

Constitution of Timaru District Holdings Limited

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1. Definitions and Interpretation

1.1 In this Constitution (unless the context otherwise requires):

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| Act | means the Companies Act 1993. |
| Board | means Directors who number not less than the required quorum, acting together as a board of Directors. |
| Chairperson | means the chairperson of the Board appointed in accordance with clause 8. |
| Company | means Timaru District Holdings Limited. |
| Constitution | means this constitution of the Company as amended or replaced from time to time. |
| Council | means Timaru District Council. |
| Director | means any person appointed as a director of the Company for the time being. |
| Shareholder | means the Council. |
| Statement of Intent | means the statement of intent to be adopted in accordance with section 64 of the Local Government Act 2002 and, where the context requires, means the most recently adopted statement of intent. |
- (a) reference to any statutory provision includes any provision which amends or replaces it and any legislation made under it;
- (b) the singular includes the plural and the reverse;
- (c) a reference to any person includes:
- (i) natural persons, companies and any other body corporates (wherever incorporated) and unincorporated bodies (wherever formed); and
 - (ii) that person's executors, administrators or permitted assigns, or if a body corporate, its successors or permitted assigns or both;
- (d) words in this Constitution have the same meaning as in the Act unless inconsistent with the context; and
- (e) clause headings are for convenience only and do not affect its interpretation.

2. Capacity and objectives

2.1 The Council is the Company's sole shareholder. The Board shall not issue shares to any person other than the Council, without the Shareholder's approval.

2.2 As a Council-Controlled Organisation the principal objectives of the Company in carrying out its activities and functions are set out in section 59 of the Local Government Act 2002.

- 2.3 Subject to this Constitution, the Act, the Local Government Act 2002 and the Statement of Intent, the Company has full capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act, or enter into any transaction.
- 2.4 The business and affairs of the Company shall be made by, or under the direction or supervision of, the Board. The Board has all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the Company.

3. Issue of Shares

- 3.1 Subject to clause 2.1, the Board may issue different classes of Shares, including Shares that:
- (a) are redeemable within the meaning of section 68 of the Act;
 - (b) confer preferential rights to distributions of capital or income;
 - (c) confer special, limited or conditional voting rights; or
 - (d) do not confer voting rights,
- on terms it considers appropriate.
- 3.2 The Board may, with Shareholder approval:
- (a) consolidate and divide the Shares or any class; or
 - (b) subdivide the Shares or any class,
- in proportion to those Shares or the Shares in that class, as the case may be.

4. Company may acquire its own shares

- 4.1 The Company may purchase or otherwise acquire shares issued by it which, subject to clause 4.2, shall be deemed to be cancelled immediately on acquisition.
- 4.2 The Company may hold its own shares uncanceled in accordance with sections 67A to 67C of the Act.

5. Calls on shares

- 5.1 The Board may make calls on the Shareholder in respect of any money unpaid on its shares not previously made payable at a fixed time. Calls shall be made by written notice to the Shareholder specifying the time and date for payment. The Shareholder shall comply with the terms of any such call made by the Board. A call may be payable by instalments. The Board may revoke or postpone a call.
- 5.2 If the Shareholder fails to pay a call on the due date, it shall pay:
- (a) interest on that money from the day payment was due until the day of actual payment at a rate fixed by the Board; and
 - (b) all expenses that the Company has incurred because of non-payment.
- 5.3 The Board may waive payment of all or part of that interest or those expenses.

6. Shareholder meetings

- 6.1 The Board shall hold an annual shareholder meeting in accordance with section 120 of the Act unless in the case of any annual meeting, everything required to be done at that meeting

(whether by way of resolution or otherwise) is done by written resolution in accordance with section 122 of the Act.

6.2 A special shareholder meeting:

- (a) may be called at any time by the Board; and
- (b) shall be called by the Board on the written request of the Shareholder.

6.3 Except as set out in this clause 6, Schedule 1 of the Act shall govern proceedings at Shareholder meetings.

7. Directors

7.1 The minimum and maximum number of Directors may be set by the Shareholder from time to time. As at the date of adoption of this Constitution, the minimum number of Directors is 3 and the maximum number of Directors is 7.

7.2 Directors shall be appointed and removed by the Shareholder in accordance with the Act.

7.3 The Company shall not do any of the following without prior approval of Shareholder:

- (a) form any subsidiary company;
- (b) acquire any shares, any debt securities, or any participatory shares in any other company;
- (c) acquire any assets of any company or organisation outside of the ordinary course of business as prescribed by the Statement of Intent;
- (d) dispose of any shares in a subsidiary company; or
- (e) appoint to or remove from office any director of a subsidiary company of the Company. If the Company has a right to appoint a director to the board of a subsidiary company, it may only appoint an independent Director to that position.

7.4 Schedule 3 of the Act, as modified by this Constitution, shall govern proceedings of the Board.

8. Chairperson

8.1 The Shareholder (shall/may) appoint a Chairperson and a Deputy Chairperson of the Board.

8.2 The Chairperson and Deputy Chairperson will hold office until:

- (a) they cease to be a Director; or
- (b) they are removed from the office of Chairperson or Deputy Chairperson (as applicable) by the Shareholder.

8.3 If the Chairperson ceases to hold office, the Deputy Chairperson (if any) will hold office as Chairperson until such time as a new Chairperson is appointed by Ordinary Resolution.

8.4 If no Chairperson or Deputy Chairperson is appointed by the Shareholder under clause 8.1, the Board may appoint a Director to act as Chairperson until such time as one has been appointed by the Shareholder.

9. Directors' remuneration

9.1 The Board shall not authorise any form of remuneration or the provision of any other benefits by the Company to a Director for services as a Director without Shareholder approval.

- 9.2 Notwithstanding clause 9.1, Directors shall be paid for all travelling, accommodation and other expenses properly and reasonably incurred by them in attending Board meetings, meetings of committees of the Board or Shareholder meetings, or in connection with the Company's business.

10. Distributions

- 10.1 The Board may authorise a distribution by the Company to the Shareholder in accordance with the Act, this Constitution and the Statement of Corporate Intent.
- 10.2 All dividends on Shares that are not fully paid up must be authorised and paid in proportion to the amount paid up.
- 10.3 Any money payable in cash in respect of Shares may be paid to a shareholder in such manner as the Board determines, or to such other person and in such manner as the relevant shareholder may direct in writing.
- 10.4 No interest is payable by the Company on any dividend.

11. Directors' Duties

- 11.1 A Director may, when exercising powers or performing duties as a Director, act in a manner which they believe is in the best interests of the Council as Shareholder, even though it may not be in the best interests of the Company.

12. Interests of Directors

- 12.1 A Director must disclose particulars or any interest in a transaction or proposed transaction of the Company in accordance with section 140 of the Act.
- 12.2 A Director who is interested (as that term is defined in section 139 of the Act) in a transaction entered into, or to be entered into, by the Company shall not:
- (a) vote on any matter relating to that transaction;
 - (b) sign a document relating to that transaction on behalf of the Company; or
 - (c) do any other thing in their capacity as a Director in relation to that transaction, provided that a Director may vote, sign documents and do any other thing in their capacity as a Director with regard to any matter relating to:
 - (d) any payment or other benefit of the kind referred to in section 161 of the Act in respect of that Director in accordance with clause 9;
 - (e) the entry into an indemnity or insurance arrangement in respect of Directors, in accordance with this Constitution; or
 - (f) any transactions in which a Director is interested solely in their capacity as a director of a related company of the Company.
- 12.3 No prohibition under this clause 12 will prevent the attendance of a Director at a Board meeting from counting for quorum purposes.
- 12.4 To avoid doubt, a Director will not be considered "interested" in a transaction by virtue only of the fact that they are a ratepayer in the Timaru District.

13. Indemnity and insurance

- 13.1 The Company may:

- (a) indemnity a Director or Employee of the Company; and/or
 - (b) effect insurance for a Director or Employee of the Company,
- to the maximum extent permitted by section 162 of the Act.

13.2 The Board shall ensure that particulars of any indemnity given to, or insurance taken out for, any Director or Employee of the Company are immediately entered in the interests register in accordance with the Act.

13.3 For the purposes of this clause 13:

- (a) **effect insurance** includes to pay, directly or indirectly, the costs of the insurance; and
- (b) **Director** includes any former director, **Employee** includes any former employee and **Company** includes any related company of the Company.

14. Method of contracting

14.1 A deed which is to be entered into by the Company may be signed on behalf of the Company by:

- (a) 2 or more Directors;
- (b) 1 Director whose signature must be witnessed; or
- (c) one or more attorneys appointed by the Company.

14.2 An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.

14.3 Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

15. Liquidation

15.1 If the Company is liquidated, the liquidator may, with the approval of the Shareholder and any other approval required by the Act:

- (a) distribute to the Shareholder in kind the whole or any part of the assets of the Company; and
- (b) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that the Shareholder is not compelled to accept any Shares or other securities on which there is any liability.