

# Constitution of Winton Land Limited

# CONSTITUTION OF WINTON LAND LIMITED

## INTERPRETATION

### 1 **Defined terms**

1.1 In this constitution the following expressions have the following meanings:

*Act* means the Companies Act 1993;

*Akarua Shareholder* means TC Akarua 2 Pty Ltd as trustee of the TC Akarua Sub Trust (or a person that directly or indirectly, through one or more intermediaries, owns and controls or is owned and controlled by or is under common ownership and control with that entity, and in each case to whom the Akarua Shareholder has transferred Shares), or a custodian that holds Shares on such a person's behalf;

*Company* means Winton Land Limited;

*constitution* means this constitution as it may be altered from time to time in accordance with the Act;

*Date of Quotation* means the first day on which the ordinary shares in the Company are quoted on the NZX Main Board;

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

*NZX* means NZX Limited, its successors and assigns and, as the context permits, includes any duly authorised delegate of NZX;

*Rules* means the Listing Rules applying to the NZX Main Board (or any successor to that market) as altered from time to time by NZX;

*Share* means a share in the Company; and

*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 visible form.

1.2 Subject to clause 1.1, expressions:

- (a) which are defined in the Rules (whether or not expressed with an initial capital letter) have the meanings given by the Rules.
- (b) which are defined in the Act (whether generally or for the purposes of one or more particular provisions) 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.

### 2 **Construction**

In this constitution:

- 2.1 headings appear as a matter of convenience and do not affect the interpretation of this constitution;

- 2.2 the singular includes the plural and vice versa, and words importing one gender include the other genders;
- 2.3 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;
- 2.4 a reference to a Rule or the Rules includes that Rule or the Rules as from time to time amended or substituted;
- 2.5 a reference to *permitted by the Act* or *permitted by the Rules* means not prohibited by the Act or not prohibited by the Rules; and
- 2.6 the Schedules form part of this constitution.

## **RELATIONSHIP BETWEEN CONSTITUTION AND RULES**

### **3 Incorporation of Rules while listed by NZX**

For so long as the Company is listed by NZX:

- 3.1 this constitution is deemed to incorporate all provisions of the Rules required under the Rules to be contained or incorporated by reference in this constitution, as those provisions apply from time to time (and as modified by any waiver or ruling relevant to the Company);
- 3.2 shareholders must not cast a vote if prohibited from doing so by the Rules; and
- 3.3 Directors must not cast a vote if prohibited from doing so by the Rules.

### **4 NZX waivers or rulings**

If NZX has granted a waiver or ruling in relation to the Company authorising any act or omission which in the absence of that waiver or ruling would be in contravention of the Rules or this constitution that act or omission will, unless a contrary intention appears in this constitution, be deemed to be authorised by the Rules and by this constitution.

### **5 Failure to comply with Rules has limited effect in some cases**

Any failure to comply with:

- 5.1 the Rules; or
- 5.2 a clause of this constitution corresponding with a provision of the Rules (whether such provision is set out in full in this constitution or incorporated in it pursuant to clause 3),

by the Company or shareholders does not affect the validity or enforceability of any transaction, contract, action, decision or vote taken at a meeting of Equity Security holders or other matter entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the non-compliance is not entitled to enforce that transaction or contract. This clause does not limit the rights of Equity Security holders against the Company or the Directors.

**6 Company must comply with Rules while listed**

- 6.1 For so long as the Company is listed by NZX, the Company must comply with the Rules. Subject to clause 4, if this constitution contains any provision inconsistent with the Rules, then the Rules prevail.
- 6.2 To the extent that any provision of this constitution is expressed as being subject to the Rules or requires compliance with the Rules, such provision will only be subject to, or require compliance with, the Rules for so long as the Company is listed.

**SHARES AND SHAREHOLDERS**

**7 Board need not comply with statutory pre-emptive rights**

Section 45 of the Act does not apply to the Company.

**8 Further issues of Shares do not affect rights of existing shareholders**

Subject to this constitution, the Board may issue Shares that rank as to voting or distribution rights, or both, equally with or in priority to any existing Shares. Any such issue will not be treated as an action affecting the rights attached to those existing Shares unless the terms of issue of those Shares expressly provide otherwise.

**9 Consolidation and subdivision**

The Board may:

- 9.1 consolidate and divide Shares or any class of Shares in proportion to those Shares or the Shares in that class; or
- 9.2 subdivide Shares or any class of Shares in proportion to those Shares or the Shares in that class.

**10 Share register may be divided**

The Share register may be divided into 2 or more registers kept in different places.

**11 Record date for shareholder voting**

The Board may determine in a notice of meeting for the purpose of voting at that meeting that those registered shareholders as at 5 p.m. on a day not more than 2 working days before the meeting will be the only persons entitled to exercise the right to vote at that meeting.

**12 Registration of separate parcels**

A shareholder or a transferee may request the Company to register the Shares held by that person in two or more separately identifiable parcels. Where the Company agrees to such a request, the Company may, so far as it considers convenient, communicate with the shareholder, pay dividends and otherwise act in respect of such parcel, as if the separately identifiable parcels belonged to different persons.

**13 Board may refuse or delay transfer**

The Board may in its absolute discretion refuse or delay the registration of any transfer of Shares (subject to their terms of issue) if permitted to do so by the Act, the Rules or this constitution (including the Fourth Schedule). The registration of any transfer of Shares shall not prejudice or affect in any way the powers exercisable by the Board or the Company under the Fourth Schedule or otherwise.

**14 Compulsory sale of less than Minimum Holdings**

14.1 The Company may at any time give notice to a shareholder holding less than a Minimum Holding (as defined in the Rules) that if, at the expiration of 3 months after the date the notice is given, Shares then registered in the name of the shareholder are less than a Minimum Holding the Company may sell those Shares on market (including through a broker acting on the Company's behalf).

14.2 The Board may authorise the transfer of the Shares sold by the Company under this clause 14 and the shareholder is deemed to have authorised the Company to act on behalf of the shareholder and to sign all necessary documents relating to the sale. The purchaser of Shares sold by the Company under this clause 14 shall have no obligation to ensure the proceeds of the sale of those Shares is applied in accordance with this clause 14, nor shall the title to the Shares be affected by any irregularity or invalidity in the procedures under this constitution relating to the sale. The remedy of any person aggrieved by the sale is in damages only and against the Company exclusively.

14.3 The proceeds of the sale of any Shares sold under this clause must be applied as follows:

- (a) first, in payment of any reasonable sale expenses.
- (b) second, in satisfaction of any unpaid calls or any other amounts owing to the Company in respect of the Shares.
- (c) the residue, if any, must be paid to the person who was the holder immediately before the sale or his or her executors, administrators or assigns.

14.4 A certificate, signed by a Director that records that a power of sale under this clause has arisen and is exercisable by the Company is conclusive evidence of the facts stated in that certificate.

**15 Board may make calls on Shares**

The Board may make calls on any shareholder for any money that is unpaid on that shareholder's Shares and not otherwise payable at a specified time or times under this constitution or the terms of issue of those Shares or any contract for the issue of those Shares. The First Schedule governs calls on Shares.

**16 Forfeiture of Shares where calls or other amounts unpaid**

The Board may exercise the rights set out in the First Schedule for forfeiture of any Shares if the holder of those Shares fails to pay:

16.1 a call, or an instalment of a call, on those Shares; or

16.2 any amount that is payable under this constitution or the terms of issue of those Shares or any contract for the issue of the Shares.

**17 Company's lien**

The Company has a lien on Shares and dividends in respect of such Shares on the terms set out in the First Schedule.

18 **Company may acquire and hold Shares**

Subject to this constitution and the Rules, the Company may:

18.1 purchase or otherwise acquire Shares issued by the Company and may hold Shares as treasury stock; and

18.2 make an offer to one or more holders of Shares to acquire Shares issued by the Company in such number or proportions as it thinks fit,

in accordance with the Act and the Rules.

19 **Company may issue and redeem Shares**

Subject to this constitution and the Rules, the Company may:

19.1 issue or redeem redeemable Shares; and

19.2 exercise an option to redeem redeemable Shares issued by the Company in relation to one or more holders of redeemable Shares,

in accordance with the Act and the Rules.

20 **Board deductions from distribution**

The Board may, at its discretion, deduct from any dividend or other distribution payable to a shareholder any amount owed by the shareholder to the Company in respect of which the Company has a lien over the specific Shares on which the dividend or other distribution is payable. The Board must deduct from any dividend or other distribution payable to any shareholder any amount it is required by law to deduct, including withholding and other taxes.

21 **Distributions do not bear interest**

No dividend or other distribution shall bear interest against the Company unless the applicable terms of issue expressly provide otherwise.

22 **Unclaimed moneys**

All dividends and other distributions unclaimed for one year after the due date for payment may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. The Company shall be entitled to mingle the distribution with other money of the Company and shall not be required to hold it or to regard it as being impressed with any trust but, subject to compliance with the solvency test, shall pay the distribution to the person producing evidence of entitlement.

23 **Proceedings at meetings of shareholders and interest groups**

The Second Schedule governs the proceedings at meetings of shareholders. The Second Schedule also governs the proceedings of meetings of any interest group required to be held by the Act, the Rules, or this constitution, with all necessary consequential modifications, except that the quorum shall be the members of the interest group holding 5% or more of the total number of Shares held by all members of that group having the right to vote at the meeting.

**DIRECTORS**

24 **Composition**

The Company shall comply with the minimum Board composition requirements of the Rules.

## 25 **Appointment of Directors**

- 25.1 Any natural person who is not disqualified under the Act and, if required under the Rules, who has been nominated within the time limits under the Rules, may be appointed as a Director by an ordinary resolution of shareholders.
- 25.2 The Board may appoint any person who is not disqualified under the Act to be a Director to fill a vacancy or as an addition to the existing Directors. Any Director appointed under this clause (including any person who subsequent to his or her appointment as a Director becomes an executive Director) may hold office only until the next annual meeting, and is then eligible for election.
- 25.3 The persons holding office as directors of the Company on adoption of this constitution continue in office and are deemed to have been appointed as Directors pursuant to this constitution. Similarly the chairperson of the Board continues in office and is deemed to have been appointed as chairperson pursuant to this constitution.

## 26 **Equity Security holder appointment right**

- 26.1 The Akarua Shareholder shall, for so long as it holds a number of Shares that is not less than 75% of the number of Shares held by the Akarua Shareholder on the Date of Quotation (adjusted as necessary to reflect any share subdivision or consolidation occurring after the Date of Quotation), be entitled to appoint one Director, and to remove any Director so appointed by it, in each case by notice in writing to the Company, provided that no such appointment of a Director may be made if it would result in the proportion such Director bears to the total number of Directors (excluding alternate Directors) exceeding the proportion of total Votes attaching to the Equity Securities in the Company that are held by the Akarua Shareholder.
- 26.2 For such time as a Director appointed by the Akarua Shareholder in accordance with clause 26.1 remains in office, the Akarua Shareholder may not Vote on the election of other Directors.
- 26.3 The Akarua Shareholder's right to appoint a Director pursuant to clause 26.1 is not a right attaching to its Shares, and may not be assigned or transferred by it (except to a new Akarua Shareholder) without the Company's prior written consent.

## 27 **Rotation of Directors**

- 27.1 Each Director shall retire from office when required to do so by the Rules, but, subject to the Rules, shall be eligible for re-election (including at any meeting at which the Director retires).
- 27.2 A Director retiring at a meeting of shareholders continues to hold office:
- (a) until he or she is re-elected; or
  - (b) if he or she is not re-elected, until the end of the meeting of shareholders at which he or she retires (or any adjournment of that meeting).

## 28 **No shareholding qualification for Directors**

There is no shareholding qualification for Directors.

## 29 **Election of chairperson of the Board and term of office**

- 29.1 The Directors may elect one of their number as chairperson and, if they so determine a deputy chairperson, of the Board.

29.2 The chairperson of the Board and, if one has been elected, the deputy chairperson of the Board holds that office until he or she vacates that office or the Directors elect a chairperson or deputy chairperson (as the case may be) in his or her place.

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

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

30.1 dies;

30.2 (other than a Director appointed pursuant to clause 26.1) is absent from 3 consecutive meetings of the Board without leave being granted by a resolution of the Board and the Board resolves that the Director has vacated office;

30.3 becomes disqualified from being a director pursuant to the Act; or

30.4 retires from office and is not re-elected.

**31 Meetings of the Board**

The Third Schedule governs the proceedings at meetings of the Board, except where otherwise agreed by all Directors in relation to a particular meeting or meetings. The third schedule to the Act does not apply to proceedings of the Board.

**32 Written resolutions of Board permitted**

A written resolution signed or assented to by all the Directors then entitled to receive notice of a meeting of the Board is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

**33 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. A copy of a written resolution, which has been signed and is sent by email or any similar means of communication (including PDF counterparts), will satisfy the requirements of this clause.

**34 Board delegates to comply with regulations**

In exercising the Board's delegated powers, any committee of Directors, Director, employee, or any other person must comply with any regulations that the Board may impose.

**35 Committee proceedings**

The provisions of this constitution relating to meetings and proceedings of the Board also apply to meetings and proceedings of any committee of Directors, except to the extent the Board determines otherwise.

**36 Reimbursement of 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 without requiring the prior approval of shareholders.

**37 Directors may appoint and remove alternate Directors**

Every Director may:

37.1 appoint any person who is not a Director and is not disqualified by the Act or this constitution from being a Director, and whose appointment has been approved in writing by a majority of the other Directors, to act as an alternate

Director in his or her place either for a specified period, or generally during the absence or inability to act from time to time of such Director; and

37.2 remove his or her alternate Director from that office,

by giving written notice to that effect to the Company. A majority of the other Directors may similarly remove an alternate of a Director (other than a Director appointed under clause 26.1) from that office. An alternate Director for a Director appointed under clause 26.1 may attend meetings of the Board as an observer if that Director attends the relevant meeting (but, in that circumstance, the alternate Director may not vote or participate in the business of the meeting).

**38 Alternate Director has powers of appointer**

While acting in the place of the Director who appointed him or her, an alternate Director:

38.1 has, and may exercise and discharge, all the powers, rights, duties and privileges of that Director (including the right to receive notice of, be counted as part of the quorum of, and participate in a meeting, of the Board, and to sign any document, including a written resolution, and to act as chairperson of the Board, but excluding the right to appoint an alternate Director);

38.2 is also subject to the same terms and conditions of appointment as that Director, except that he or she is not entitled to receive remuneration other than such proportion (if any) of the remuneration otherwise payable to his or her appointer as the appointer may direct by notice in writing to the Company.

**39 Termination of appointment of alternate Director**

The appointment of an alternate Director terminates automatically if the Director who appointed him or her ceases to be a Director or if an event occurs which would cause him or her to vacate office if he or she were a Director. A Director retiring by rotation and being re-elected is not to be treated as having ceased to be a Director for the purposes of this clause.

**GENERAL**

**40 Company indemnification of directors and employees for certain liabilities**

The Company shall indemnify a director of the Company, and may indemnify an employee of the Company or a director or employee of 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 such an indemnity.

**41 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.

**42 Manner of 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 Director, or any other person authorised by

the Board, whose signature must be witnessed, or as otherwise permitted by the Act.

43 **Distribution of surplus assets in kind**

If the Company is liquidated the liquidator may, with the approval of shareholders by special resolution, but subject to any other sanction required by the Act:

43.1 divide among the shareholders in kind the whole or any part of the surplus assets of the Company and for that purpose the liquidator may:

- (a) fix such values for surplus assets as the liquidator considers to be appropriate, and
- (b) determine how the division will be carried out as between shareholders or different classes of shareholder; and

43.2 vest the whole or any part of any such surplus assets in trustees upon such trusts for the benefit of such of those shareholders as the liquidator thinks fit,

but so that no shareholder is compelled to accept any shares or other securities on which there is any liability.

## FIRST SCHEDULE: CALLS, FORFEITURE AND LIENS

### INTERPRETATION

- 1 **Construction**  
Unless stated otherwise, references to clauses are references to clauses in this Schedule.

### CALLS ON SHARES

- 2 **Shareholders must pay calls**  
Every shareholder on receiving at least 10 working days' notice specifying the time or times and the place of payment must pay, in accordance with that notice, the amount called to be paid in respect of any Shares that shareholder holds. The Board may revoke or postpone a call, or require a call to be paid by instalments.
- 3 **Call made when Board resolution passed**  
A call is regarded as having been made at the time when the Board resolution authorising the call was passed.
- 4 **Joint holders are jointly and severally liable**  
The joint holders of a Share are jointly and severally liable to pay all calls for that Share.
- 5 **Unpaid calls will accrue interest**  
If an amount called is not paid in full at the time specified for payment, the person from whom the amount is due must pay the Company interest on the amount that remains unpaid at a rate determined by the Board and calculated from the time specified for payment until the day of actual payment. Subject to the Rules, the Board may waive some or all of the payment of that interest.
- 6 **Amounts payable under terms of issue treated as calls**  
Any amount that becomes payable on issue or at any specified date under this constitution or under the terms of issue of Shares or under a contract for the issue of Shares, will be regarded as being a call duly made and payable on the specified date. If the payment is not made, the relevant provisions of this constitution will apply as if the amount had become payable by virtue of a call made in accordance with this constitution.
- 7 **Board may differentiate between shareholders as to calls**  
On the issue of Shares, the Board may differentiate between shareholders as to the amount of calls to be paid and the times of payment.
- 8 **Board may accept payment in advance for calls**
  - 8.1 Where a shareholder is willing to advance some or all of the money unpaid and uncalled on any Share of that shareholder, the Board may accept the amount advanced on the Company's behalf. The Board may pay interest on that amount at a rate agreed between the Board and that shareholder for the period between the date that the amount is accepted and the date that the amount becomes payable pursuant to a call or the date specified for its payment.
  - 8.2 The Board may at any time repay to any shareholder the whole or any portion of any money so advanced upon giving that holder at least 10 working days' notice in writing and as from the date of such repayment interest (if any) shall cease to accrue on the money so repaid.

- 8.3 A shareholder is not entitled as of right to any payment of interest on any amount so paid in advance and the Board may decline to pay any interest. Any amount so paid in advance must not be taken into account in ascertaining the amount of any dividend or other distribution payable upon the Shares concerned.

## **FORFEITURE OF SHARES**

- 9 **Board may by notice require forfeiture of Shares if calls unpaid**  
The Board may during the time that a call, instalment, or other amount remains unpaid on a Share, serve a notice on the holder of that Share requiring payment of the unpaid call, instalment, or other amount, together with any accrued interest and any expenses incurred by the Company by reason of non-payment.
- 10 **Notice of forfeiture must satisfy certain requirements**  
The notice served on a shareholder under clause 9 must specify a date not earlier than 10 working days after the date the notice is served by which the payment is to be made. The notice must also state that in the event of non-payment by the appointed time, the Shares to which the call, instalment, or other amount relates, will be liable to be forfeited by the shareholder.
- 11 **Failure to comply with notice may lead to forfeiture**  
Where a valid notice under clause 9 is served on a shareholder and the shareholder fails to comply with the notice, then the Board may resolve that any Share for which that notice was given and all distributions authorised and not paid before the notice was served be forfeited.
- 12 **Board may deal with forfeited Share**  
A forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit. However, the Board may cancel the forfeiture at any time before the sale or other disposition on such terms as the Board thinks fit if the call, instalment or other amount which remains unpaid on the Share is paid.
- 13 **Shareholder whose Shares are forfeited loses rights**  
A person whose Shares have been forfeited immediately ceases to be a shareholder in respect of those Shares notwithstanding any other provision of this constitution, and remains liable to pay the unpaid amount that the shareholder owes the Company, but that liability shall cease if the Company receives payment in full of all money owing for those Shares.
- 14 **Evidence of forfeiture**  
A certificate signed by a Director that a Share has been duly forfeited on a stated date is conclusive evidence of the facts stated in that certificate.
- 15 **Company may sell forfeited Share**  
The Company may receive the consideration, if any, given for a forfeited Share following a sale or disposition, and may execute a transfer of the Share in favour of the person to whom the Share is sold or disposed of, and register that person as the holder of the Share. That person is not bound to see to the application of the purchase money, if any, nor is the title to the Share affected by any irregularity or invalidity in the procedures under this constitution in respect of the forfeiture, sale or disposal of that Share. Any residue after satisfaction of unpaid calls, instalments, premiums or other amounts and interest, and expenses, shall be paid to the previous holder, or to his or her executors, administrators or assigns.

## **LIEN ON SHARES**

### **16 Company's lien**

The Company has a lien, ranking in priority over all other equities, on:

16.1 all Shares registered in the name of a shareholder; and

16.2 all dividends authorised in respect of such Shares; and

16.3 the proceeds of sale of such Shares,

for:

16.4 unpaid calls and instalments payable in respect of any such Shares; and

16.5 interest on any such calls or instalments; and

16.6 sale expenses owing to the Company in respect of any such Shares; and

16.7 any amounts that the Company may be called on to pay under any statute, regulation, ordinance or other legislation in respect of the Shares of that shareholder, whether the period for payment has arrived or not.

### **17 Waiver of lien**

Registration of a transfer of Shares on which the Company has any lien will operate as a waiver of the lien, unless the Company gives notice to the contrary to the transferee prior to registration.

### **18 Company may sell Share on which it has a lien**

The Company may sell a Share on which it has a lien in such manner as the Board thinks fit, where:

18.1 the lien on the Share is for a sum which is presently payable; and

18.2 the registered holder of the Share, or the person entitled to it on his or her death or bankruptcy, has failed to pay that sum within 10 working days after the Company has served that registered holder written notice demanding payment of that sum.

### **19 Company may transfer Share and apply proceeds**

19.1 The Company may receive the consideration given for a Share sold under clause 18, and may execute a transfer of the Share in favour of the person to whom the Share is sold, and register that person as the holder of the Share discharged from all calls due prior to the purchase.

19.2 The purchaser is not bound to see to the application of the purchase money, and the purchaser's title to the Share is not affected by any irregularity or invalidity in the proceedings relating to the sale. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.

19.3 The Company must apply the sale proceeds in payment of the sum presently payable on the lien, and the balance, if any, shall (subject to a like lien for sums not presently payable that existed upon the Share before the sale) be paid to the person who held the Share immediately before the date of sale or to his or her executors, administrators or assigns.

## **SECOND SCHEDULE: PROCEEDINGS AT MEETINGS OF SHAREHOLDERS**

### **INTERPRETATION**

#### **1 Construction**

- 1.1 This Schedule is to be read together with the first schedule to the Act.
- 1.2 Unless stated otherwise, references to clauses are references to clauses in this Schedule.
- 1.3 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.

### **QUORUM**

#### **2 Quorum for shareholders' meeting**

A quorum for a meeting of shareholders is present if 3 or more shareholders are present having the right to vote at the meeting.

### **CHAIRPERSON**

#### **3 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 Directors 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 or is unwilling to act, the deputy chairperson of the Board (if any) shall be the chairperson, or failing him or her, the Directors present may elect one of their number to be chairperson of the meeting.

#### **5 As a last resort shareholders may elect chairperson**

If at any meeting of shareholders, no Director is willing to act as chairperson or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may elect one of their number to be chairperson of the meeting.

#### **6 Chairperson's power to adjourn meeting**

The chairperson of a meeting at which a quorum is present:

- 6.1 may adjourn the meeting with the consent of the shareholders present who are entitled to attend and vote at that meeting; and
- 6.2 must adjourn the meeting if directed by the meeting to do so.

The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

#### **7 Chairperson may dissolve or adjourn unruly meetings**

The chairperson may adjourn or dissolve the meeting if in his or her opinion the meeting has become so unruly, disorderly or inordinately protracted, that the business of the meeting cannot be conducted in a proper and orderly manner. The

chairperson may exercise this power without the consent of the meeting and without giving reasons.

**8 Dissolved meetings - unfinished business**

If the chairperson proposes to dissolve a meeting pursuant to clause 7, and there is any item of unfinished business of the meeting which in his or her opinion requires to be voted upon, then that item shall be dealt with by the chairperson directing it to be put to the vote by a poll without further discussion.

**VOTING**

**9 Chairperson not 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 does not have a casting vote.

**POLLS**

**10 Voting at meetings to be by poll**

As required by the Rules, all voting at meetings of shareholders must be conducted by a poll.

**11 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.

**12 Declaration of poll result**

12.1 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.

12.2 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.

**PROXIES**

**13 Form of notice of proxy**

13.1 A notice appointing a proxy shall be in such form as the Board may direct.

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

Where:

14.1 the shareholder has died or become incapacitated; or

14.2 the proxy, or the authority under which the proxy was executed, has been revoked; or

14.3 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.

## **POSTAL VOTES**

### **15 Postal votes permitted at Board's option**

- 15.1 A shareholder may exercise the right to vote at a meeting by casting a postal vote only if the Board, prior to the giving of notice of a meeting, has so determined and, if the Board so determines, the provisions of clause 7 of the first schedule to the Act shall apply. To avoid doubt, a postal vote may be cast using electronic means permitted by the Board.

## **OTHER PROCEEDINGS**

### **16 Chairperson may regulate other proceedings**

Except as provided in the first schedule to the Act as modified by this Schedule, the chairperson of a meeting of shareholders may regulate the proceedings at the meeting.

## **THIRD SCHEDULE: PROCEEDINGS OF THE BOARD**

### **NOTICE OF MEETING**

**1 Director's power to convene meetings**

A Director, or any other person at the request of a Director, may convene a meeting of the Board by giving notice in accordance with this Schedule.

**2 Notice to be sent to Director's address**

The notice of meeting must be a written notice delivered by hand to the Director, or sent to the address, or an electronic mail message sent to the electronic mail address, which the Director provides to the Company for that purpose, or if an address or electronic mail address, is not provided, then a written notice to his or her last place of employment or residence known to the Company.

**3 Notice to contain certain details**

The notice of meeting must include the date, time and place of the meeting and the matters to be discussed.

**4 Period of notice required to be given to Directors**

At least two days' notice of a meeting of the Board must be given unless the chairperson (or, in the chairperson's absence from New Zealand, the deputy chairperson (if any), and in the deputy chairperson's absence, any other Director) believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting of the Board may be given, so long as at least two hours' notice is given. Any such shorter notice may be given by telephone communication to each Director at the telephone number provided to the company by each Director provided that written notice shall be given to the Directors within the shorter notice period where it is practicable to do so.

**5 Absent Directors**

If a Director, who is for the time being absent from New Zealand, supplies the Company with an electronic mail address to which notices are to be sent during his or her absence, then notice must be given to that Director. Otherwise notice need not be given to any Director for the time being absent from New Zealand. However, if he or she has an alternate Director who is in New Zealand, then notice must be given to that person.

**6 Directors may waive irregularities in notice**

Any irregularity in the notice of a meeting, or failure to comply with clauses 1 to 5 of this Schedule is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or failure, or if all Directors entitled to receive notice of the meeting agree to the waiver.

### **MEETING AND QUORUM**

**7 Methods of holding meetings**

A meeting of the Board may be held:

- 7.1 by a number of Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting;
- 7.2 by means of audio, or audio and visual, communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting; or

7.3 by a combination of the methods described in clauses 7.1 and 7.2 of this Schedule.

**8 Quorum for Board meeting**

Unless otherwise determined by the Board, the quorum necessary for the transaction of business at a meeting of the Board is a majority of the Directors. No business may be transacted at a meeting of the Board unless a quorum is present.

**9 Meeting adjourned if no quorum**

If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the chairperson will adjourn the meeting to a specified day, time and place, the day being within the next 2 days. If no such adjournment is made the meeting will be adjourned automatically until the following working day/the same day in the following week at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the Directors present will constitute a quorum.

**CHAIRPERSON**

**10 Chairperson to chair meetings**

The chairperson or, in the absence of the chairperson, the deputy chairperson of the Board will chair all meetings of the Board. If no chairperson or deputy chairperson is elected, or if at a meeting of the Board the chairperson or deputy chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, then the Directors present may elect one of their number to be chairperson of the meeting.

**VOTING**

**11 Voting on resolutions**

Each Director has one vote. 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. A Director must not vote where that Director is not permitted to vote by the Rules or this constitution. 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.

**12 Chairperson does not have a casting vote**

The chairperson of the Board does not have a casting vote.

**MINUTES**

**13 Board must keep minutes of proceedings**

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

**OTHER PROCEEDINGS**

**14 Board may regulate other proceedings**

Except as set out in this Schedule, the Board may regulate its own procedure.

## FOURTH SCHEDULE: OWNERSHIP RESTRICTIONS

### INTERPRETATION

#### 1 Definitions

In this Schedule, unless the context otherwise requires:

*Affected Shares* means any Shares held by a Shareholder that the Board has determined are "Affected Shares" under clause 8.1 because (in the opinion of the Board):

- (a) the receipt by the Shareholder of those Shares; or
- (b) any matter which has arisen since the receipt by the Shareholder of those Shares and Concerns those Shares and/or that Shareholder,

has resulted in the Company Breaching the Overseas Ownership Threshold (and, where that Shareholder holds more Shares of the relevant class than the number determined to be Affected Shares, means the number of such Shares which the Board considers to be the number of Affected Shares held by that Shareholder) – but shall not include any such Shares:

- (c) which have been transferred to a Non-Overseas Person in accordance with clause 9.1(b) or 9.2(b); or
- (d) in respect of which the relevant notice given by the Board under clause 8.4 is withdrawn;

*associate* has the meaning given to that term in the Overseas Investment Act (and includes any replacement term to similar effect or meaning in that act);

*Breach the Overseas Ownership Threshold* means:

- (a) to exceed the Overseas Ownership Threshold; or
- (b) to the extent that the Company has, at the relevant time, already exceeded the Overseas Ownership Threshold, to exceed the Overseas Ownership Threshold to a greater extent,

and *Breached the Overseas Ownership Threshold* has a corresponding meaning;

*Final Notice Recipient* has the meaning given to that term in clause 8.1;

*Inadequate Discloser* has the meaning given in clause 7.1;

*Initial Notice Recipient* has the meaning given to that term in clause 7;

*Legislative Limit* means the maximum aggregate percentage of Shares that can be owned or controlled by an Overseas Person or all Overseas Persons (together with their respective associates) without the Company itself being an Overseas Person;

*Non-Overseas Person* means any person that is not an Overseas Person;

*Overseas Investment Act* means the Overseas Investment Act 2005 and all regulations under it, and includes any replacement or successor legislation and regulations under it;

*Overseas Ownership Threshold* means 90% of any relevant Legislative Limit, or any such higher percentage (which, to avoid doubt, may exceed 100% - for example, in the event of a relevant regulatory exemption applying to the Company) as may be determined by the Board from time to time for so long as that determination remains in effect;

*Overseas Person* has the meaning given to that term in the Overseas Investment Act (and includes any replacement term to similar effect or meaning in that act);

*Proposed Recipient* has the meaning given to that term in clause 3.2;

*Representations* has the meaning given to that term in clause 7.6;

*Required Disclosure* has the meaning given to that term in clause 3; and

*Shareholder* means the registered holder of any Shares.

## 2 **Construction**

In this Schedule, unless the context requires otherwise:

2.1 information "Concerns":

- (a) a Shareholder if it relates, directly or indirectly, and in any way whatsoever, to any matter which has or may have the effect of meaning that that Shareholder is an Overseas Person or an associate of an Overseas Person;
- (b) any Share if it relates, directly or indirectly, and in any way whatsoever, to any matter which has or may have the effect of meaning that that Share is held by an Overseas Person or an associate of an Overseas Person;

2.2 Shares shall be deemed to be held by an Overseas Person if held by an associate of an Overseas Person (and any such associate shall be deemed to be an Overseas Person to the extent of that holding);

2.3 capitalised terms which are not otherwise defined in this Schedule have the meanings given to them in the constitution of which this Schedule forms part; and

2.4 a reference to a clause is reference to a clause in this Schedule.

### **POWER TO REQUIRE DISCLOSURE**

## 3 **Registered holders to provide information**

The Board may, by notice in writing, require:

3.1 any Shareholder; or

3.2 any proposed recipient of Shares (whether intended to receive Shares by way of transfer, transmission, operation of law or issue) (*Proposed Recipient*),

to lodge with the Company within 15 working days of the date of the notice a statutory declaration (or other disclosure or documentary evidence as may be required by the Board) giving such information Concerning the Shareholder and/or any Shares held by that Shareholder as the Board may require for the purposes of determining whether circumstances have arisen which may entitle it to exercise, and/or whether to exercise, its powers under this Schedule (*Required Disclosure*). The information that the Board may request be disclosed in a Required Disclosure includes (but is not limited to):

- 3.3 the number and class of Shares of which the:
  - (a) Shareholder is the registered holder; or
  - (b) Proposed Recipient will, if the relevant Shares are registered in the Proposed Recipient's name, become the registered holder,as applicable;
- 3.4 whether (and, if so, why) the Shareholder or Proposed Recipient (as applicable) is, or is reasonably likely to become (for any reason whatsoever), an Overseas Person or an associate of an Overseas Person; and
- 3.5 such other information as the Board may require for the purposes of determining whether to exercise powers under this Schedule.

#### 4 **Disclosure register**

The Company must:

- 4.1 keep a register containing all information obtained by it from notices, statutory declarations and other documentary evidence provided to it under clause 3; and
- 4.2 ensure that the information stored in the register referred to in clause 4.1 is kept confidential to:
  - (a) the Company (and its Directors, officers, employees, agents and advisers); and
  - (b) any person nominated by the Board for the purposes of maintaining the register or exercising any of the Board's or the Company's powers under this Schedule.

#### **REFUSAL TO REGISTER SHARE TRANSFERS**

#### 5 **Power to refuse to register**

In addition to any other grounds the Board may have (whether under this constitution or otherwise) for declining to register any transfer of Shares, the Board may decline to register a transfer of Shares:

- 5.1 if the Board has required the Proposed Recipient under clause 3 to lodge a Required Disclosure with the Company and that Required Disclosure has:
  - (a) not been received by the Company from the Proposed Recipient within 15 working days of the date of the notice; or

- (b) been received by the Company but has not been completed to the satisfaction of the Board or, in the opinion of the Board, is or may be materially incorrect or misleading or otherwise unsatisfactory; or

5.2 if the Board knows or believes that the transfer of those Shares to the Proposed Recipient will or is likely to cause the Company to Breach the Overseas Ownership Threshold,

and the Board resolves to exercise its powers under this clause within 30 working days after receipt or presentation of the relevant transfer. Notice of the resolution must be sent to the transferor and to the transferee within five working days of it being passed.

## 6 **Registration of transfer not to affect rights of the Board**

The registration of any transfer will not prejudice or affect in any way the provisions of, or the powers exercisable after such registration by the Board or the Company under, this Schedule (whether in respect of the transferred Shares or otherwise).

### **AFFECTED SHARES**

## 7 **Notification that Shares may be Affected Shares**

Where:

- 7.1 a Shareholder has not lodged a Required Disclosure with the Company within the 15 working day period specified in clause 3 or that Required Disclosure has been received by the Company but has not been completed to the satisfaction of the Board or in the opinion of the Board is or may be materially incorrect or misleading or otherwise unsatisfactory (that Shareholder being an *Inadequate Discloser*); or
- 7.2 the Board is of the opinion that any Required Disclosure provided to the Company by, and/or any other information held by or known to the Board which Concerns, a Shareholder (a *Relevant Shareholder*) or any Shares held by that Shareholder, indicates that the Company has Breached the Overseas Ownership Threshold,

the Company may give notice in writing to the relevant Shareholder (an *Initial Notice Recipient*), notifying the Initial Notice Recipient:

- 7.3 that the Board is (and summarising the Board's reasons for) considering whether it should determine that Shares held by that Initial Notice Recipient are Affected Shares;
- 7.4 of the number of Shares in each class of Shares held by that Initial Notice Recipient that the Board is considering whether to determine to be Affected Shares;
- 7.5 that, in the event that the Board determines that any such Shares are Affected Shares:
  - (a) some or all voting rights attaching to the Affected Shares may be immediately suspended; and
  - (b) the Initial Notice Recipient will be required to dispose of those Affected Shares to a Non-Overseas Person within 20 working days, failing which

the Board may dispose of those Shares on behalf of the Initial Notice Recipient; and

7.6 that the Initial Notice Recipient may make representations in writing to the Company as to the matters set out in the notice within 15 working days of the date of that notice (*Representations*).

## 8 **Determination of Affected Shares**

8.1 Within:

- (a) 45 working days of the date of a notice given by the Company under clause 7 (if no Representations are received by the Company within the time referred to in clause 7.6); or
- (b) 30 working days of receiving any Representations in writing pursuant to clause 7.6,

whichever is the later, the Board may determine whether any Shares held by the Shareholder given notice by the Company under clause 7 (*Final Notice Recipient*) are "Affected Shares".

8.2 If a Shareholder is an Inadequate Discloser, the Board may for all purposes of this Schedule deem the Shareholder to have become an Overseas Person or an associate of an Overseas Person on the date of the notice sent to that Shareholder under clause 3 requiring the relevant Required Disclosure, unless and until the Board determines that the Shareholder was not an Overseas Person on that date.

8.3 The determination of the Board under clause 8.1, including any determination whether to consider any Representations from the Final Notice Recipient and the weight to be placed on the same, is binding on the Final Notice Recipient and not subject to challenge, appeal or review. In making its determination, the Board may take into account such evidence or other information as it considers appropriate.

8.4 The Company must promptly give notice in writing to the Final Notice Recipient following any determination made by the Board under this clause, indicating:

- (a) whether the Board has determined that any of the Shares held by that Final Notice Recipient are Affected Shares; and
- (b) if so, the number of Shares in each class of Shares held by that Final Notice Recipient that the Board has determined are Affected Shares.

8.5 A determination of the Board under clause 8.1 that some or all of the Shares held by a Final Notice Recipient are or are not Affected Shares does not prevent the Board from subsequently making a different determination as to whether any such Shares are Affected Shares, or that any other Shares are also Affected Shares.

## 9 **Suspension of rights attaching to, and disposal of, Affected Shares**

9.1 If the Board makes a determination under clause 8 that Shares are Affected Shares, the Shareholder of those Affected Shares:

- (a) if so notified in that notice, will not (unless the notice given by the Board under clause 8 is withdrawn) be entitled to exercise the votes attached to those Affected Shares at any meeting of Shareholders (including at any meeting of an interest group or a class of Shareholders) and any such vote cast at any such meeting shall be disregarded, provided that nothing in this clause 9.1 shall prevent any the Shareholder attending any such meeting; and
- (b) must (unless the notice given by the Board under clause 8 is withdrawn), within 20 working days, ensure that the Affected Shares are disposed of to a Non Overseas Person.

9.2 If the Board is not satisfied that:

- (a) such a disposal of Affected Shares has been made; or
- (b) a disposal of Affected Shares was made to a Non Overseas Person,

the Company may sell the Affected Shares on behalf of the Shareholder (or any person who or which the Board does not consider to be a Non-Overseas Person and who or which has acquired them) to a Non-Overseas Person. The Company may only sell Affected Shares pursuant to this clause 9.2 in a manner first approved by NZX.

## 10 **Validity of resolutions etc unaffected**

Notwithstanding clause 9.1(a), no resolution of, or proceeding at, a meeting of Shareholders (or of the holders of Shares in a class or interest group) shall be invalid on the grounds that:

- 10.1 a Shareholder who holds Affected Shares cast a vote in breach of clause 9.1(a), provided any such vote was counted by (or on behalf of) the Company in good faith and without actual knowledge at the time of the vote that it was cast in contravention of that clause; or
- 10.2 a Shareholder was prohibited from casting a vote or votes in respect of any Shares because the Board had determined in accordance with clause 8.1 that those Shares were Affected Shares in circumstances where the Board subsequently withdraws the notice given by the Board under clause 8 on the basis that the Board no longer considers that the Shares to which the notice applied are or may be Affected Shares.

## 11 **Appointment of Company as agent**

11.1 For the purposes of clause 9, a Shareholder holding any Affected Shares (for the avoidance of doubt, including any Overseas Person who or which acquires Affected Shares from a former Shareholder required to dispose of those Affected Shares under clause 9.1(b)) will be deemed to have appointed, and does hereby irrevocably appoint, the Company as its agent with full authority to act (and the Company shall have full authority to act) on its behalf in relation to the sale of the Affected Shares and to sign all documents relating to such sale and transfer of the Affected Shares (including any instrument of share transfer) and the Board may register a transfer of the Affected Shares so sold, whether or not the transfer has been properly completed and whether or not it is accompanied by the certificates (if any) for the Affected Shares.

11.2 Any person transferred such Shares will not be bound to see to the application of the purchase money, nor will his, her or its title to the Shares be affected by any irregularity or invalidity in the proceedings relating to the sale of those Shares.

11.3 The net proceeds of sale, after deduction of any brokerage, other costs of sale and other costs incurred by the Company in connection with the sale (including, for the avoidance of doubt, all costs reasonably incurred by the Company or the Board in investigating whether such Shares should be treated as Affected Shares, or otherwise in relation to the exercise of its powers under this Schedule in relation (directly or indirectly) to those Affected Shares), will be held on trust by the Company for, and be paid (together with interest at such rate (if any) as the Board considers appropriate) to, the Shareholder who or which held them immediately prior to their sale on surrender by that (former) Shareholder of the certificate (if any) for the Affected Shares and otherwise as soon as reasonably practicable after the sale has been settled.

## 12 **Withdrawal or amendment of notice**

12.1 If the Board considers that any notice issued by the Company under clause 7 or 8 should be withdrawn (because it no longer believes that the Shares to which the notice applied are or may be (as the case may be) Affected Shares) or amended, it may do so, and must give notice of the withdrawal or amendment to the Shareholder of the relevant Shares.

12.2 In the event that the Board, in accordance with clause 12.1, amends any notice that it has previously issued under clause 7 or 8, the time limit within which that Shareholder may provide Representations to the Company or must dispose of Affected Shares (as applicable) shall commence from the date of the amended notice (and not the date of the original notice given under clause 7 or 8 (as applicable)).

## 13 **No liability**

Subject to the obligation of the Company under clause 11.3 to pay the net proceeds from the sale of Affected Shares to the relevant former Shareholder, to the maximum extent permitted by law neither the Company, nor any Director, officer, employee, agent or adviser of the Company, shall have any liability of any nature to any person (including any registered holder of any Shares) for or in relation (directly or indirectly) or connection with the exercise or purported exercise of any of the powers under this Schedule or otherwise in connection with the provisions of this Schedule.

## **TERMS OF ISSUE OF OTHER SHARES**

14 If the Company issues Shares then the Board must ensure that the terms of issue of those Shares include or otherwise incorporate clauses 1 to 13 (inclusive), with such amendments as may be necessary to reflect the nature of the relevant Shares.

## **GENERAL**

## 15 **Notices**

15.1 A notice required to be given to a person under this Schedule may be given in any manner set out in section 391 of the Act.

15.2 The absence of such a notice in such circumstances, and any accidental error in or failure to give any notice to any person to whom notice is required to be

given under this Schedule will not prevent the implementation of or invalidate any procedure under this Schedule.

16 **Decisions final, conclusive and binding**

Any resolution or determination of, or decision or declaration or exercise of any discretion or power by, the Company or the Board under or pursuant to this Schedule is to be final and conclusive; and any disposal or transfer made, or other thing done, by or on behalf of, or on the authority of, the Company or the Board pursuant to this Schedule is to be conclusive and binding on all persons concerned therein and is not open to challenge, appeal or review, whether as to its validity or otherwise on any ground whatsoever.

17 **Certificate conclusive**

A certificate signed by a Director and countersigned by a second Director that a power of sale under clause 10 has arisen and is exercisable by the Board, or that a Share has been duly transferred under clause 10 on the date stated therein, is conclusive evidence of the facts stated therein.