## CALLS ON SHARES

### 15. BOARD MAY MAKE CALLS

15.1 Subject to the terms of issue of any shares the board may resolve to require the holders of unpaid or partly paid shares to pay all or part of the amount unpaid on the shares. The terms of the resolution of the board will constitute the terms of the obligation to pay the call including payment by instalments. The call may be revoked or postponed at any time by the board.

## 16. NOTICE OF CALLS

- 16.1 Subject to the terms of issue of any class of shares and to clause 18 of this constitution, unless all the holders of a class of shares subject to a call unanimously agree, a call or the postponement or revocation of a call will apply to all the holders of shares of the class equally.
- 16.2 Notice of the call must be given to the shareholders at the time of the call, or to a subsequent holder. Failure to give notice to a shareholder will not invalidate a call but it will not be payable by that shareholder until the notice has been served on the shareholder.
- 16.3 Notice of a call sent by post to a shareholder to the address recorded in the share register as the address of the shareholder will be deemed to have been received by the shareholder 48 hours following the date of the posting of the notice.

## 17. LIABILITY FOR CALLS

- 17.1 The joint holders of shares are jointly and severally liable to pay all calls in respect of the shares.
- 17.2 If a call is not paid before or on the day appointed for payment the person from whom the sum is due will be liable to pay interest on the sum from the day appointed for payment to the time of actual payment at such rate as the board determines either at the time of the call or subsequently.
- 17.3 The liability for a call which has become due and payable attaches to the shareholder for the time being recorded in the share register and not a prior shareholder, notwithstanding that at the date of the call, or the date the call fell due for payment, another person was the shareholder or that the notice of the call was served on the previous and not the current shareholder. **[Section 100 of the Act]**
- 17.4 Following the registration in the share register of a change of ownership of shares in respect of which a call has been made, a notice of the call is not required to be served on the new shareholder.

## 18. AGREEMENT TO DIFFERENTIATE CALLS

- 18.1 The board may, on the issue of shares, by agreement with the shareholders concerned, differentiate between the shareholders of the same class as to the amount to be paid on the shares and the times of payment.

## SUSPENSION OF RIGHT TO DIVIDENDS AND LIEN

### 19. NOTICE OF SUSPENSION OF RIGHTS TO DIVIDEND

- 19.1 If a shareholder fails to pay any call or instalment of a call on the day appointed for payment, the board may, at any time after that date, while any part of the call or instalment payable by the shareholder remains unpaid, serve a notice on the shareholder requiring payment of so much of the call or instalment as is unpaid together with any interest which may have accrued and all expenses that may have been incurred by the company by reason of such non-payment.

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- 19.2 The notice must state a further date (not earlier than the expiration of 5 days from the date of service of the notice) on or before which the payment required by the notice is to be made and state that, in the event of non-payment at or before the time appointed, the right to dividends in respect of the shares subject to the call will be suspended.

20. **APPLICATION OF SUSPENDED DIVIDENDS**

- 20.1 All dividends which would have been payable in respect of shares which are subject to a suspension of the right to dividends must be withheld and applied by the company to reduce the amount owing under the call.

- 20.2 The amount owing under the call, for the purposes of clauses 20 and 22 of this constitution may include any interest which may have accrued and all expenses which may have been incurred by the company by reason of non-payment by the shareholder under the call.

21. **LIABILITY NOT DISCHARGED BY SUSPENSION OF RIGHT TO DIVIDENDS OR TRANSFER OF SHARES**

- 21.1 A shareholder whose shares are the subject of a suspension of the right to dividends remains liable to the company for all money owing under the call, and that liability is not extinguished by a transfer of the shares subject to the suspension to a third party.

22. **LIFTING OF SUSPENSION OF RIGHT TO DIVIDENDS**

- 22.1 When the total dividends withheld and applied under clause 20 of this constitution equal the total amount owing under the call, including amounts owing under clause 20.2 of this constitution, or when the shares are transferred to a third party, the suspension of the right to dividends will be lifted and all rights to be paid dividends on the shares will resume.

23. **LIENS**

- 23.1 The company has a first and paramount lien upon every share registered in the name of a shareholder (whether solely or jointly with others) and upon the proceeds of sale of those shares, for all money (whether presently payable or not) payable in respect of shares held by the shareholder, and for all other money presently payable by the shareholder to the company on any account whatever, and also for such amounts (if any) as the company may be called upon to pay under any statute or regulation in respect of shares of a deceased or other shareholder, whether the period for the payment, fulfilment or discharge respectively has actually arrived or not.

- 23.2 The lien extends to all dividends from time to time declared in respect of the shares.

24. **SALE ON EXERCISE OF LIEN**

- 24.1 The company may sell, in such manner as the board thinks fit, any shares on which the company has a lien, but no sale may be made unless a sum in respect of which the lien exists is due and payable, nor until the expiration of 14 days after a notice in writing, which states and demands payment of the amount due and payable in respect of which the lien exists, has been given to the registered shareholder for the time being or the person entitled to that share by reason of the registered shareholder's death or bankruptcy.

- 24.2 The net proceeds of the sale of any shares sold for the purpose of enforcing a lien is to be applied in or towards satisfaction of any unpaid calls, instalments or any other money

Attachment 2

payable by the shareholder in respect of which the lien existed. The residue, if any, is to be paid to the former shareholder.

- 24.3 A certificate signed by a director stating that the power of sale provided in this clause 24 of this constitution has arisen and is exercisable by the company under this constitution will be conclusive evidence of the facts stated in the certificate.
- 24.4 In order to give effect to any sale enforcing the lien in the exercise of the powers given to it under clause 24.1 of this constitution the board may authorise any person to execute a transfer of the shares to the purchaser. The purchaser will be registered as the shareholder of the shares which are transferred, and will not be bound to see to the application of the purchase money. The purchaser's title to the shares will not be affected by any irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale will be in damages only and against the company exclusively. If the certificate for the shares is not delivered up to the company the board may issue a new certificate distinguishing it as the board thinks fit from the certificate not delivered up.

## DISTRIBUTIONS

### 25. SOLVENCY TEST

- 25.1 Subject to clause 26 of this constitution, the board may authorise a distribution by the company at a time, and of an amount, and to any shareholders it thinks fit if it is satisfied on reasonable grounds that the company will, immediately after the distribution, satisfy the solvency test. **[Sections 4 and 52(4) of the Act]**
- 25.2 The directors who vote in favour of a distribution must sign a certificate stating that in their opinion the company will, immediately after the distribution, satisfy the solvency test and stating the grounds for that opinion. **[Sections 4 and 52 of the Act]**
- 25.3 For the purpose of this clause in applying the solvency test "debts" and "liabilities" have the meaning given to them in section 52(4) of the Act.

### 26. DIVIDENDS PAYABLE PARI PASSU

- 26.1 Subject to clause 26.3 of this constitution the board must not authorise a dividend:

- (a) In respect of some but not all the shares in a class; or
- (b) That is of a greater value per share in respect of some shares of a class than it is in respect of other shares in that class,

unless the amount of the dividend in respect of a share of that class is in proportion to the amount paid to the company in satisfaction of the liability of the shareholder under the constitution of the company or under the terms of issue of the share or is required, for a portfolio tax rate entity, as a result of section HL 7 of the Income Tax Act 2004. **[Section 53 of the Act]**

- 26.2 A shareholder may, by notice in writing signed by or on behalf of the shareholder and given to the company, waive his or her entitlement to receive a dividend. **[Section 53(3) of the Act]**

26.3 If all the shareholders of the same class have agreed or concur in writing, a dividend may be authorised otherwise than in accordance with clause 26.1 of this constitution. **[Section 107(1) of the Act]**

## 27. **SHARES IN LIEU OF DIVIDEND AND SHAREHOLDER DISCOUNTS**

27.1 The board may issue shares in lieu of a proposed dividend or proposed future dividends and may offer shareholders discounts in respect of some or all of the goods sold or services provided by the company in accordance with sections 54 and 55 of the Act respectively.

## 28. **FINANCIAL ASSISTANCE ON ACQUISITION OF SHARES**

28.1 The company may, subject to and in accordance with sections 52, 76, 77, 78 and 107(1)(e) of the Act, give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, or by its holding company, whether directly or indirectly. **[Section 76 of the Act]**

# **PART III SHAREHOLDERS' RIGHTS AND OBLIGATIONS**

## **EXERCISE OF POWERS RESERVED TO SHAREHOLDERS**

### 29. **POWERS RESERVED TO SHAREHOLDERS**

29.1 Powers reserved to shareholders of the company by the Act or by this constitution may be exercised:

- (a) At an annual meeting or a special meeting; or
- (b) By a resolution in lieu of a meeting pursuant to clause 35. **[Section 104 of the Act]**

29.2 Unless otherwise specified in the Act or this constitution, a power reserved to shareholders may be exercised by an ordinary resolution. **[Section 105 of the Act]**

### 30. **SPECIAL RESOLUTIONS**

30.1 When shareholders exercise a power to approve any of the following, that power may only be exercised by a special resolution:

- (a) An alteration to or the revocation of this constitution or the adoption of a new constitution; or
- (b) A major transaction; or
- (c) An amalgamation; or
- (d) The liquidation of the company.

- 30.2 Any decision made by special resolution pursuant to subclauses a. b. and c. of this clause may be rescinded only by a special resolution; a decision made by special resolution pursuant to subclause d. of this clause cannot be rescinded. **[Section 106 of the Act]**

### 31. **MANAGEMENT REVIEW BY SHAREHOLDERS**

- 31.1 The chairperson of a meeting of shareholders of the company must allow a reasonable opportunity for shareholders at the meeting to question, discuss, or comment on the management of the company.
- 31.2 Notwithstanding anything in the Act or any other clause of this constitution, and subject to clause 31.3 of this constitution, a meeting of shareholders may pass a resolution relating to the management of the company.
- 31.3 A resolution relating to the management of the company passed at a meeting of shareholders is not binding on the board. **[Section 109 of the Act]**

## **MEETING OF SHAREHOLDERS**

### 32. **ANNUAL MEETING**

- 32.1 The board must, in accordance with Section 120 (Annual meeting of shareholders) of the Act, call an annual meeting of shareholders to be held:
- (a) Once in each calendar year other than the year of its registration; and
  - (b) Not later than 6 months after the balance date of the company; and
  - (c) Not later than 15 months after the previous annual meeting, or in respect of its first annual meeting not later than 18 months after its date of registration.
- 32.2 The company must hold the annual meeting on the date on which it is called to be held. **[Section 120 of the Act]**

### 33. **SPECIAL MEETINGS**

- 33.1 A special meeting of shareholders entitled to vote on an issue:
- (a) May be called at any time by the board or a person who is authorised by this constitution to call the meeting; and
  - (b) Must be called by the board on the written request of shareholders holding not less than 5% of the voting rights entitled to be exercised on the issue. **[Section 121 of the Act]**

### 34. **PROCEDURE FOR MEETINGS OF SHAREHOLDERS**

- 34.1 The provisions of Schedule 1 to this constitution govern proceedings at and in relation to meetings of shareholders of the company. Schedule 1 of the Act shall accordingly not apply to the Company.



35. **RESOLUTION IN LIEU OF MEETING**

- 35.1 Subject to sections 122(2) and (3) of the Act, a resolution in writing signed by not less than 75% of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders who together hold not less than 75% 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. Such a resolution may consist of several documents in like form (including letters, facsimiles, electronic mail, or other similar means of communication), each signed by one or more shareholders. **[Section 122 of the Act]**

**PART IV  
THE BOARD**

**POWERS AND DUTIES OF THE BOARD**

36. **POWERS OF THE BOARD**

- 36.1 The business and affairs of the company must be managed by or under the direction or supervision of the board.
- 36.2 The board has, and may exercise, all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company, except to the extent that this constitution or the Act expressly requires those powers to be exercised by the shareholders or any other person. **[Section 128 of the Act]**

37. **DELEGATION BY THE BOARD**

- 37.1 The board may delegate to a committee of directors, a director, or an employee of the company, or any other person, any one or more of its powers other than the following powers:
- (a) Section 23(1)(c) (change of company names):
  - (b) Section 42 (issue of shares):
  - (c) Section 44 (shareholder approval to the issue of shares):
  - (d) Section 47 (consideration for the issue of shares):
  - (e) Section 49 (consideration in relation to issue of options and convertible financial products):
  - (f) Section 52 (distributions):
  - (g) Section 54 (issue of shares in lieu of dividends):
  - (h) Section 55 (shareholder discounts):
  - (i) Section 60 (offers to acquire shares):
  - (j) Section 61 (special offers to acquire shares):
  - (k) Section 63 (stock exchange acquisitions subject to prior notice to shareholders):
  - (l) Section 65 (stock exchange acquisitions not subject to prior notice to shareholders):
  - (m) Section 69 (redemption of shares at the option of a company):

- (n) Section 71 (special redemptions of shares):
- (o) Section 76 (provision of financial assistance):
- (p) Section 78 (special financial assistance):
- (q) Section 80 (financial assistance not exceeding 5 percent of shareholders' funds):
- (r) Section 84(4) (transfer of shares):
- (s) Section 187 (change of registered office):
- (t) Section 193 (change of address for service):
- (u) Section 221 (manner of approving an amalgamation proposal):
- (v) Section 222 (short form amalgamations).

**[Section 130 and Second Schedule to the Act]**

- 37.2 The board is responsible for the exercise by any delegate of a power delegated under this clause 37 as if the power had been exercised by the board, unless the board:
- (a) Believed on a reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the directors by the Act and this constitution; and
  - (b) Has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate. **[Section 130 of the Act]**

**38. DIRECTORS TO ACT IN GOOD FAITH**

- 38.1 A director, when exercising powers or performing duties, must act in good faith and in what the director believes to be in the best interests of the company.
- 38.2 If the company is a wholly-owned subsidiary, a director may when exercising the powers or performing duties as a director, act in a manner which he or she believes is in the best interests of the company's holding company even though it may not be in the best interests of the company.
- 38.3 If the company is a subsidiary (but not a wholly-owned subsidiary) a director may, when exercising powers or performing duties as a director, with the prior agreement of the shareholders (other than its holding company), act in a manner which he or she believes is in the best interests of the company's holding company even though it may not be in the best interests of the company.
- 38.4 If the company is incorporated to carry out a joint venture between its shareholders the director may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, act in a manner which he or she believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company. **[Section 131 of the Act]**

**39. MAJOR TRANSACTIONS**

- 39.1 The board may not procure or permit the company to enter into a major transaction unless the transaction is:
- (a) Approved by special resolution; or
  - (b) Contingent on approval by special resolution. **[Section 129 of the Act]**

Item 2

40. **PROCEEDINGS OF BOARD**

- 40.1 The provisions of Schedule 2 to this constitution govern proceedings at and in relation to meetings of the board. Schedule 3 of the Act shall accordingly not apply to the company.

**DIRECTORS**

41. **NUMBER OF DIRECTORS**

- 41.1 The minimum number of directors is six (6) and the maximum number is seven (7), provided that any directors appointed in accordance with clause 46.1(b) shall not be taken into account when determining whether such minimum or maximum has been exceeded.

42. **EXISTING DIRECTORS TO CONTINUE**

- 42.1 The persons holding office as directors on the date of adoption of this constitution continue in office and are deemed to have been appointed as directors pursuant to this constitution.

43. **QUALIFICATION OF DIRECTOR**

- 43.1 Not more than two directors may be members or employees of any shareholding local authority at the same time as they hold office as directors of the company.

44. **APPOINTMENT AND REMOVAL BY NOTICE**

- 44.1 The Nelson City Council shall be entitled to appoint one (1) director at any time and may likewise remove and/or replace that one (1) director at any time, in each case by notice in writing to the Company signed by a duly authorised officer of the Nelson City Council.
- 44.2 The Tasman District Council shall be entitled to appoint one (1) director at any time and may likewise remove and/or replace that one (1) director at any time, in each case by notice in writing to the Company signed by a duly authorised officer of the Tasman District Council.
- 44.3 The Nelson City Council and the Tasman District Council shall be jointly entitled to appoint, remove and replace up to five (5) directors at any time by notice in writing to the Company signed by both a duly authorised officer of the Tasman District Council and a duly authorised officer of the Nelson City Council.
- 44.4 A notice given under clauses 44.1, 44.2 or 44.3 of this constitution takes effect upon receipt of it at the registered office of the company (including receipt by way of letter, facsimile, 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). The notice may comprise one or more similar documents separately signed by shareholders giving the notice.
- 44.5 A director holds office until his or her resignation, retirement, disqualification or removal in accordance with this constitution.  
**[Section 157 of the Act]**

Attachment 2

**45. NO APPOINTMENT OR REMOVAL OF DIRECTORS BY RESOLUTION**

45.1 Directors may not be appointed or removed by a resolution of Shareholders.  
**[Section 155 and section 156 of the Act]**

**46. APPOINTMENT OF DIRECTORS TO FILL TEMPORARY VACANCY**

46.1 In addition to the appointment or removal of directors under clause 44 of this constitution, 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 41 above and with written approval of the shareholders holding in aggregate a majority of the voting shares; 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.

46.2 Subject to their earlier resignation, retirement, disqualification or removal in accordance with this constitution, any director appointed under this clause 46 will cease to hold office at the commencement of the next annual meeting of the company or at the next special general meeting whichever is earlier.

46.3 Subject to the Act and this constitution that director will be eligible for re-appointment as a director.

**47. ROTATION**

**47.1 Number to Retire**

Subject to clause 47.3, at the annual general 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, shall retire from office. A retiring director shall hold office until the dissolution or adjournment of the annual general meeting. A retiring director shall be eligible for re-appointment unless he/she is disqualified under this constitution.

**47.2 Directors to Retire**

Subject to clause 47.3, the directors to retire at an annual general meeting shall 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 shall, unless they otherwise agree among themselves, be determined by lot.

**47.3 Exceptions to Rotation Policy**

The Nelson City Council and Tasman District Council may, by way of a notice in writing to the company signed by both a duly authorised officer of the Tasman District Council and a duly authorised officer of the Nelson City Council, jointly direct that the retirement procedure set out in clauses 47.1 and 47.2 be varied in respect of one or more annual general meetings (for example, by directing that a particular director shall not be required to retire by rotation at a particular annual general meeting) and such notice shall be effective and binding upon the company and its directors notwithstanding clauses 47.1 and 47.2.

48. **DISQUALIFICATION AND REMOVAL**

48.1 A person will be disqualified from holding the office of director if he or she is removed under clause 44 or 46 of this constitution or he or she:

- (a) Dies; or
- (b) Becomes subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988; or
- (c) Is an undischarged bankrupt; or
- (d) Is prohibited by the Companies Act 1955 from being a director or officer or promoter or would be so prohibited but for the repeal of that Act; or
- (e) Is prohibited by the Companies Act 1993 from being a director or officer or promoter or taking part in the management of the company; or
- (f) Resigns in writing; or
- (g) Is absent without permission of the directors from three (3) consecutive meetings of the directors; or
- (h) Becomes a member or employee of any shareholding local authority if there are already two directors who are members or employees of shareholding local authorities. Where two (2) or more directors are elected as members of shareholding local authorities at the same election and the effect is that there would be more than two directors who are also members or employees of shareholding local authorities, the directors so elected to the shareholding local authorities shall determine which of them is or are not to hold office as directors or are to vacate membership of the shareholding local authorities. In the absence of agreement the matter shall be determined by lot with the losing director or directors having the option to relinquish either the directorship of the company or the membership of the local authority or local authorities concerned: or
- (i) He or she is an executive director and ceases to be employed by the company.

49. **SHAREHOLDING QUALIFICATION**

49.1 A director is not required to hold shares.

50. **INDEMNITY OF DIRECTORS AND EMPLOYEES**

50.1 For the purpose of clauses 50 and 51 "director" includes a former director and "employee" includes a former employee.

50.2 The board may cause the company to indemnify a director or employee of the company or a related company for any costs incurred by him or her in any proceeding:

- (a) That relates to liability for any act or omission in his or her capacity as a director or employee; and
- (b) In which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.  
**[Section 162(3) of the Act]**

- 50.3 The board may cause the company to indemnify a director or an employee of the company or a related company in respect of:
- (a) Liability to any person other than the company or a related company for any act or omission in his or her capacity as a director or employee; or
  - (b) Costs incurred by the director or employee in defending or settling any claim or proceeding relating to any liability under subparagraph a. above not being criminal liability or liability in respect of a breach, in the case of a director, of the duty specified in section 131 of the Act or, in the case of an employee, of any fiduciary duty owed to the company or related company. **[Section 162(4) of the Act]**

## 51. INSURANCE OF DIRECTORS AND EMPLOYEES

- 51.1 The board may, subject to section 162 of the Act, cause the company to effect insurance for a director or for an employee of the company or a related company in respect of:
- (a) Liability, not being criminal liability for any act or omission in his or her capacity as a director or employee; or
  - (b) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability under subclause a.; or
  - (c) Costs incurred by that director or employee in defending any criminal proceedings in which he or she was acquitted. **[Section 162(5) of the Act]**
- 51.2 The directors who vote in favour of authorising the effecting of insurance under clause 52.1 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the company. **[Section 162(6) of the Act]**
- 51.3 The board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the company or related company, are forthwith entered in the company's interests register. **[Section 162(7) of the Act]**

## REMUNERATION OF DIRECTORS

### 52. AUTHORITY TO REMUNERATE DIRECTORS

- 52.1 The Board may not exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section to or in respect of a Director in his or her capacity as such, without the prior approval of all Shareholders. For the avoidance of doubt, such approval may express the Directors' remuneration as either:
- (a) a monetary sum per annum payable to all Directors taken together; or
  - (b) a monetary sum per annum payable to each person from time to time holding office as a Director.
- 52.2 The Board must ensure that it complies with the provisions of section 161 of the Act whenever it exercises a power conferred by that section to authorise any payment or other benefit of the kind referred to in that section.

**53. OTHER OFFICES WITH COMPANY HELD BY DIRECTOR**

- 53.1 Any director may act by himself or herself or by the director's firm in a professional capacity for the company, and the director or the director's firm will be entitled to remuneration for professional services as if the director were not a director. Nothing in this clause authorises a director or the director's firm to act as auditor to the company.
- 53.2 A director may hold any other office or place of profit in the company (other than the office of auditor) in conjunction with the director's office of director for such period and on such terms (as to remuneration and otherwise) as the board may determine.
- 53.3 Other than as provided in clause 54 a director is not disqualified by virtue of his or her office from entering into any transaction with the company. Any such transaction will be valid and enforceable to the same extent as if he or she were not a director and not in a fiduciary relationship with the company.

**INTERESTED DIRECTORS**

**54. NOTICE OF INTEREST TO BE GIVEN**

- 54.1 A director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the company, cause to be entered in the interests register, and, if the company has more than one director, disclose to the board of the company:
- (a) If the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
  - (b) If the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.

- 54.2 For the purposes of clause 54.1 a general notice entered in the interests register or disclosed to the board to the effect that a director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.  
**[Section 140 of the Act]**

## 55. **RIGHT OF INTERESTED DIRECTOR TO VOTE**

- 55.1 A director may vote in respect of any transaction in which the director is interested, and 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.  
**[Section 144 of the Act]**

## MISCELLANEOUS

### 56. **DIRECTORS NOT TO SELL MAIN UNDERTAKING**

- 56.1 Without limiting Section 129 of the Act (which requires approval of a major transaction by a special resolution) the directors shall not sell, lease, let, exchange or otherwise dispose of (other than by way of charge) twenty percent (20%) or more of the total assets in aggregate of the company either absolutely or conditionally without the prior approval of the company in general meeting.

### 57. **RESTRICTION ON CERTAIN DEALINGS WITH ASSETS**

- 57.1 Without limiting Section 129 of the Act (which requires approval of a major transaction by a special resolution) neither the company nor any of its subsidiaries shall, without the prior approval of the company in general meeting, enter into any agreement for the acquisition or disposition of assets with a value in excess of twenty percent (20%) of the total assets in aggregate of the company at the date to which the last audited accounts were made up where the vendor or purchaser is or was at any time during the six months immediately preceding the date of the agreement:

- (a) a director or officer of the company or any of its subsidiaries; or
- (b) the beneficial owner of 10% or more of the company's issued voting capital; or
- (c) a person or company associated with either the company or any of its subsidiaries or any of their directors or officers.

The notice of meeting containing the resolution to approve any intended transaction of this kind shall contain all reports, valuations and other material prepared by independent experts as are necessary to enable the shareholders to decide whether the transaction price is a fair price. Nothing in this clause shall apply to the transfer of financial instruments, stock in trade, or current assets between a bank and any company related to that bank.

### 58. **AUDIT**

- 58.1 The auditors of the company shall be the Auditor General as provided in Section 19 of the Port Companies Act 1988 or such other auditor as may be permitted by legislation regulating the company.



59. **NOTICES**

59.1 **Service**

Notice may be served by the company upon any director or shareholder, either personally by pre-paid courier delivery, by post or by fastpost in a pre-paid envelope or package addressed to such director or shareholder at such person's last known address or by delivery to a document exchange or by facsimile to the facsimile number of such director or shareholder or by electronic means.

59.2 **Time of Service by Facsimile**

A notice served by facsimile is deemed to have been served on the day following completion of its transmission.

59.3 **Time of Service by Post**

A notice sent by post or delivered to a document exchange is deemed to have been served:

- (a) In the case of a person whose last known address is in New Zealand, at the end of 48 hours after the envelope or package containing the same was posted or delivered in New Zealand; and
- (b) In the case of a person whose last known address is outside New Zealand, at the expiration of 7 days after the envelope or package containing the same was posted by fastpost in New Zealand.

59.4 **Time of service by electronic means**

A notice sent by electronic means is deemed to have been served when an acknowledgement of receipt sent by the recipient of the notice and transmitted by electronic means has been received.

59.5 **Proof of Service**

In proving service by post or delivery to a document exchange, it is sufficient to prove that the envelope or package containing the notice was properly addressed and posted or delivered with all attached postal or delivery charges paid. In proving service by facsimile, it is sufficient to prove that the document was properly addressed and sent by facsimile. In proving service by electronic means, the acknowledgement of receipt from the recipient of the notice is sufficient proof of service.

59.6 **Service on Joint Holders**

A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the share register in respect of the share.

59.7 **Service of Representatives**

A notice may be given by the company to a person or persons entitled to a share in consequence of the death or bankruptcy of a shareholder by addressing it to such person or persons by name or by title or by any appropriate description, at the address (if any) within New Zealand supplied for the purpose by the person or persons claiming to be so entitled, or (until such time an address has been supplied) by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

60. **REMOVAL FROM THE NEW ZEALAND REGISTER**

60.1 In the event that:

- (a) The company has ceased to carry on business has discharged in full its liabilities to all known creditors and has distributed its surplus assets in accordance with this constitution and the Act; or
- (b) The company has no surplus assets after paying its debts in full or in part and no creditor has applied to the Court under section 241 of the Act for an order putting the company into liquidation:

the board of directors may, in the prescribed form, request the Registrar of Companies to remove the company from the New Zealand register.

61. **METHOD OF CONTRACTING**

61.1 A contract or other enforceable obligation may be entered into by a company as follows:

- (a) An obligation which, if entered into by a natural person, would, by law, be required to be by deed may be entered into on behalf of the company in writing signed under the name of the company by:
  - (i) two or more directors of the company; or
  - (ii) if there is only one director, by that director whose signature must be witnessed; or
  - (iii) a director, or other person or class of persons whose signature or signatures must be witnessed, provided that such persons signing on behalf of the company must first be approved by the board; or
  - (iv) one or more attorneys appointed by the company in accordance with section 181 of the Act.
- (b) An obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the company in writing by a person acting under the company's express or implied authority:
- (c) An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the company in writing or orally by a person acting under the company's express or implied authority. **[Section 180 of the Act]**

61.2 Clause 61.1 applies to a contract or other obligation:

- (a) whether or not that contract or obligation was entered into in New Zealand; and
- (b) whether or not the law governing the contract or obligation is the law of New Zealand.

Item 2

62. **APPOINTMENT OF ATTORNEY**

- 62.1 The company may by instrument in writing executed in accordance with section 180(1)(a) of the Act appoint a person as its attorney either generally or in relation to a specified matter and the provisions of section 181 of the Act will apply. **[Section 181 of the Act]**

Attachment 2

## **SCHEDULE 1 PROCEEDINGS FOR MEETINGS OF SHAREHOLDERS**

### **1. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS**

- 1.1 The chairperson of the board, if one has been elected and is present at a meeting of shareholders, must chair the meeting.
- 1.2 If no chairperson has been elected or if, at any meeting of shareholders, the chairperson is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of their number to chair the meeting.

### **2. NOTICE OF MEETINGS**

- 2.1 Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting, and to every director and an auditor of the company not less than 10 working days before the meeting. With the consent of all shareholders entitled to attend and vote at a meeting, it may be convened by such shorter notice and in such manner including the contents of the notice as those shareholders agree.

### **3. CONTENTS OF NOTICE**

- 3.1 The notice referred to in clause 2 of this Schedule must state:
  - (a) The nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
  - (b) The text of any resolution to be submitted to the meeting; and
  - (c) The postal address to which postal votes may be sent and the name or office of the person to whom they may be sent; and
  - (d) That the postal vote must be received by the person referred to in paragraph c. at least 48 hours prior to the time of the meeting.

### **4. IRREGULARITIES IN NOTICE**

- 4.1 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceeding of that meeting.
- 4.2 Notwithstanding clause 3 of this Schedule, an irregularity in a notice of a meeting required by clause 2 of this Schedule is waived if all the shareholders entitled to attend and vote at the meeting do attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.

5. **METHOD OF HOLDING MEETING**

- 5.1 A meeting of shareholders, where notice of the meeting has been given, may be held either:
- (a) By a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
  - (b) By means of audio, audio and visual, or electronic communication by which all shareholders participating and constituting a quorum can simultaneously hear each other throughout the meeting; or
  - (c) By a combination of both of the methods described in sub-clauses (a) and (b) above.

6. **ADJOURNMENTS**

- 6.1 If a meeting of shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned provided that except for adjournments later that same day any director not present is to be advised of the date, time, place and business left unfinished which is to be transacted at the adjourned meeting.

7. **MINUTES**

- 7.1 The board must ensure that minutes are kept of all proceedings at meetings of shareholders.
- 7.2 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

8. **QUORUM**

- 8.1 A quorum for a meeting of shareholders is present if those shareholders or their proxies who are present or who have cast postal votes are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.
- 8.2 No business may be transacted at a meeting of shareholders if a quorum is not present.
- 8.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) In the case of a meeting called pursuant to a requisition of shareholders under clause 33.1(b) of this constitution the meeting is dissolved;
  - (b) In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the directors may appoint, and if at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present or their proxies are a quorum.
- 8.4 To avoid doubt, a shareholder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.

## 9. VOTING

9.1 In the case of a meeting of shareholders held under clause 5.1(a) of this Schedule, unless a poll is demanded, voting at the meeting must be by whichever of the following methods is determined by the chairperson of the meeting:

- (a) Voting by voice; or
- (b) Voting by show of hands.

9.2 In the case of a meeting of shareholders held under clause 5.1(b) or 5.1(c) of this Schedule, unless a poll is demanded, voting at the meeting must be by the shareholders signifying individually their assent or dissent by voice.

9.3 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 9.4 of this Schedule.

9.4 At a meeting of shareholders a poll may be demanded by:

- (a) The chairperson; or
- (b) Not less than 5 shareholders having the right to vote at the meeting; or
- (c) A shareholder or shareholders representing not less than 10% of the total voting rights of all shareholders having the right to vote at the meeting; or
- (d) By a shareholder or shareholders holding the shares that confer a right to vote at a meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all shares that confer that right.

9.5 A poll may be demanded either before or after the vote is taken on a resolution.

9.6 If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present in person or by proxy and voting.

9.7 The chairperson of a shareholders' meeting is not entitled to a casting vote.

## 10. PROXIES AND REPRESENTATIVES

10.1 A shareholder may exercise the right to vote either by being present in person or by proxy.

10.2 A proxy for a shareholder is entitled to attend, be heard and vote at a meeting of shareholders as if the proxy were the shareholder.

10.3 A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months. The notice must (so far as the subject matter and form of the resolutions to be passed at the relevant meeting reasonably permit) provide for either way voting on all resolutions, enabling the appointor to instruct the proxy as to the casting of the vote.

10.4 The company shall send a form of notice of appointment of proxy to every shareholder entitled to attend and vote at a meeting with the notice convening the meeting.

10.5 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the person referred to in clause 3.1(c) of this Schedule at least 48 hours before the start of the meeting. The chairperson may generally or in respect of any particular shareholder waive the requirements of this clause 10.5.

10.6 A body corporate which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy.

## 11. **POSTAL VOTES**

11.1 A shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this clause 11.

11.2 To avoid doubt, a postal vote may be cast using electronic means permitted by the board.

11.3 The notice of a meeting at which shareholders are entitled to cast a postal vote must state the name of the person authorised by the board to receive and count postal votes at that meeting.

11.4 If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.

11.5 A shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which the shareholders' shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.

11.6 Any person authorised to receive and count postal votes at a meeting:

(a) Must collect together all postal votes received by him or her or by the company; and

(b) In relation to each resolution to be voted on at a meeting, must count:

(i) The number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and

(ii) The number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution; and

(c) Must sign a certificate that he or she has carried out the duties set out in paragraphs a. and b. of this clause and which sets out the results of the counts required by paragraph b. of this clause; and

(d) Must ensure that the certificate required by paragraph c. of this clause is presented to the chairperson of the meeting.

11.7 If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must:

(a) On a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution; and

(b) On a poll count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.

- 11.8 The chairperson of a meeting must call for a poll on a resolution on which the chairperson receives the certificate provided in clause 11.6.d indicating sufficient postal votes that the chairperson believes that if a poll were taken the result could differ from that obtained on a show of hands.
- 11.9 The chairperson of a meeting must ensure that a certificate of postal vote held by the chairperson is annexed to the minutes of the meeting.

## 12. SHAREHOLDER PROPOSALS

- 12.1 A shareholder may give written notice to the board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of the shareholders at which the shareholder is entitled to vote.
- 12.2 The notice must be received by the board not less than 10 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board.
- 12.3 The board must give notice of a shareholder proposal and the text of a proposed resolution received by it under clause 12.1 of this Schedule in the notice of the meeting given to shareholders, and, if the directors intend that shareholders may vote on that proposal by proxy or by postal vote, they must give the proposing shareholder the right to include in the notice of meeting a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.
- 12.4 The costs incurred or to be incurred by the board under clause 12.3 of this Schedule must be met by the proposing shareholder by depositing with or tendering to the company a sum sufficient to meet those costs.
- 12.5 The board is not required to include in the notice of meeting a statement prepared by a shareholder which the board considers to be defamatory, frivolous or vexatious

## 13. VOTES OF JOINT HOLDERS

- 13.1 Where 2 or more persons are recorded in the register as the holder of a share, the vote of the person named first in the register and voting on a resolution will be accepted to the exclusion of the votes of the other joint holders.

## 14. UNPAID SHARES

- 14.1 If a sum due to the company in respect of a share has not been paid, that share may not be voted at a shareholders' meeting other than at a meeting of an interest group.

## 15. OTHER PROCEEDINGS

- 15.1 Except as provided in this Schedule, and subject to the constitution of the company, a meeting of shareholders may regulate its own procedure.



16. **SHAREHOLDER PARTICIPATION BY ELECTRONIC MEANS**

16.1 For the purposes of this Schedule, a shareholder, or the shareholder's proxy or representative, may participate in a meeting by means of audio, audio and visual, or electronic communication if—

(a) the board approves those means; and

(b) the shareholder, proxy, or representative complies with any conditions imposed by the board in relation to the use of those means (including, for example, conditions relating to the identity of the shareholder, proxy, or representative and that person's approval or authentication (including electronic authentication) of the information communicated by electronic means).

16.2 To avoid doubt, participation in a meeting includes participation in any manner specified in this schedule or permitted by the remainder of this constitution.

## **SCHEDULE 2 PROCEEDINGS FOR MEETINGS OF THE BOARD**

### **1. CHAIRPERSON**

- 1.1 The directors may elect one of their number as chairperson of the board and determine the period for which the chairperson is to hold office.
- 1.2 The director elected as chairperson holds that office until he or she dies or resigns or the directors elect a chairperson in his or her place.
- 1.3 If no chairperson is elected, or if at a meeting of the board the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the deputy chairperson (if elected and present) shall be chairperson of the meeting, or if a deputy chairperson has not been elected or is not present the directors present may choose one of their number to be chairperson of the meeting.

### **2. DEPUTY CHAIRPERSON**

- 2.1 The directors may elect one of their number as deputy chairperson of the board and determine the period for which the deputy chairperson is to hold office.
- 2.2 The director elected as deputy chairperson holds that office until he or she dies or resigns or the directors elect a deputy chairperson in his or her place.

### **3. NOTICE OF MEETING**

- 3.1 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 3 of this Schedule 2.
- 3.2 Not less than 2 days' notice of a meeting of the board must be given to every director who is in New Zealand, and the notice must include the date, time and place of the meeting and the matters to be discussed.
- 3.3 An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.
- 3.4 Notice of a meeting may be given by any means, including by telephone. Notice given by a letter addressed to a director at his or her last known residential address will be deemed to have been received by the director the day following the date the letter is posted.

### **4. MEETINGS OF BOARD**

- 4.1 A meeting of the board may be held either:
  - (a) By a number of directors sufficient to form a quorum being assembled together at the place, date and time appointed for the meeting; or

- (b) By means of audio, or audio and visual communication by which all the directors participating in the meeting and constituting a quorum can simultaneously hear each other throughout the meeting; or
- (c) by a combination of both of the methods described in sub-clauses (a) and (b) above.

## 5. **QUORUM**

- 5.1 A quorum for a meeting of the board is a majority of the directors.
- 5.2 No business may be transacted at a meeting of directors if a quorum is not present.

## 6. **VOTING**

- 6.1 Every director has one vote.
- 6.2 The chairperson does not have a casting vote.
- 6.3 A resolution of the board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it.
- 6.4 A director present at a meeting of the board is presumed to have agreed to, and to have voted in favour of, a resolution of the board unless he or she expressly dissents from or votes against the resolution at the meeting.

## 7. **MINUTES**

- 7.1 The board must ensure that full and accurate minutes are kept of all proceedings at meetings of the board.

## 8. **UNANIMOUS RESOLUTION**

- 8.1 A resolution in writing, signed or assented to by all directors is as valid and effective as if it had been passed at a meeting of the board duly convened and held.

Any such resolution may consist of several documents (including letters, facsimiles, electronic mail, or other similar means of communication) in like form each signed or assented to by one or more directors. A copy of any such resolution must be entered in the minute book of board proceedings.

## 9. **CONTINUING DIRECTORS**

- 9.1 Notwithstanding any vacancy in the number of directors, the board will continue to comprise the continuing directors, but, if their number is reduced below the number fixed by or pursuant to this constitution as the minimum number of directors, the continuing directors may act only for the purpose of increasing the number of directors to the minimum number, or for summoning a general meeting of the company.

## 10. **OTHER PROCEEDINGS**

- 10.1 Except as provided in clauses 1 to 9 of this Schedule 2 the board may regulate its own procedure.

