
Constitution of Ngati Whatua Orakei Trustee Limited

This document should be read together with the Companies Act 1993



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CONSTITUTION OF NGATI WHATUA ORAKEI TRUSTEE LIMITED

PART A: INTRODUCTION

1 INTERPRETATION

1.1 Defined terms

(a) The following expressions have the following meanings:

Act means the Companies Act 1993;

Adult Members of Ngati Whatua Orakei means all Members of Ngati Whatua Orakei identified on the register of members maintained by the Company as being 18 years and over;

Assets means all property (whether real or personal) and includes choses in action, rights, interests and money;

Balance Date means 30 June or any other date which the Company adopts by resolution as the date up to which accounts are to be made in each year;

Board means the Directors of the Company from time to time;

Company means Ngati Whatua Orakei Trustee Limited;

Constitution means this constitution as altered from time to time in accordance with the Act;

Director means a person appointed as a director of the Company in accordance with this Constitution;

Directors' Removal Resolution means a resolution approved by at least 75% of the Directors (other than the Director to whom the resolution relates who is to be excluded from the total number of directors in determining the 75% threshold);

Directors' Special Resolution means a resolution approved by at least 75% of the votes of those Directors present at the meeting and entitled to vote on the resolution, provided that at least six Directors must have voted in favour of the resolution;

Elected Representative means a person appointed as an elected representative of the Ngati Whatua Orakei Trust from time to time in accordance with the Ngati Whatua Orakei Trust Deed;

Hapu means the descendants of Tuperiri of Te Taou, Ngao Oho and Te Uringutu hapu of the Ngati Whatua iwi, commonly known as Ngati Whatua Orakei;

Member of Ngati Whatua Orakei means every individual referred to in the definition of Ngati Whatua Orakei;



Ngati Whatua Orakei means the members of the Hapu, being the descendants of their common ancestor Tuperiri;

Ngati Whatua Orakei Group means the Ngati Whatua Orakei Trust and any of its subsidiaries, including the Company;

Ngati Whatua Orakei Trust Deed means the trust deed dated 5 November 2011 in respect of the Ngati Whatua Orakei Trust;

Share means an ordinary share in the Company;

Special Resolution of Members means a resolution approved by not less than 75% of the Adult Members of Ngati Whatua Orakei in accordance with clause 3.4 of this Constitution;

written or in writing in relation to words, figures and symbols includes all modes of presenting or reproducing those words, figures and symbols in a tangible and permanently visible form, including email or fax.

- (b) Expressions which are defined in the Act (whether in section 2 or elsewhere for the purposes of a particular subsection, section or sections) have the meanings given to them by the Act. Where an expression is defined in the Act more than once and in different contexts, its meaning will be governed by the context in which it appears in this Constitution.

1.2 **Construction**

- (a) Headings appear as a matter of convenience and do not affect the interpretation of this Constitution.
- (b) Including and similar words do not imply any limitation.
- (c) The singular includes the plural and vice versa, and words importing one gender include the other genders.
- (d) A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.
- (e) The Schedules form part of this Constitution.
- (f) Any obligation to calculate a cost or value will include an obligation that the calculation will be conducted in accordance with generally accepted accounting principles in New Zealand.



PART B: NGATI WHATUA ORAKEI GROUP

2 RELATIONSHIP BETWEEN CONSTITUTION, THE ACT AND THE NGATI WHATUA ORAKEI TRUST DEED

2.1 Effect of the Act on this Constitution

The Company, the Board, each Director, and each shareholder have the rights, powers, duties, and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this Constitution.

2.2 Effect of this Constitution

This Constitution has no effect to the extent that it contravenes the Act, or is inconsistent with it.

2.3 Constitution to be consistent with Ngati Whatua Orakei Trust Deed

- (a) Subject to clause 2.2, this Constitution is to be consistent with all relevant provisions of the Ngati Whatua Orakei Trust Deed. In the event of any amendments to the Ngati Whatua Orakei Trust Deed, the Board will review those amendments and to the extent there are inconsistencies, use reasonable endeavours to procure that, as soon as is practicable and to the extent allowed by law, this Constitution is altered to accord with all relevant provisions of the Ngati Whatua Orakei Trust Deed. The terms of this Constitution will continue to apply until any such amendments are made.
- (b) In respect of any issues of ambiguity, phrases or expressions defined in the Ngati Whatua Orakei Trust Deed are intended to have a common meaning or understanding when used in this Constitution.

3 PURPOSE AND OBJECTIVES OF THE COMPANY

3.1 Purpose

The sole purpose of the Company is to act as the sole corporate trustee for the Ngati Whatua Orakei Trust.

3.2 Objectives

The Company's objectives are to hold the Assets of the Ngati Whatua Orakei Trust, enter into transactions, incur liabilities and comply with the powers and duties provided in the Ngati Whatua Orakei Trust Deed.

3.3 Special Resolution of Elected Representative

Where the Company is aware that the Ngati Whatua Orakei Trust Deed requires that a transaction or any other matter by a member of the Ngati Whatua Orakei Group be approved by "Special Resolution of Elected Representatives", the Company will put that matter to the Board for consideration and approval as a Directors' Special Resolution under this Constitution.

3.4 Special Resolution of Members

Where a Special Resolution of Members is required under this Constitution, the Company will put that matter to the Board for consideration, and the Board will use reasonable endeavours to procure that, as soon as is practicable, the matter is put



to the Adult Members of Ngati Whatua Orakei for approval by Special Resolution of Members, in accordance with the Ngati Whatua Orakei Trust Deed.

PART C: SHARES

4 SHARES AND ISSUE OF SHARES

4.1 Elected Representatives to be shareholders

The shareholders of the Company will be the Elected Representatives from time to time, and the Elected Representatives are the only persons eligible to hold Shares.

4.2 Number of Shares to equal number of Elected Representatives

- (a) Each Elected Representative holds one Share (except the chairperson of the Board, who may from time to time hold more than one Share pursuant to clause 5.2(b)).
- (b) The number of Shares issued by the Company is equal to the number of positions available for Elected Representatives.
- (c) The Company must issue, purchase or otherwise acquire Shares in accordance with this Constitution if the number of positions available for Elected Representatives is adjusted for any reason.

4.3 Board to issue Shares

- (a) Section 45 of the Act does not apply. The Board must only issue Shares to the Elected Representatives, provided that at all times each Elected Representative holds one Share (except the chairperson of the Board, who may from time to time hold more than one Share pursuant to clause 5.2(b)).
- (b) Prior to the Board issuing any Shares to an Elected Representative, the Elected Representative must deliver to the Company:
 - (i) a signed consent to be a shareholder of the Company; and
 - (ii) a signed consent to be a director of the Company, certifying that he or she is not disqualified from being appointed or holding office as a director of a company; and
 - (iii) any other documents required by the Board (including an irrevocable consent to the Company acquiring Shares in accordance with clause 7.1~~6-1~~ of this Constitution),

all such documents to be in a form reasonably required by the Board from time to time.

- (c) Such Shares may rank as to voting or distribution rights, or both, equally with or prior to any existing Shares, and any such issue will not be treated as an action affecting the rights attached to existing Shares.



4.4 **Time of issue of Shares**

A Share is issued when the name of the holder is entered on the Company's share register. The Board will not enter the name of any person on the Company's share register until the Company has received the documents referred to in clause 4.3(b) above.

5 **TRANSFER OF SHARES**

5.1 **Restrictions on transfer of Shares**

No Share may be transferred except in accordance with this clause 5.

5.2 **Person ceasing to be Elected Representative must transfer Shares**

If a person ceases to be an Elected Representative or a Director for any reason, he or she must promptly transfer the Share he or she holds:

- (a) where a replacement Elected Representative has been elected or appointed in accordance with the Ngati Whatua Orakei Trust Deed, to that replacement Elected Representative in accordance with clause 5.4;
- (b) where no replacement Elected Representative has been elected or appointed, to the chairperson of the Board in accordance with clause 5.4; or
- (c) where the number of positions available for Elected Representatives has decreased, to the Company in accordance with clause 5.4.

5.3 **Chairperson to hold shares on trust**

If a Share is transferred to the chairperson of the Board under clause 5.2(b), the chairperson will hold the Share on trust until a person is elected or appointed as the replacement Elected Representative, at which time the chairperson will promptly transfer the Share to that newly elected or appointed Elected Representative in accordance with clause 5.4.

5.4 **Signed transfer and other documents delivered to Company**

(a) Where Shares are to be transferred by a shareholder that has ceased to be an Elected Representative or a Director, that shareholder (as transferor) must promptly deliver to the Company:

- (i) a signed share transfer form;
- (ii) a signed notice of resignation as a Director of the Company (except where that shareholder has been previously removed as a Director under this Constitution, in which case a notice of resignation is not required); and
- (iii) any other documents required by the Board,

all such documents to be in a form reasonably required by the Board from time to time.

(b) If the Shares are being transferred to the chairperson of the Board under clause 5.2(b), the chairperson must sign the transfer form.



- (c) Where Shares are to be transferred to a replacement Elected Representative:
- (i) if the chairperson of the Board is holding Shares on trust under clause 5.2(b), the chairperson (as transferor) must deliver to the Company:
 - (A) a signed share transfer form; and
 - (B) any other documents required by the Board,
 - (ii) whether under clause 5.2(a) (from the departing shareholder) or 5.2(b) (from the chairperson of the Board), the replacement Elected Representative must promptly deliver to the Company:
 - (A) a signed share transfer form;
 - (B) a signed consent to be a director of the Company, certifying that he or she is not disqualified from being appointed or holding office as a director of a company; and
 - (C) any other documents required by the Board (including an irrevocable consent to the Company acquiring Shares in accordance with clause 7.1~~6.1~~ of this Constitution),

all such documents to be in a form reasonably required by the Board from time to time.

5.5 **Shares transferred by entry on share register**

Shares will be transferred by entry on the Company's share register of the name of the transferee which appears on the transfer form delivered to the Company. The Board will not enter the name of any person on the Company's share register until the Company has received all necessary documents referred to in clause 5.4 above.

5.6 **Board may refuse or delay a Share transfer in certain cases**

The Board may in its absolute discretion refuse or delay the registration of any transfer of Shares if:

- (a) the transfer is not made in accordance with clauses 5.2 to 5.4 of this Constitution;
- (b) the transferee has not signed the transfer form;
- (c) the transfer is not accompanied by such evidence as the Board may reasonably require to establish the right of the transferor to make the transfer;
- (d) the transfer would cause the Company to breach the Ngati Whatua Orakei Trust Deed.



6 FORFEITURE OF SHARES

6.1 Forfeiture of Shares

- (a) If a shareholder fails to promptly perform his or her shareholder's obligations under this Constitution and without limiting any other rights or obligations of the Company, the Board may resolve to, and by notice to the relevant shareholder, forfeit that shareholder's Share.
- (b) The forfeited Share may be disposed of on such terms and in such manner as the Board thinks fit.
- (c) A person whose Shares have been forfeited immediately ceases to be a shareholder in respect of those Shares.
- (d) A statutory declaration given by a Director that a Share has been duly forfeited on a stated date is conclusive evidence of the facts stated in that declaration against any person claiming an entitlement to that Share.

7 ACQUISITION OF OWN SHARES

7.1 Company must acquire its own Shares in certain circumstances

The Company must purchase or otherwise acquire Shares issued by the Company from a shareholder, and may hold those Shares in accordance with the Act, if the number of positions available for Elected Representatives is adjusted for any reason, with the intention that the number of Shares issued by the Company is equal to the number of positions available for Elected Representatives, and each Elected Representative holds one Share (except the chairperson of the Board, who may from time to time hold more than one Share pursuant to clause 5.2(b)).

7.2 Board may acquire Shares on a non-proportional basis

The Company may purchase or otherwise acquire Shares issued by the Company from such shareholders and in such numbers or proportions as it thinks fit, in accordance with the Act.

8 MEETINGS OF SHAREHOLDERS

8.1 Proceedings at meetings of shareholders

The First Schedule to this Constitution governs the proceedings at meetings of shareholders.



8.2 **Company must hold annual meeting of shareholders**

- (a) Subject to clause 8.2(b), the Board must call an annual meeting of shareholders to be held:
- (i) once in each calendar year;
 - (ii) not later than 15 months after the date of the previous annual meeting of shareholders; and
 - (iii) not later than 6 months after the Balance Date of the Company.

However no annual meeting need be called and held if everything required to be done at the meeting is done by resolution passed in accordance with clause 8.4.

- (b) The Company does not have to hold its first annual meeting in the calendar year of its registration but must hold that meeting within 18 months of its registration.
- (c) The Company must hold the meeting on the date on which it is called by the Board to be held.

8.3 **Company may hold special meetings of shareholders**

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

- (a) may be called at any time by the Board; and
- (b) must be called by the Board on a written request:
- (i) signed by at least five shareholders; or
 - (ii) of shareholders holding Shares carrying together not less than 5% of the voting rights entitled to be exercised on the issue.

8.4 **Written shareholders' resolution instead of holding a meeting**

A written resolution signed by all of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of shareholders. Any such resolution may consist of several copies of the resolution, each signed by one or more shareholders. A copy of a resolution, which has been signed and sent by facsimile or any similar means of communication, will satisfy the requirements of this clause 8.4.

PART D: DIRECTORS

9 APPOINTMENT AND REMOVAL

9.1 Number of Directors

The number of Directors is equal to the number of shareholders of the Company from time to time.



9.2 **Appointment of Directors**

Any natural person who is not disqualified under the Act will be appointed as a Director of the Company on the date that the person's name is entered as a holder of a Share on the share register of the Company.

9.3 **Disrepute**

The Directors must not, either as a Board or individually, act in a manner which brings or is likely to bring the Ngati Whatua Orakei Trust, the Company or any other member of the Ngati Whatua Orakei Group, into disrepute.

9.4 **Removal of Directors**

Any Director may be removed from office where the Board resolves, by a Directors' Removal Resolution, that the Director has acted in a manner that has brought or is likely to bring the Ngati Whatua Orakei Trust, the Company or any other member of the Ngati Whatua Orakei Group, into disrepute.

10 **VACATION OF OFFICE**

10.1 **Office of Director vacated in certain cases**

The office of Director is vacated if the person holding that office:

- (a) ceases to be a shareholder;
- (b) resigns that office in accordance with clause 10.2;
- (c) is removed from office in accordance with this Constitution or the Act, including in accordance with clause 9.4 of this Constitution.

10.2 **Directors' resignation procedure**

A Director may resign office by delivering a signed notice of resignation in writing to the address for service of the Company. The notice is effective when it is received at that address or at a later time specified in the notice.

11 **MANAGEMENT OF THE COMPANY**

11.1 **Board to manage Company**

The Company's business and affairs must be managed by, and under the direction or supervision of, the Board, except to the extent that the Act or this Constitution provides otherwise.

11.2 **Board has powers necessary to manage Company**

The Board has all the powers necessary for managing, and for directing and supervising the management of, the Company's business and affairs, except to the extent that the Act or this Constitution provides otherwise.



12 PROCEEDINGS OF THE BOARD

12.1 Meetings of the Board

The Second Schedule to this Constitution governs the proceedings at meetings of the Board. The Third Schedule to the Act does not apply to proceedings of the Board.

12.2 Written resolutions of Board permitted

A resolution in writing signed or assented to by all of the Directors then entitled to vote on the resolution at a meeting of the Board ~~(or their alternate Directors)~~ is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

12.3 Written resolutions may be in counterparts

Any written resolution may consist of several copies of the resolution, each signed or assented to by one or more of the Directors ~~(or their alternate Directors)~~. A copy of a written resolution, which has been signed and is sent by facsimile or any similar means of communication, will satisfy the requirements of this clause 12.3.

13 DELEGATION OF POWERS

13.1 Restriction on Board's right to delegate its powers

The Board may delegate to a committee of Directors, a Director or any other person, any one or more of its powers other than its powers under any of the sections of the Act set out in the Second Schedule to the Act.

13.2 Board delegates to comply with regulations ~~and refer matters to Directors for final determination~~

In exercising the Board's delegated powers, any committee of Directors, Director or any other person must:

- (a) comply with any regulations that the Board may impose; and
- (b) refer any final decision, determination, or recommendation to the Directors for final determination before implementing that decision, determination or recommendation.

13.3 Directors to remain responsible

In the event that the Directors delegate any powers pursuant to clause 13.1 above, the Directors will continue to be responsible for the exercise of that delegated power by the delegate, as if the Directors had exercised that power themselves, unless the Directors:

- (a) believed on reasonable grounds when making the delegation that the delegate would exercise the power in accordance with the provisions of, and the duties owed by the Directors' pursuant to, this Constitution, the Act, and the Ngati Whatua Orakei Trust Deed; and
- (b) used reasonable methods to monitor the exercise of the power by the delegate.



13.4 **Committee proceedings**

Subject to any regulations made by the Board, any committee of Directors may:

- (a) regulate its proceedings as it sees fit; and
- (b) co-opt any person to be a member of that committee, provided that the committee notifies the Board of any such person co-opted.

13.5 **Appointments of officers**

The Directors may appoint any officers or employees that the affairs of the Company may require on such terms and conditions as they think fit. The Directors may also remove and replace any persons so appointed.

14 **INTERESTED DIRECTORS**

14.1 **Interested Directors**

The meaning of "interested" as defined under the Act will apply to the Directors and where the Company is a corporate trustee of a trust, will include transactions to which the Company is a party, either in its own capacity, or in its capacity as the corporate trustee of a trust.

14.2 **Directors must disclose their interests**

As soon as a Director becomes aware of the fact that he or she is interested in a transaction or proposed transaction:

- (a) with the Company; or
- (b) with the Ngati Whatua Orakei Trust,

then unless the Act provides otherwise or all entitled persons have agreed to or concur in the Company entering into the transaction, that Director must cause to be entered in the interests register, and disclose to the Board:

- (a) the nature and monetary value of his or her interest (if the monetary value of the interest is able to be quantified); or
- (b) the nature and extent of his or her interest (if the monetary value of the interest cannot be quantified).

14.3 **General disclosure in certain cases will suffice**

For the purposes of clause 14.2, a general notice entered in the interests register and disclosed to the Board to the effect that a Director:

- (a) is a shareholder, director, officer, or trustee of another named company or other person; and
- (b) is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that other company or person,

will be a sufficient disclosure of that interest in relation to such transactions.



14.4 Failure to disclose does not affect validity of transaction

Any failure by a Director to comply with clause 14.2 does not affect the validity of a transaction entered into by the Company or the Director. However, the transaction may be avoided under clause 14.5.

14.5 Company may avoid transaction if Director interested

Where the Company enters into a transaction in which a Director is interested, the Company, if it is permitted to do so by the Act, may avoid that transaction in accordance with the Act. However, if all entitled persons have agreed to or concur in the Company entering into such a transaction then this clause 14.5 will not apply.

14.6 Interested Director may not vote

Subject to clause 14.8, a Director of the Company who is interested in a transaction entered into, or to be entered into, by the Company may not take part in any deliberation or vote on a matter relating to the transaction, nor be included among the Directors present at the meeting for the purpose of a quorum, but may:

- (a) attend a meeting of Directors at which a matter relating to the transaction arises (except the interested Director must remove himself or herself from the meeting while the other Directors are discussing a matter relating to the transaction);
- (b) sign a document relating to the transaction on behalf of the Company; and
- (c) do anything else as a Director in relation to the transaction,

as if he or she were not interested in the transaction.

14.7 All Directors are interested

Subject to clause 14.8, where all the Directors are interested in a transaction or proposed transaction, the Company must not enter into the transaction unless that transaction is approved by Special Resolution of Members, or is contingent upon approval by Special Resolution of Members.

14.8 Interests in common with Adult Members of Ngati Whatua Orakei

For the purposes of clauses 14.6 and 14.7, a Director is not interested in a matter where his or her interest is not different in kind from the interests of the other Adult Members of Ngati Whatua Orakei.

15 REMUNERATION

15.1 Board's power to authorise remuneration and other benefits is limited

- (a) The Board may remunerate or provide other benefits to the Directors, on an individual Director basis or within a limit for all Directors, provided that payment or benefit has been authorised by an ordinary resolution of the Adult Members of Ngati Whatua Orakei.



- (b) The Board must not authorise or allow:
- (i) the payment by the Company to a Director of compensation for loss of office;
 - (ii) the making of loans by the Company to a Director;
 - (iii) the giving of guarantees by the Company for debts incurred by a Director;
and
 - (iv) the entering into of a contract to do any of the things set out in this clause 15.1(b).

15.2 **Expenses**

A Director may be reimbursed for reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising powers as a Director of the Company, without requiring the prior authorisation of the Adult Members of Ngati Whatua Orakei.

15.3 **Special Remuneration**

The Board may authorise special remuneration to any Director who is or has been engaged by the Company, the Ngati Whatua Orakei Trust or any other member of the Ngati Whatua Orakei Group to carry out any work or perform any service which is not in the capacity of a director of the Company or a subsidiary.

PART E: GENERAL

16 **SHAREHOLDER APPOINTMENT OF ATTORNEY**

16.1 **Shareholder to sign necessary documents**

Each shareholder will, on request from the Board, sign all documents necessary to effect an issue, transfer, or a purchase of Shares by the Company, in order to give effect to clauses 4.2, 4.3, 5.2, 5.3 and the intention that:

- (a) the number of Shares issued by the Company is equal to the number of positions available for Elected Representatives;
- (b) each Elected Representative holds one Share (except the chairperson of the Board, who may from time to time hold more than one Share pursuant to clause 5.2(b)); and
- (c) each shareholder will be a Director and hold that office for so long as he or she is a shareholder of the Company.

16.2 **Appointment of Director as attorney**

If a shareholder fails to properly comply with clause 16.1, then that shareholder:

- (a) irrevocably appoints any Director to act as its attorney for the purposes of signing any documents or doing any other thing which, in the opinion of the Director (acting as an attorney for the shareholder), is required to give effect to clause 16.1; and



- (b) agrees to sign or do anything on request from the Board to ratify the actions of the attorney under clause 16.2(a).

17 INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES

17.1 Company may indemnify Directors and employees for certain liabilities

The Company is authorised to indemnify a Director or employee of the Company or a related company for any liability or costs for which a Director or employee may be indemnified under the Act. The Board may determine the terms and conditions of any such indemnity.

17.2 Company may effect insurance for Directors and employees

The Company may, with the prior approval of the Board, effect insurance for a Director or employee of the Company or a related company for any liability or costs for which a company may effect insurance for a director or employee under the Act. The Board may determine the amounts and the terms and conditions of any such insurance.

18 EXECUTION OF DEEDS

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:

- (a) two or more Directors;
- (b) if there is only one Director, by that Director whose signature must be witnessed;
- (c) a Director, or any other person authorised by resolution of the Board, whose signature must be witnessed;
- (d) one or more attorneys appointed by the Company in accordance with the Act.

19 ARCHIVING OF RECORDS

All minutes and other records of the Company must be held by the Company for a minimum period of 7 years.

20 LIQUIDATION

If the Company is liquidated the liquidator will, at the direction of the trustee or trustees for the time being of the Ngati Whatua Orakei Trust, but subject to any other sanction required by the Act:

- (a) distribute to the trustee or trustees for the time being of the Ngati Whatua Orakei Trust in kind the whole or any part of the assets of the Company and for that purpose the liquidator may fix such values for assets as the liquidator considers to be appropriate; and



- (b) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the trustee or trustees for the time being of the Ngati Whatua Orakei Trust,

but so that the trustee or trustees for the time being of the Ngati Whatua Orakei Trust is not compelled to accept any shares or other securities on which there is any liability.

FIRST SCHEDULE: PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

1 INTERPRETATION

1.1 Construction

- (a) Unless stated otherwise, references to clauses are references to clauses in this Schedule.
- (b) A reference in this Schedule to a shareholder present at a meeting or entitled to vote at a meeting includes a reference to a proxy of a shareholder, a representative of a corporate shareholder, an attorney of a shareholder, and any person who may lawfully act on behalf of a shareholder.

2 NOTICE

2.1 Written notice must be given to shareholders, Directors and auditors

Written notice of the time and place of a meeting of shareholders must be either hand-delivered, posted or sent by facsimile or by electronic form to every shareholder entitled to receive notice of the meeting and to every Director and any auditor of the Company, not less than 10 working days before the meeting.

2.2 Notice must state nature of business

The notice must:

- (a) state 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;
- (b) state the text of any special resolution to be submitted to the meeting;
- (c) in the case of special resolutions required by sections 106(1)(a) or (b) of the Act, the right of a shareholder under section 110 of the Act; and
- (d) contain or be accompanied by sufficient explanation to enable a reasonable person to understand the effect of the resolutions proposed in the notice.

2.3 Meeting limited to notified business

No business will be transacted at any meeting of shareholders other than the business expressly referred to in the notice of meeting.

2.4 Proxy form must be sent with notice

A proxy form must be sent with each notice of meeting.

2.5 Irregularities in notice may be waived

Any irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity or if all such shareholders give their written consent to the waiver.

2.6 Deficiency of notice does not invalidate meeting

Subject to clause 2.3, a deficiency or irregularity in a notice of meeting does not invalidate the proceedings at that meeting.

2.7 **Notice of an adjournment**

No notice is required for adjourned meetings except to those shareholders who were not present when the meeting was adjourned.

3 **MEETING AND QUORUM**

3.1 **Methods of holding meetings**

A meeting of shareholders 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 a teleconference (or any analogous and/or more advanced technology) between a number of shareholders who constitute a quorum and held in accordance with clause 3.2.

3.2 **Teleconference meetings**

All the provisions in this Schedule relating to meetings will apply to teleconference meetings so long as the following conditions are met:

- (a) all of the shareholders for the time being entitled to receive notice of a meeting will be entitled to notice of a teleconference meeting and to be linked for the purposes of such a meeting. Notice of a teleconference meeting may be given on the telephone;
- (b) throughout the teleconference meeting each participant must be able to hear each of the other participants taking part;
- (c) at the beginning of the teleconference meeting each participant must acknowledge his or her presence for the purpose of that meeting to all the others taking part;
- (d) a participant may not leave the teleconference meeting by disconnecting his or her telephone or other means of communication without first obtaining the chairperson's express consent. Accordingly, a participant will be conclusively presumed to have been present and to have formed part of the quorum at all times during the teleconference meeting unless he or she leaves the meeting with the chairperson's express consent;
- (e) a minute of the proceedings at the teleconference meeting will be sufficient evidence of those proceedings, and of the observance of all necessary formalities, if certified as a correct minute by the chairperson of that meeting pursuant to clause 11.1 of this Schedule.

3.3 **Business to be transacted only if a quorum is present**

Subject to clauses 3.5 and 3.6, business may be transacted at a meeting of shareholders only if a quorum is present at the time when the meeting proceeds to business.

3.4 **Quorum for shareholders' meeting**

A quorum for a meeting of shareholders is present if five or more shareholders are present having the right to vote at the meeting.

3.5 **Meeting convened at shareholders' request dissolved if no quorum**

If a quorum is not present within 30 minutes after the time appointed for the meeting convened on the written request of shareholders holding Shares ~~together~~ carrying together not less than 5% of the voting rights entitled to be exercised, the meeting will be dissolved automatically.

3.6 **Other meetings to be adjourned if no quorum**

If a quorum is not present within 30 minutes after the time appointed for a meeting (other than a meeting referred to in clause 3.5), the meeting will be adjourned to the same day in the following week at the same time and place, or to such other day, time, and place as the Directors may appoint. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders or their proxies present will constitute a quorum.

4 **CHAIRPERSON**

4.1 **Chairperson of Board to be chairperson of meeting**

The chairperson of the Board, if one has been elected by the Directors and is present at a meeting of shareholders, will chair the meeting.

4.2 **Shareholders may elect chairperson if chairperson of Board not available**

If no chairperson of the Board has been elected or, if at any meeting of shareholders the chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting, the deputy chairperson of the Board (if any) will be the chairperson, or failing him or her, the shareholders present may elect one of their number to be chairperson of the meeting.

4.3 **Unruly meetings**

If any meeting becomes so unruly or disorderly that in the opinion of the chairperson of the meeting, the business of the meeting cannot be conducted in a proper and orderly manner, or if in the opinion of the chairperson a meeting becomes unduly protracted, the chairperson may put a motion to adjourn the meeting and ask for a vote to be taken. If the majority of shareholders present vote to adjourn the meeting then the meeting will be adjourned and the chairperson may direct that any uncompleted item of business of which notice was given will be adjourned to another time, date and place (no later than 21 days following the adjourned meeting) for all incomplete and uncompleted business to be addressed by the shareholders.

5 **VOTING**

5.1 **Voting by show of hands or voice vote at meeting**

In the case of a meeting of shareholders held under clause 3.1(a) of this Schedule, unless a poll is demanded, voting at the meeting will be by a show of hands or by voice vote, as the chairperson may determine.

5.2 **Voting by voice if teleconference meeting**

In the case of a meeting of shareholders held under clause 3.1(b) of this Schedule, unless a poll is demanded, voting at the meeting will be by the shareholders signifying individually their assent or dissent by voice or by such other manner as the chairperson may decide.

5.3 **Votes of joint holders**

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

5.4 **Chairperson allowed casting vote**

In the case of an equality of votes, whether on a show of hands, voice vote or on a poll, the chairperson has a casting vote.

5.5 **Chairperson's declaration of result**

Unless a poll is demanded, a declaration by the chairperson of the meeting that a resolution on a show of hands or voice vote or by such other manner as the chairperson may have decided under clause 5.2 is carried by the requisite majority or lost, will be conclusive evidence of that fact.

6 **POLLS**

6.1 **Poll may be demanded by chairperson or shareholder**

At a meeting of shareholders, a poll may be demanded, either before or after a vote by show of hands or voice vote, by:

- (a) the chairperson, at his or her absolute discretion;
- (b) at least 5 shareholders having the right to vote at the meeting;
- (c) a shareholder or shareholders having the right to exercise at least 10% of the total votes entitled to be exercised on the business to be transacted at the meeting; or
- (d) a shareholder or shareholders holding Shares that confer a right to vote at the meeting and on which the total amount paid up is at least 10% of the total amount paid up on all the Shares that confer that right.

6.2 **Time at which polls to be taken**

A poll demanded on the election of a chairperson of a meeting or on a question of adjournment must be taken immediately. A poll demanded on any other question is to be taken at such time as the chairperson of the meeting directs. The meeting may proceed to deal with any business other than that upon which a poll has been demanded pending the taking of the poll.

6.3 **Counting votes cast in a poll**

If a poll is taken, votes must be counted according to the votes attached to the Shares of each shareholder present in person and voting.

6.4 **Declaration of poll result**

- (a) The chairperson of the meeting may declare the result of a poll either at or after the meeting, and when the outcome of the poll is known, may do so regardless of whether all votes have been counted.
- (b) The result of a poll declared by the chairperson of the meeting will be treated as the resolution of the meeting at which the poll was demanded on the issue for which the poll was taken.

6.5 **Proxy allowed to demand a poll**

The instrument appointing a proxy to vote at a meeting confers authority to demand, or join in demanding a poll, and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.

7 **SHAREHOLDER PROPOSALS**

7.1 **Shareholder proposals by written notice**

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 shareholders at which the shareholder is entitled to vote. The provisions of clause 9 of the First Schedule to the Act apply to any notice given pursuant to this clause.

8 **PROXIES**

8.1 **Proxies permitted**

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

8.2 **Proxy to be treated as shareholder**

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

8.3 **Appointment of proxy must be in writing and specify restrictions**

A proxy must be appointed by a notice in writing that is signed by the shareholder, and the notice must state whether the appointment is for a particular meeting or a specified term. A proxy need not be a shareholder of the Company.

8.4 **Notice of proxy to be produced at least 48 hours before meeting**

No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced to the Company at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the notice proposes to vote. If the written notice appointing a proxy is signed under power of attorney, a copy of the power of attorney (unless already deposited with the Company) and a signed certificate of non-revocation of the power of attorney must accompany the notice.

8.5 **Form of notice of proxy**

- (a) A notice appointing a proxy will be in such form as the Board may direct.
- (b) Proxy forms must provide for two-way voting on all resolutions, enabling the shareholder to instruct the proxy as to the casting of the vote, and must not be sent with any name or office (e.g. "chairman of directors") filled in as proxy holder.
- (c) So far as reasonably practicable, resolutions must be framed in a manner which facilitates two way voting instructions for proxy holders.

8.6 **Vote by proxy valid where no notification before meeting of disqualified proxy**

Where:

- (a) the shareholder has died or become incapacitated; or

- (b) the proxy, or the authority under which the proxy was executed, has been revoked; or
- (c) the Share in respect of which the notice of proxy is given has been transferred,

before a meeting at which a proxy exercises a vote in terms of a notice of proxy but the Company does not receive written notice of that death, incapacity, revocation, or transfer before the start of the meeting, the vote of the proxy is valid.

9 **POSTAL VOTES**

9.1 **Postal votes are not permitted**

A shareholder may not exercise the right to vote at a meeting by casting a postal vote.

10 **CORPORATE REPRESENTATIVES**

10.1 **Corporations may act by representative**

A body corporate which is a shareholder may appoint a representative to attend any meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy. The representative will be entitled to attend and be heard at a meeting of shareholders as if the representative were the shareholder.

11 **MINUTES**

11.1 **Board must keep minutes of proceedings**

The Board must ensure that minutes are kept of all proceedings at meetings of shareholders and that a record is kept of all written resolutions of shareholders. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

11.2 **Minutes to be evidence of proper conduct**

Where minutes of proceedings at a meeting of shareholders have been made in accordance with clause 11.1 above, until the contrary is proved, the meeting will be deemed to have been properly convened and its proceedings to have been properly conducted.

12 **OTHER PROCEEDINGS**

12.1 **Chairperson may regulate proceedings**

Except as provided in this Schedule, the chairperson of a meeting of shareholders may regulate the proceedings at the meeting.

SECOND SCHEDULE: PROCEEDINGS OF THE BOARD

1 INTERPRETATION

1.1 Construction

Unless stated otherwise, references to clauses are references to clauses in this Schedule.

2 BOARD TO REGULATE MEETINGS

2.1 Board to meet

The Board is to meet together for the dispatch of business, adjourn and except as set out in this Schedule, the Board may regulate its own procedure. Any five Directors may at any time by notice in writing to the Company summon a meeting of the Board, and the Company will take all such steps as are necessary to convene such meeting.

3 NOTICE OF MEETING

3.1 Notice of meeting

Written notice of every meeting must be either hand-delivered, posted or sent by facsimile or by electronic form to each Director (including any interested Director) at least seven days before the date of the meeting. It will not be necessary to give notice of the meeting to any Director for the time being absent from New Zealand unless that Director has provided details of where he or she may be contacted while overseas. No notice is required for adjourned meetings except to those Directors who were not present when the meeting was adjourned.

3.2 Content of notice

Every notice of a meeting must state the place, day and time of the meeting, and the subject-matter of the meeting.

3.3 Waiver of notice

The requirement for notice of a meeting may be waived if all the Directors who are at the time entitled to receive notice of the meeting give their written consent to such a waiver.

3.4 Meeting limited to notified business

No business may be transacted at any meeting of the Board other than the business expressly referred to in the notice calling the meeting.

3.5 Deficiency of notice

Subject to clause 3.4 of this Schedule, no deficiency or irregularity in a notice of any meeting of the Board will invalidate such meeting or the proceedings at such meeting.

4 QUORUM

4.1 Quorum for Board meeting

The quorum necessary for the transaction of business at a meeting of the Board is five Directors who must not include a Director interested and excluded under clause

14.6 of the Constitution. No business may be transacted at a meeting of the Board unless a quorum is present.

5 **METHODS OF HOLDING MEETINGS**

5.1 **Methods of holding meetings**

A meeting of the Board may be held either:

- (a) by a number of Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of a teleconference (or any analogous and/or more advanced technology) between a number of Directors who constitute a quorum and held in accordance with clause 5.2.

5.2 **Teleconference meetings**

All the provisions in this Schedule relating to meetings will apply to teleconference meetings so long as the following conditions are met:

- (a) all of the Directors for the time being entitled to receive notice of a meeting will be entitled to notice of a teleconference meeting and to be linked for the purposes of such a meeting. Notice of a teleconference meeting may be given on the telephone;
- (b) throughout the teleconference meeting each participant must be able to hear each of the other participants taking part;
- (c) at the beginning of the teleconference meeting each participant must acknowledge his or her presence for the purpose of that meeting to all the others taking part;
- (d) a participant may not leave the teleconference meeting by disconnecting his or her telephone or other means of communication without first obtaining the chairperson's express consent. Accordingly, a participant will be conclusively presumed to have been present and to have formed part of the quorum at all times during the teleconference meeting unless he or she leaves the meeting with the chairperson's express consent;
- (e) a minute of the proceedings at the teleconference meeting will be sufficient evidence of those proceedings, and of the observance of all necessary formalities, if certified as a correct minute by the chairperson of that meeting pursuant to clause 8.2 of this Schedule.

6 **CHAIRPERSON AND DEPUTY CHAIRPERSON**

6.1 **Directors to elect**

At the first meeting of the Board following an election of Elected Representatives, the Directors must elect one of their number as chairperson and (at their discretion) one as deputy chairperson of the Board. Following the third election of Elected Representatives after the date of incorporation of the Company, the chairperson and the deputy chairperson must have served at least one term of three years as a Director.

6.2 **Voting on election**

Where there is more than one candidate for chairperson (or as the case may be deputy chairperson) then a vote will be taken and the person receiving the most votes in favour of his or her appointment will become chairperson (or deputy chairperson). If a tie, the chairperson will be chosen by lot between the tied candidates.

6.3 **Termination of office**

The chairperson (or deputy chairperson) will cease to hold office in the event that he or she resigns from that office, ceases to be a Director or is removed from office by the other Directors passing a resolution of no confidence in him or her. In the event that the chairperson (or deputy chairperson) ceases to hold that office then a further election will be held for the position. Otherwise the term of such office will be until the first meeting of the Board following the next election of Elected Representatives.

7 **PROCEEDINGS AT MEETINGS**

7.1 **Decisions by majority vote**

Each Director entitled to attend and be present at a meeting has one vote. A resolution of the Board, other than a Directors' Removal Resolution or Directors' Special Resolution, is passed if it is agreed to by a majority of the votes cast on it. A Director present at a meeting of the Board may abstain from voting on a resolution, and any Director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Act.

7.2 **Chairperson has casting vote**

In the case of an equality of votes, the chairperson of the Board has a second or casting vote.

7.3 **Chairperson**

The chairperson will take the chair at all meetings of the Board. If the chairperson is not present then the deputy chairperson, if there is one, will take the chair. If there is no deputy chairperson or the deputy chairperson is also not present then the Directors present must elect one of their number to be chairperson of the meeting.

7.4 **Vacancies of Elected Representatives**

If and so long as the number of Directors is less than the quorum fixed by this Schedule, the continuing Directors may act only for the purpose of taking the steps necessary to procure the appointment of new Directors (through the election of new Elected Representatives) to fill any vacancy or vacancies of the positions of Elected Representatives, and for no other purpose.

7.5 **Defects of appointment**

All acts done by any meeting of the Board or of any committee will, notwithstanding that it is afterwards discovered that there was some defect in the appointment of such Director or person co-opted to any committee, or that they were disqualified, be valid as if every such person had been duly appointed and was qualified to act.

7.6 **Unruly meetings**

If any meeting of the Board becomes so unruly or disorderly that in the opinion of the chairperson of the meeting, the business of the meeting cannot be conducted in a proper and orderly manner, or if in the opinion of the chairperson a meeting

becomes unduly protracted, the chairperson may put a motion to adjourn the meeting and ask for a vote of the Board to be conducted. If the majority of Directors present pass a motion to adjourn the meeting then the meeting will be adjourned and the chairperson may direct that any uncompleted item of business of which notice was given will be adjourned to another time, date and place (no later than 21 days following the adjourned meeting) for all incomplete and uncompleted business to be addressed by the Board.

8 MINUTES

8.1 Minutes must be kept

The Board must keep a proper record in a minute book of all decisions taken and business transacted at every meeting of the Board and ensure that a record is kept of all written resolutions of Directors.

8.2 Minutes to be evidence of proceedings

Any minute of the proceedings at a meeting which is purported to be signed by the chairperson of that meeting and which are approved and confirmed at the next meeting of the Board, will be evidence of those proceedings.

8.3 Minutes to be evidence of proper conduct

Where minutes of the proceedings at a meeting of the Board have been made in accordance with clause 8 then, until the contrary is proved, the meeting will be deemed to have been properly convened and its proceedings to have been properly conducted.