
CONSTITUTION OF OPUHA WATER LIMITED

I certify that this is the constitution of Opuha Water Limited



Ryan James O'Sullivan

Chairman of the Board of Directors of Opuha Water Limited

CONSTITUTION OF OPUHA WATER LIMITED

PART A: INTRODUCTION	1
INTERPRETATION.....	1
1 Defined Terms	1
2 Construction.....	3
THE RELATIONSHIP BETWEEN THE CONSTITUTION AND THE ACT	3
3 Effect of the Act on this Constitution	3
4 Shareholders may alter or revoke this Constitution	3
PART B: SHARES AND SHAREHOLDERS	4
SHARES.....	4
5 Co-operative Company	4
6 Existing Shares on Issue	4
7 Share confers rights on shareholder	5
8 Statement of rights to be given to shareholders.....	6
9 Company must obtain approval before altering shareholders' rights	6
10 Consolidation and subdivision.....	6
ISSUE OF EQUITY SECURITIES.....	6
11 Board to issue Shares	6
12 Board may issue Shares	7
13 Board may issue Redeemable Shares	7
14 Board may issue new Shares on pro rata basis.....	7
15 Board may issue new equity securities within 10% limit.....	8
16 No issue.....	8
17 Dividend and Rebate Rights attached to shares	9
SHARE REGISTER	9
18 Status of registered holder	9
19 Trusts not to be entered on share register	9
20 Nomination of Person entitled to vote	9
SHARE CERTIFICATES.....	9
21 Issue of share certificates on new issue or transfer	9
22 Board may issue replacement share certificate.....	9
23 Board may cancel share certificate	10
TRANSFER OF SHARES	10
24 Signed transfer to be delivered to Company	10

25	Sale by Land Owner	10
26	Shares transferred by entry on share register	10
27	Board may refuse or delay a Share transfer in certain cases	10
28	Board must refuse a Share transfer in certain cases	11
CALLS, FORFEITURE AND LIENS.....		11
29	Board may make calls	11
30	Forfeiture of Shares where calls or other amounts unpaid	11
31	Company's lien/security interests on Shares	12
ACQUISITION OF OWN SHARES, REDEMPTIONS AND FINANCIAL ASSISTANCE.....		12
32	Company may acquire and hold Shares.....	12
33	Board may acquire Shares in the Company on a non-proportional basis.....	12
34	Acquisition of Shares is restricted	12
35	Company may redeem and surrender Shares.....	13
36	Redemptions are restricted	15
37	Financial assistance is restricted	15
DISTRIBUTIONS.....		15
38	Board may authorise distributions	15
39	Board's power to authorise rebates and dividends	15
40	Shareholder may waive dividend.....	16
41	Board may deduct from distribution amounts owed to Company.....	16
42	Distributions do not bear interest.....	16
43	Unclaimed distributions.....	16
MEETINGS OF SHAREHOLDERS.....		16
44	Company must hold annual meeting of shareholders.....	16
45	Company may hold special meetings of shareholders	17
46	Proceedings at meetings of shareholders	17
PART C: DIRECTORS		17
APPOINTMENT AND REMOVAL.....		17
47	Number of Directors	17
48	Appointment of Directors	17
49	Removal of Directors	18
50	Rotation of Directors	18
51	Nominations for Director	19
52	Voting Procedure	20
53	Postal Ballot	20
54	Board may fill casual vacancy on the Board.....	22

CHAIRPERSON	22
55 Directors to elect chairperson of the Board	22
56 Chairperson to hold office on certain terms	23
VACATION OF OFFICE	23
57 Office of Director vacated in certain cases	23
58 Directors' resignation procedure	23
MANAGEMENT OF THE COMPANY	23
59 Board to manage Company	23
60 Board has powers necessary to manage Company	23
61 Special resolutions necessary for major transactions	24
PROCEEDINGS OF THE BOARD	24
62 Meetings of the Board	24
63 Written resolutions of Board permitted	24
64 Written resolutions may be in counterparts	24
DELEGATION OF POWERS	24
65 Restriction on Board's right to delegate its powers	24
66 Board delegates to comply with regulations	24
67 Committee proceedings	24
INTERESTED DIRECTORS	25
68 Directors must disclose their interests	25
69 Failure to disclose does not affect validity of transaction	25
70 Company may avoid transaction if Director interested	25
71 Interested Director may vote	25
REMUNERATION	25
72 Board's power to authorise remuneration and other benefits is limited	25
73 Expenses	26
MANAGING DIRECTOR	26
74 Board may appoint Managing Director	26
75 Remuneration of Managing Director	26
76 Powers conferred on Managing Director	26
77 Managing Director has no power to appoint alternate Managing Director	27
PART D: GENERAL	27
CHANGE OF COMPANY NAME	27
78 A Director may apply to change Company name	27

INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES.....	27
79 Company may indemnify directors and employees for certain liabilities	27
80 Company may effect insurance for directors and employees	27
EXECUTION OF CONTRACTS.....	27
81 Manner of execution	27
82 Company may appoint attorneys	28
LIQUIDATION	28
83 Distribution of assets in kind.....	28
REMOVAL OF COMPANY FROM REGISTER	28
84 Directors may remove Company from register.....	28
FIRST SCHEDULE: CALLS, FORFEITURE AND LIENS	30
INTERPRETATION.....	30
1 Clause references	30
CALLS ON SHARES	30
2 Shareholders must pay calls	30
3 Call made when Board resolution passed	30
4 Joint holders are jointly and severally liable.....	30
5 Unpaid calls will accrue interest.....	30
6 Amounts payable under terms of issue treated as calls	30
7 Board may differentiate between holders as to calls.....	30
8 Board may accept payment in advance for calls	30
FORFEITURE OF SHARES.....	31
9 Directors may by notice require forfeiture of Shares if calls unpaid	31
10 Notice of forfeiture must satisfy certain requirements	31
11 Failure to comply with notice may lead to forfeiture.....	31
12 Board may deal with forfeited Share	31
13 Shareholder whose Shares are forfeited loses rights	32
14 Director's statutory declaration is conclusive.....	32
15 Company may sell forfeited Share.....	32
LIENS	32
16 Company's lien.....	32
17 Waiver of lien	33
18 Company may sell Share on which it has a lien.....	33
19 The Company may transfer Share and apply proceeds.....	33
20 The Company may surrender Shares	33

SECOND SCHEDULE: PROCEEDINGS AT MEETINGS OF SHAREHOLDERS	34
INTERPRETATION.....	34
1 Construction.....	34
NOTICE.....	34
2 Written notice must be given to shareholders, Directors and auditors.....	34
3 Notice must state nature of business	34
4 Irregularities in notice may be waived.....	34
5 Company's accidental failure to send notice does not invalidate meeting.....	34
6 Notice of an adjournment.....	34
MEETING AND QUORUM	35
7 Methods of holding meetings	35
8 Business to be transacted only if a quorum is present	35
9 Quorum for shareholders' meeting.....	35
10 Meeting convened at shareholders' request dissolved if no quorum	35
11 Other meetings to be adjourned if no quorum.....	35
CHAIRPERSON	36
12 Chairperson of Board to be chairperson of meeting.....	36
13 Directors may elect chairperson if chairperson of Board not available.....	36
14 As a last resort shareholders may elect chairperson	36
15 Chairperson's power to adjourn meeting	36
VOTING	36
16 Voting restriction	36
17 Application to I Shares	39
18 Voting by show of hands or voice vote at meeting.....	39
19 Voting by voice if audio-conference meeting.....	39
20 Votes of joint holders	39
21 Shareholder loses certain voting rights if calls unpaid.....	39
22 Chairperson not allowed casting vote	39
23 Chairperson's declaration of result.....	39
POLLS.....	39
24 Poll may be demanded by chairperson or shareholders.....	39
25 Time at which polls to be taken.....	40
26 Counting votes cast in a poll.....	40
27 Result of a poll to be treated as resolution of the meeting	40
28 Proxy allowed to demand a poll	40
29 Chairperson may dissolve or adjourn unruly meetings.....	40
30 Dissolved meetings - unfinished business	40

SHAREHOLDER PROPOSALS.....	41
31 Shareholder proposals by written notice	41
32 Board to give notice of proposal at Company’s expense	41
33 Board to give notice of proposal at shareholder’s expense	41
34 Board may give notice of proposal on short notice.....	41
35 Proposing shareholder may include statement.....	41
36 Board may exclude statement in some cases.....	41
37 Shareholder to give security for costs for proposal with short notice.....	41
PROXIES.....	42
38 Proxies permitted	42
39 Proxy to be treated as shareholder	42
40 Appointment of proxy must be in writing and specify restrictions.....	42
41 Notice of proxy to be produced at least 48 hours before meeting.....	42
42 Form of notice of proxy	42
43 Vote by proxy valid where Company not notified before meeting of disqualified proxy	42
POSTAL VOTES.....	43
44 Postal votes are permitted	43
45 Notice of meeting to state name of person authorised to receive and count postal votes ...	43
46 Directors may be regarded as authorised to receive and count postal votes	43
47 Manner in which postal vote to be cast.....	43
48 Duties of person authorised to collect and count postal votes	43
49 Chairperson to take postal votes into account.....	43
50 Chairperson must call for poll if postal votes will affect result	44
51 Certificate of postal votes to be annexed to minutes	44
52 Form of postal vote	44
CORPORATE REPRESENTATIVES	44
53 Corporations may act by representative.....	44
MINUTES.....	44
54 Board must keep minutes of proceedings.....	44
OTHER PROCEEDINGS	44
55 Meeting may regulate other proceedings.....	44
THIRD SCHEDULE: PROCEEDINGS OF THE BOARD	45
NOTICE OF MEETING	45
1 Director’s power to convene meetings	45
2 Notice to be sent to Director’s address.....	45
3 Notice to contain certain details.....	45

4	Period of notice required to be given to Directors	45
5	Absent Directors.....	45
6	Directors may waive irregularities in notice.....	45
	MEETING AND QUORUM	46
7	Methods of holding meetings	46
8	Quorum for Board meeting.....	46
9	Meeting adjourned if no quorum.....	46
	CHAIRPERSON	46
10	Chairperson to chair meetings.....	46
	VOTING	46
11	Voting on resolutions	46
12	Chairperson casting vote.....	46
	MINUTES	47
13	Board must keep minutes of proceedings.....	47
	OTHER PROCEEDINGS	47
14	Board may regulate other proceedings	47
	FOURTH SCHEDULE: PROXY FORM.....	48
	FIFTH SCHEDULE: POSTAL VOTING FORM	50
	SIXTH SCHEDULE: CLASS RIGHTS.....	52

CONSTITUTION OF OPUHA WATER LIMITED

PART A: INTRODUCTION

INTERPRETATION

1 Defined Terms

In this constitution:

1.1 The following expressions have the following meanings:

the Act means the Companies Act 1993;

associated person has the meaning given to that expression in the Securities Act 1978;

the Board means Directors who number not less than the required quorum acting together as the board of directors of the Company or, if the Company only has one Director, that Director;

the Company means Opuha Water Limited;

Consents means each resource consent held by the Company to store, extract, discharge and use water within the Scheme Area and where applicable consents required to deliver water to a Shareholder;

Co-op Act means the Co-operative Companies Act 1996;

this constitution means this constitution as it may be 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;

Director Qualification means that to qualify to hold office as a Director appointed by the shareholders the appointed person must hold an interest either directly or indirectly in a company, trust, or other ownership structure that has entered into a Water Agreement with the Company;

I Area means each separate area as determined by the Company within the Scheme Area where infrastructure within that specified I Area services a group of shareholders whom use water under Consents held by the Company for irrigating properties within that area;

Infrastructure includes all canals, pipes, inlets, outlets and other infrastructure required or constructed to deliver water;

Infrastructure Shares or *I Shares* are shares which give a shareholder the right to use specified infrastructure within an I Area with the rights and obligations attached to that class of I Shares being specified by the Board;

Irrigation Season means the period during which the Company can supply water to shareholders for irrigation pursuant to the terms and provisions of Consents held by the Company;

Land Owner means a person holding any interest in land in the Scheme Area which land can have delivered to it water from the Company for the purposes of irrigation, under Consents or any other person approved by the Board;

Maximum Amount means up to 0.41336 litres per second of water based on an application rate of 25mm of water per hectare per week and with an annual volumetric cap per annum for each Share of 5,625m³ or such other amounts as the Board may determine in respect of any particular Land Owner or group of Land Owners from time to time;

Nominal Value means in relation to each I Share and Water Share one dollar each;

ordinary resolution means a resolution approved by a simple majority of the votes of those holders of Shares entitled to vote and voting on the question;

Water Shares means shares issued to a Land Owner who has entered into an agreement to take Services from the Company and until varied by the Board means one Water Share for each 0.41336 litres per second of water supplied for irrigation under a Water Agreement (or such other amount as the Board may determine in respect of any Land Owner or group of Land Owners from time to time) and such additional Infrastructure Share as may be required to deliver water to the property of a shareholder;

Scheme and Scheme Area means the irrigation infrastructure under which water is supplied to Land Owners for irrigation within such area in South-Canterbury as is notified from time to time by the Company to shareholders and posted on the website of the Company which area is referred to as the Scheme Area;

Services means the provision of water by the Company to a shareholder, or an applicant for shares, for the purposes of irrigation as specified in the Water Agreement and subject to the Supply Standards and for the holder of I Shares the right to access specified infrastructure within an I Area;

Share means a share in the Company and includes Water Shares and I Shares;

Supply Standards are the standards established by the Board for the supply of water to Land Owners including but without restricting the same the following matters:

- (a) the right of the Company to vary the supply of water when water is not available;
- (b) compliance with Consent conditions;
- (c) compliance with all acts, regulations and by laws;
- (d) compliance with standards of best practice for the taking and utilisation of water;
- (e) the minimum area for which a Water Agreement will be entered into;

as notified from time to time by the Board to all Shareholders;

Water Agreement means the contract entered into (or to be entered into by a new shareholder) under which the terms and conditions for the supply of water by the Company to a Land Owner are set out including where applicable the right to use Infrastructure with such agreement being in such form or form(s) as may be advised by the Board from time to time;

Water Shares are shares entitling the holder to receive a specified amount of water per share for the purpose of irrigation within the Scheme Area;

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 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 The Schedules form part of this constitution.

THE RELATIONSHIP BETWEEN THE CONSTITUTION AND THE ACT

3 Effect of the Act on this Constitution

- 3.1 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.
- 3.2 The Company, while registered under the Co-op Act shall have the rights powers duties and obligations set out in the Co-op Act and this constitution.

4 Shareholders may alter or revoke this Constitution

The shareholders may alter or revoke this constitution by special resolution.

PART B: SHARES AND SHAREHOLDERS

SHARES

5 Co-operative Company

- 5.1 The Company is registered as a co-operative company under Section 6 of the Co-op Act.
- 5.2 The Company may carry out all or any of the co-operative activities set out in Section 3 of the Co-op Act either directly or indirectly, and the principal activity of the Company shall be such co-operative activities.
- 5.3 All existing Shares on issue and all further Shares issued by the Company shall have a nominal value of one dollar \$1.00 unless the terms of issue prescribe a different nominal value.

6 Existing Shares on Issue

- 6.1 As at the date of adoption of this constitution 12,704 Water Shares are on issue having the rights attached to those shares as set out in this Constitution.
- 6.2 Every shareholder who requires to obtain water for irrigation pursuant to the Consents held by the Company must hold Water Shares with each Water Share having attached thereto the right (subject to reliability and availability under resource consent conditions) to receive up to the Maximum Amount of water during the Irrigation Season.
- 6.3 Every Shareholder who wishes to access the right to use Infrastructure that has been constructed and installed within each I Area must hold, in addition to Water Shares, the separate class of shares relating to that I Area and such number of that class of shares as determined by the Company.
- 6.4 As at the date of adoption of this constitution the Company intends to issue the following I Shares in the separate classes set out below and having the rights in respect of the relevant I Areas as set out below and such further rights as set out in the Sixth Schedule:
 - 6.4.1 K Shares which entitle the holder to access and use the Kakahu infrastructure within the I Area as designated by the Company as the Kakahu Infrastructure Area.
 - 6.4.2 L Shares which entitle the holder to access and use the Level Plains Infrastructure within the L Area as designated by the Company as the Levels Plains Infrastructure Area.
 - 6.4.3 T Shares which entitle the holder to access and use the Totara Valley Infrastructure within the T Area as designated by the Company as the Totara Valley Infrastructure Area.
- 6.5 In levying charges under the Water Agreement the Company shall levy separate charges to each shareholder to reflect their respective holding of Water Shares and I Shares.

- 6.6 The Company shall not change the rights attaching to the relevant class of I Shares without consulting with the holders of that class of I Shares and 10% or more of that class may call a meeting of that class of I Shares to vote on a change to the rights attached to that class of shares which change of rights shall require a special resolution to approve that change of such rights. Any such change shall not alter the rights or obligations attached to any other class of shares in the Company.
- 6.7 The class rights attached to each class of shares issued by the Company shall not prevent the Company:
- 6.7.1 Issuing further shares within that class to a shareholder who holds Water Shares and wishes to access the relevant Infrastructure.
 - 6.7.2 Carrying out additions or alterations to the relevant Infrastructure with the approval of an ordinary resolution of the holders of the I Shares for the relevant I Area where such approval is required.
 - 6.7.3 Creating a new class of I Shares where new infrastructure is required in a specified part of the Scheme Area and shareholders within that specified area contribute to that new class of I Shares.
- 6.8 **Voting Rights:** On any matter affecting the Company all shareholders shall have one vote for every one Water Share held subject to the further restrictions set out in clause 46.2 and clause 16 of the Second Schedule of this constitution. The holders of the I Shares shall have no votes attached to those shares except at a separate class meeting the holders of the I Shares shall be entitled to one vote for each I Share held provided no holder of I Shares (including associated persons of that holder) shall exercise more than 15% of the votes cast at the relevant meeting of that class of I shares. That voting shall be governed by clause 16 of the Second Schedule.
- 6.9 **Rights to surplus assets:** A Water Share confers on the holder the right to an equal share in the distribution of the surplus assets of the Company but subject to the rights of holders of Infrastructure Shares in respect of Surplus Assets. The Sixth Schedule sets out the rights conferred on the holders of K Shares, L Shares and T Shares in respect of surplus assets.

7 Share confers rights on shareholder

Subject to the terms on which a Share is issued, including those set out in this constitution, a Share confers on the holder:

- 7.1 subject to the provisions of clause 6.8 and 12.4 hereof the right to one vote for each Water Share on a poll and one vote for each Shareholder present in person or by proxy on a show of hands (subject to the voting restrictions in this constitution) at a meeting of shareholders on any resolution, including any resolution to:
- 7.1.1 appoint or remove a Director or an auditor in accordance with this constitution;
 - 7.1.2 adopt a constitution;
 - 7.1.3 alter this constitution;
 - 7.1.4 approve a major transaction;

- 7.1.5 approve an amalgamation under the Act; and
- 7.1.6 put the Company into liquidation;
- 7.2 a right to a rebate or dividends in respect of shares according to the rights attached to shares under this constitution or in accordance with the terms of issue of any shares;
- 7.3 the right to share in the distribution of assets of the Company according to the rights attached to each class of shares.

8 Statement of rights to be given to shareholders

Where the Act requires, the Company must issue a statement of shareholder rights complying with the Act to any shareholder who asks for one.

9 Company must obtain approval before altering shareholders' rights

- 9.1 The Company must not take any action that affects the rights attached to Shares unless that action has been approved by a special resolution of each interest group in accordance with the Act.
- 9.2 Subject to this constitution, the Board may issue Shares that 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.

10 Consolidation and subdivision

The Board may:

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

ISSUE OF EQUITY SECURITIES

11 Board to issue Shares

- 11.1 The Board may issue Shares, at any time, to any person and in any number it thinks fit provided:
 - 11.1.1 the issue is expressly authorised by this constitution; or
 - 11.1.2 the issue is of Water Shares issued in accordance with clause 12.1; or
 - 11.1.3 the issue is of I Shares issued under clause 6.7;
 - 11.1.4 the issue is to enhance or enable the extension or better use of the Scheme;
 - 11.1.5 in the case of any other Shares of any class their issue has been approved by an ordinary resolution; or

11.1.6 in the case of Shares of any class, those Shares are issued in accordance with:

- (a) the terms of conversion of securities convertible into Shares; or
- (b) the terms of any option to acquire Shares; or
- (c) the terms of any Shares;

which have been issued in accordance with this clause; or

11.1.7 the issue is made in accordance with *clauses 12 to 16*.

11.2 If the Board issues Shares that rank as to voting or distribution rights, or both, equally with or prior to existing Shares, the Board need not first offer those Shares to existing shareholders for acquisition.

12 Board may issue Shares

The Board may issue Shares as provided for by the Co-op Act and for such purpose:

12.1 The Board may determine that any new Shares issued may be at a premium to the nominal value notwithstanding those Shares retain a \$1.00 nominal value.

12.2 Notwithstanding their issue price all Shares shall retain their nominal value unless otherwise specified.

12.3 Water Shares shall only be issued to and held by a Land Owner who has entered into a Water Agreement to take, acquire, use or purchase Services from the Company.

12.4 I Shares shall only be issued to a holder of Water Shares who holds a property within the relevant I Area or any other person approved by the Board.

12.5 The holders of the Water Shares shall be entitled to voting rights as set out in clause 46.2 (and restricted as set out in clause 16 of the Second Schedule) provided that the right to exercise such voting rights may not be exercised in respect of any particular vote if the holder has not purchased Services from the Company during the one year preceding that vote.

13 Board may issue Redeemable Shares

The Board may from time to time issue redeemable shares on the terms and conditions determined by the Board and may redeem any shares so issued in accordance with the provisions of Section 68 of the Companies Act 1993.

14 Board may issue new Shares on pro rata basis

The Board may issue Shares or a class of Shares if:

14.1 those Shares are offered to holders of existing Shares of that class on a basis which, if the offer were accepted by all such holders, would maintain the existing proportionate rights of each existing holder (relative to other holders of Shares of that class) to voting and distribution rights, whether that offer is renounceable or not; or

- 14.2 those Shares are issued to holders of existing Shares of that class as fully paid securities on a basis which maintains the existing proportionate rights of each existing holder (relative to other holders of Shares of that class) to voting and distribution rights.

Notwithstanding *clauses 14.1 and 14.2*, the Board is entitled:

- 14.3 to issue any Shares in respect of which an offer is not accepted, or which because of fractional entitlements are not otherwise offered, to such persons and in such manner as the Board considers equitable and in the interests of the Company, provided that the price and terms and conditions of the issue of such Shares are not materially more favourable to the persons to whom they are issued than the terms of the original offer; and
- 14.4 to offer and issue Shares to the holders of existing securities in accordance with specific rights attached to those existing securities to participate in issues of Shares, notwithstanding that the effect may be that existing proportionate rights to voting and distribution rights are not maintained; and
- 14.5 to not offer or issue Shares to holders of existing Shares the terms of which expressly exclude the right to participate in the relevant offer or issue.
- 14.6 to restrict an issue of fully paid up securities to those Shareholders who were Shareholders during the time when the reserves or other moneys to be capitalised into shares were accumulated by the Company.
- 14.7 To place any restrictions and conditions on any new shares issued including any voting restrictions that the Board considers appropriate.

15 Board may issue new equity securities within 10% limit

The Board may issue Shares if:

- 15.1 the issue is made to a person or other entity that is either:
- 15.1.1 entering into a new Water Agreement with the Company; or
 - 15.1.2 is purchasing an interest in the land from a Land Owner and at the same time an existing Shareholder being the vendor of that interest in land is surrendering the same number of Shares for which that new owner is applying and the new owner is entering into a Water Agreement with the Company.
- 15.2 The Shares being offered are and will remain non-voting Shares and are issued to fund capital expenditure relating to the Scheme with such Shares being either dividend or non-dividend bearing Shares.

16 No issue

If any issue of Shares would cause the registration of the Company under the Co-op Act to be suspended then such issue shall not proceed except after being authorised by shareholders by special resolution.

17 Dividend and Rebate Rights attached to shares

The Board may determine in respect of any issue of Shares to attach rights to dividends and/or rebates to such Shares. Any rebates paid on Shares and any other Shares entitled to rebates shall be paid and distributed in such manner as the Board thinks fit.

SHARE REGISTER

18 Status of registered holder

The Company may treat the registered holder of a Share as the only person entitled to:

- 18.1 exercise the right to vote attaching to the Share;
- 18.2 receive notices;
- 18.3 receive a distribution in respect of the Share; and
- 18.4 exercise the other rights and powers attaching to the Share.

19 Trusts not to be entered on share register

The Company must not enter any notice of a trust, on the share register, whether that trust is express, implied or constructive.

20 Nomination of Person entitled to vote

By notice given to the Company any holder of Shares may nominate any person who is residing and farming in the District and has a direct or indirect financial interest under a Water Agreement to exercise all voting rights of that holder until notice of revocation of that nomination is given to the Company. Upon a transfer of the Shares of that holder such nomination shall cease to have effect.

SHARE CERTIFICATES

21 Issue of share certificates on new issue or transfer

If required to do so by the Act or the Securities Act 1978 the Company will issue share certificates to shareholders. While the exemption to issue share certificates is in force no share certificates shall be issued.

22 Board may issue replacement share certificate

The Board:

22.1 may issue a replacement share certificate for any share certificate that is worn out or defaced;
and

22.2 must issue a share certificate for a share certificate that has been lost or destroyed,

subject to satisfactory proof of that fact, payment of the reasonable expenses of the Company and, if so required by the Board, an appropriate indemnity being given to the Company.

23 Board may cancel share certificate

The Board may cancel share certificates of the Company upon:

- 23.1 the consolidation or subdivision of any Shares; or
- 23.2 any change to the amount paid up or credited as paid up on any Shares; or
- 23.3 any change of name of the Company,

and must issue share certificates reflecting such change if the Company is required by the Act or the Securities Act 1978 to issue share certificates after the issue or transfer of Shares.

TRANSFER OF SHARES

24 Signed transfer to be delivered to Company

Where Shares are to be transferred, a form of transfer signed by the present holder of the Shares, or by that holder's attorney, personal representative, or by any other person who may lawfully sign on behalf of that holder, must be delivered to the Company or to an agent who maintains the Company's share register. The transferee must sign the transfer form if the registration imposes a liability to the Company on the transferee.

25 Sale by Land Owner

In the event that a Land Owner has sold an interest in land and as a result the Services are no longer provided to that Shareholder under a Water Agreement then the following provisions apply:

- 25.1 the Board may forthwith cause the Company to surrender the Shares held by that Land Owner in accordance with the provisions set out in clause 35.5 and cancel the Water Agreement with that Shareholder reserving any right to claim moneys due under that Water Agreement or continue to make any claims outstanding under that Water Agreement; or
- 25.2 the Company may agree to the transfer of the Shares held by that Shareholder to a purchaser of the interest in land held by that transferor shareholder subject to that transferee purchaser entering into a Water Agreement with the Company and agreeing to be bound by the Supply Standards.
- 25.3 Notwithstanding that the nominal value of Shares is \$1.00 each the Board may issue shares at a premium based on the usual transfer value attributable to Shares at that time if at the same time an equivalent number of shares is being surrendered for the same price.

26 Shares transferred by entry on share register

Subject to the provisions of clause 27 Shares shall 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.

27 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:

- 27.1 the holder of the Shares has failed to pay the Company an amount due in respect of those Shares, whether by way of consideration for the issue of the Shares or in respect of sums payable by the holder of the Shares in accordance with this constitution or under a Water Agreement;
- 27.2 registration would impose a liability to the Company on the transferee and the transferee has not signed the transfer form;
- 27.3 the transfer is for more than one class of Shares; or
- 27.4 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;
- 27.5 the Board has determined that it is impractical or uneconomic to deliver water to the property as required by the proposed transferee;
- 27.6 there is no infrastructure to deliver water to the property of the transferee and the transferee will not bear the costs of constructing such infrastructure;
- 27.7 where the Board has determined that a transfer of Water Shares cannot occur unless at the same time a specified number and class of I Shares are transferred to the same transferee or held by that transferee and both transfers are not presented for registration at the same time;
- 27.8 if the transfer of Water Shares and/or any I Shares is not to a Land Owner who intends to take Services from the Company and simultaneously to that transfer enters, or prior to that transfer has entered, into a Water Agreement for the taking of Services.
- 27.9 If the transfer is in the opinion of the Board not in the best interests of the Company and the Board gives reasons for so declining that transfer.

28 Board must refuse a Share transfer in certain cases

The Board must refuse the registration of any transfer of Shares if it is required to do so by law.

CALLS, FORFEITURE AND LIENS

29 Board may make calls

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.

30 Forfeiture of Shares where calls or other amounts unpaid

The Board may commence procedures in accordance with the First Schedule for forfeiture of any Shares if the holder of those Shares fails to pay:

- 30.1 a call, or an instalment of a call, on those Shares; or
- 30.2 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.

31 Company's lien/security interests on Shares

- 31.1 The Company has a lien on all Shares for any moneys owing or payable to the Company by the holder of those Shares under a Water Agreement or any other agreement or arrangement. This lien extends to any moneys payable on redemption of those Shares, any rebates or dividends payable, and any moneys receivable by the shareholder on the sale or transfer of those Shares.
- 31.2 In the event that any shareholder wishes to create a security interest over any Shares that shareholder shall first obtain an acknowledgement from the proposed security holder that the rights of the Company under clause 31.1 shall be paramount and take priority over the rights of any security holder.
- 31.3 If the shareholder breaches the provisions of clause 31.2 or a person holding a security interest over the Shares of that shareholder seeks to sell those Shares or exercise rights over those Shares then the Company may surrender the Shares of that shareholder and terminate the Water Agreement entered into with that shareholder. At least 20 Business Days' notice of that intention shall be given by the Company to that shareholder. Any surrender of Shares shall be as set out in clauses 35.5 to 35.10.

ACQUISITION OF OWN SHARES, REDEMPTIONS AND FINANCIAL ASSISTANCE

32 Company may acquire and hold Shares

Subject to this constitution, the Company may purchase or otherwise acquire Shares and may hold those Shares in accordance with the Act. If the Company intends to transfer any Shares which it has acquired and held, such transfer will be treated as a new issue of Shares and the Board must first comply with the requirements of this constitution for issues of Shares.

33 Board may acquire Shares in the Company on a non-proportional basis

Subject to this constitution, the Board may purchase or otherwise acquire Shares from such shareholders and in such numbers or proportions as it thinks fit, in accordance with the Act.

34 Acquisition of Shares is restricted

The Company must not acquire by repurchase (excluding the surrender of Shares) Shares unless:

- 34.1 the acquisition is effected in compliance with section 60(1)(a) (read together with section 60(2)) of the Act; or
- 34.2 the precise terms and conditions of the specific proposal for the acquisition is approved by ordinary resolution of holders of all Shares; or
- 34.3 the acquisition is required by a shareholder of the Company pursuant to sections 110 or 118 of the Act;
- 34.4 that acquisition is the surrender of shares having a nominal value pursuant to the provisions of the Co-op Act;
- 34.5 that acquisition is in accordance with clause 25 of this constitution.

35 Company may redeem and surrender Shares

Subject to this constitution:

35.1 The Company may redeem Shares:

- (a) at the option of the Company if permitted by their terms of issue; or
- (b) at the option of the holder of the Shares if permitted by their terms of issue; or
- (c) on a date for redemption specified by a special resolution which alters this constitution by adding such a date, or (to the extent permitted by law), on a date for redemption specified as such in the terms of issue of such Shares,

for a consideration that is specified, calculated by reference to a formula, or required to be fixed by a suitably qualified person who is not associated with or interested in the Company, in accordance with the Act.

35.2 The Company may exercise an option to redeem Shares issued by the Company in relation to one or more holders of Shares, in accordance with the Act.

35.3 The Board shall accept the surrender of any Shares in the Company having a nominal value in the circumstances and in accordance with section 20(2) and 20(3) of the Co-op Act and if otherwise so required to under the Co-op Act.

35.4 The Board may, in its absolute discretion, accept the surrender of any Shares in the Company having a nominal value in the circumstances and in accordance with section 20(1) of the Co-op Act and if otherwise so permitted to under the Co-op Act.

35.5 The Board may, in its absolute discretion, require any shareholder to surrender all or any specified number of the Shares in the Company held by that shareholder. That surrender is authorised to be exercised under Section 21(1) of the Co-op Act in respect of all Shares having a nominal value and where any of the circumstances set out below have arisen:

35.5.1 the shareholder has ceased to hold an interest in land within the Scheme Area ;or

35.5.2 the shareholder has ceased taking and is unlikely (in the opinion of the Board) to resume taking Services from the Company under a Water Agreement; or

35.5.3 a shareholder has breached or otherwise failed to comply with the terms and provisions of a Water Agreement and those breaches have continued after notice has been given to that shareholder of those breaches and the intention of the Company to terminate the Water Agreement and surrender the Shares held by that shareholder subject to the provisions of clause 35.6;

35.5.4 The shareholder has assigned and transferred rights to water without the prior written consent of the Company;

35.5.5 The shareholder has assigned and transferred rights to water to another farmer in the Scheme Area and that assignee has breached the terms of the Water Agreement entered into between the Company and that shareholder;

- 35.5.6 The shareholder has leased or licensed water to which that Shareholder is entitled to another person or entity in the Scheme Area and that person or entity breaches the terms and provisions of the Water Agreement commonly used by the Company and entered into between the Company and that Shareholder;
- 35.5.7 The shareholder has not taken and is unlikely (in the opinion of the Board) to take Services from the Company under a Water Agreement.
- 35.6 The event that the Company gives notice to a shareholder under clause 35.5.3 and that shareholder requires the matter in dispute to be determined by arbitration in accordance with the provisions of the Water Agreement then the Company shall not exercise its rights to surrender Shares of that shareholder until that arbitration has been concluded and the right of the Company to surrender the Shares is confirmed by that arbitration. If the shareholder fails to progress the arbitration after 20 business days' notice to that effect has been given by the Company to that shareholder then the Company may surrender the Shares notwithstanding the arbitration is still to be determined.
- 35.7 The consideration payable by the Company for any Shares surrendered by the Company under clause 35.5 shall be one dollar for each share or if otherwise determined by the Board shall be at a price determined as set out below:
- 35.7.1 A price determined annually by the Board and communicated to all shareholders; or
- 35.7.2 If a value has not been determined under clause 35.7.1 above then subject to 35.7.3 below at the average price at which Shares in the Company have been transferred by shareholders in the 12 months prior to the proposed surrender date; or
- 35.7.3 A price as negotiated and agreed between the Board and the relevant shareholder; or
- 35.7.4 If new Shares have been issued by the Company in the 12 months prior to the proposed surrender date average weighted the price at which those Shares were issued.
- 35.8 If the shareholder whose Shares are being surrendered disputes the price at which those Shares are to be surrendered then that shareholder may require the price to be determined by arbitration under Section 22(2) of the Co-op Act. All costs of that arbitration shall be borne by the shareholder unless otherwise directed by the arbitrator.
- 35.9 The Company shall be permitted to not cancel any Shares in the Company surrendered and to hold any such Shares subject to the provisions of Section 24 of the Co-op Act.
- 35.10 The Company shall be entitled to deduct and retain from any moneys payable for any Shares being surrendered all moneys owing or payable to the Company under a Water Agreement or otherwise payable.

36 Redemptions are restricted

The Company must not redeem securities of the Company (but may surrender shares) unless:

- 36.1 those Shares were issued in compliance with *clause 11.1* or *clause 14*, and the Company is bound or entitled to redeem those Shares pursuant to the terms of their issue; or
- 36.2 those Shares are redeemed in compliance with section 69(1)(a) of the Act; or
- 36.3 those equity securities are debt securities which may be converted into Shares, and, before that conversion, they are redeemed in cash; or
- 36.4 the redemption of those Shares is approved by ordinary resolution of holders of Shares whose rights or entitlements could be affected by the redemption.

37 Financial assistance is restricted

37.1 The Company must not give financial assistance for the purpose of, or in connection with, the acquisition of shares issued or to be issued by the Company unless:

- 37.1.1 the financial assistance is offered or given so that all holders of equity securities of the Company are treated, or given the opportunity to be treated, on the same basis; or
- 37.1.2 the financial assistance is given in accordance with section 80 of the Act; or
- 37.1.3 the proposal to give that assistance is approved by ordinary resolution of holders of Shares whose rights or entitlements could be affected by the financial assistance.

37.2 The Company may give any person who is issued with Shares the right to pay the amount payable for those Shares over such period as the Board considers appropriate.

DISTRIBUTIONS

38 Board may authorise distributions

The Board may authorise distributions by the Company in accordance with the Act.

39 Board's power to authorise rebates and dividends

39.1 The Board may pay rebates on the Shares in accordance with Section 30 of the Co-op Act and calculated by reference to the number or value or volume of, or the profit derived by the Company from, transactions by the shareholders with the Company or in respect of the class of shares held. The Company may retain any rebates payable to shareholders and apply those rebates as a set off against charges or payments payable by a shareholder including payment for future Services provided to that shareholder by the Company.

39.2 Where the Company has issued shares entitled to a dividend the Board must not authorise a dividend:

- 39.2.1 in respect of some but not all the Shares in a class; or

39.2.2 that is of a greater value per Share in respect of some Shares than it is in respect of other Shares of that class,

unless the amount of the dividend in respect of a Share of that class is in proportion to the amount paid to the Company in satisfaction of the liability of the shareholder under this constitution or under the terms of issue of the Share or under the contract for the issue of the Share. Nothing in this clause prevents the Board issuing Shares wholly or partly in lieu of dividend in accordance with the Act.

39.3 For the purpose of clauses 40 to 43 the word “dividend” shall include rebates.

40 Shareholder may waive dividend

Notwithstanding *clause 39*, a shareholder may waive his or her entitlement to receive a dividend by giving a written notice to the Company signed by or on behalf of the shareholder.

41 Board may deduct from distribution amounts owed to Company

The Board may, at its discretion, deduct from any dividend or other distribution payable to any 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.

42 Distributions do not bear interest

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

43 Unclaimed distributions

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.

MEETINGS OF SHAREHOLDERS

44 Company must hold annual meeting of shareholders

44.1 The Board must call an annual meeting of shareholders to be held:

44.1.1 once in each calendar year; and

44.1.2 not later than 15 months after the date of the previous annual meeting of shareholders; and

44.1.3 not later than 6 months (or such longer period as may be permitted by the Act) after the balance date of the Company.

44.2 The Company must hold the meeting on the date on which it is called by the Board to be held.

45 Company may hold special meetings of shareholders

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

- 45.1 may be called at any time by the Board; and
- 45.2 must be called by the Board on the written request of shareholders holding Shares carrying together not less than 5 percent of the voting rights entitled to be exercised on the issue.

46 Proceedings at meetings of shareholders

- 46.1 The Second Schedule governs the proceedings at meetings of shareholders.
- 46.2 Subject to the provisions of clause 12.5 at any meeting of shareholders only the holder of Water Shares shall have a right to vote unless any other class of shares is given the right to vote by the terms of issue thereof or rights attached thereto. On a poll and on a postal vote each holder of Water Shares shall have one vote for each Water Share held and on a show of hands each holder of Water Shares shall have one vote. The right to vote is qualified by and subject to the provisions contained in clause 16 of the Second Schedule.

PART C: DIRECTORS

APPOINTMENT AND REMOVAL

47 Number of Directors

- 47.1 The minimum number of Directors shall be five and the maximum number of Directors shall be eight.
- 47.2 The shareholders may change the minimum and/or the maximum number of Directors by ordinary resolution.

48 Appointment of Directors

- 48.1 The Directors shall be appointed as follows:
 - 48.1.1 At least four of the Directors must comply with and meet the Director Qualification.
 - 48.1.2 Subject to compliance with clause 48.1.1 the Board may appoint up to three further persons who have the experience and qualifications to act as directors to be directors (each an “**Independent Director**”). The Board shall have the following powers in respect of those appointments:
 - 48.1.2.1 to determine the period for which they hold office which period shall be reviewed at least every three years with each appointed director resigning after each period of three years and being subject to reappointment;
 - 48.1.2.2 the right to remove any person so appointed by a majority vote of the directors appointed under clause 48.1.1;

48.1.2.3 any other terms and conditions of holding office.

48.1.3 Subject to the above rights to appoint directors under clause 48.1.2 and clause 54, all other directors shall be appointed by the holders of the Water Shares in accordance with clauses 51 to 53.

48.2 The first Directors of the Company shall be those persons holding office at the date of registration of this constitution and such Directors shall be deemed to have been appointed by the shareholders in accordance with clause 48.1.1 and 48.1.3.

49 Removal of Directors

49.1 Any Directors appointed pursuant to clause 48.1.1 and 48.1.3 may be removed from office by an ordinary resolution passed by the holders of the Water Shares voting as a class at a meeting called for the purpose of, or for purposes that include, removal of the Director.

49.2 If any Director who is elected into office (excluding directors appointed under clause 48.1.2) ceases to meet the Director Qualification the Board may:

49.2.1 remove that Director from office; or

49.2.2 require that Director to retire from office at the next annual meeting of the Company.

50 Rotation of Directors

50.1 While there are Directors holding office under clause 48.1.1 and 48.1.3 those Directors shall be subject to re-election every three years after their election.

50.2 In the event that at an annual meeting, there are no Directors who are required to retire pursuant to clause 50.1 above then at least one Director (excluding Directors appointed under clause 48.1.2) must retire from office.

50.3 For the purposes of clause 50.2, the Director to retire at an annual meeting will be:

50.3.1 first, any Director who wishes to retire and does not offer themselves for re-election; and

50.3.2 secondly, the Director who has been longest in office since their last election. Persons who became Directors on the same day must retire in the same order as they were elected by the shareholders (or in the case of persons who become Directors on the same day by virtue of a postal ballot, by reference to who received the most votes in that postal ballot), unless the Board resolves otherwise.

50.4 A retiring Director continues to hold office until:

50.4.1 he or she is re-elected; or

50.4.2 if he or she is not re-elected, until the shareholders at any meeting at which he or she retires (or any adjournment of that meeting) elect someone in his or her place; or

50.4.3 if the meeting does not elect someone in his or her place, until the end of the meeting or any adjournment of the meeting.

- 50.5 A retiring Director who is not disqualified under the Act is eligible for re-election.
- 50.6 The provisions of clauses 50.1 to 50.4 shall only apply to a Director appointed by the holders of the Water Shares in accordance with clause 48.1.1 or 48.1.3. Any Director appointed under clause 48.1.2 shall not be required to retire from office by rotation and shall not be counted in the number of Directors for that purpose.
- 50.7 Subject to the provisions of clauses 48.1.1 and 48.1.3 the holders of the Water Shares, may by ordinary resolution fill the office vacated by a Director who is retiring in accordance with this clause by electing a person who is not disqualified under the Act to that office at the annual meeting at which the outgoing Director retires. If no new Director is elected and if the retiring Director (not being disqualified under the Act) is offering himself or herself for re-election, the retiring Director shall be regarded as having been re-elected unless it is expressly resolved by ordinary resolution not to fill the vacated office or a resolution for the re-election of that Director is lost.
- 50.8 No person, other than a Director retiring pursuant to clauses 50.1 to clause 50.3 will be eligible for election to the office of director unless he or she meets the Director Qualification.

51 Nominations for Director

- 51.1 Save as otherwise provided all Directors of the Company (excepting the Independent Directors) including Directors who retire by rotation and who offer themselves for re-election, shall be chosen by postal ballots conducted in the manner hereinafter provided.
- 51.2 No person shall be elected as a Director unless a nomination paper in the form prescribed by the next succeeding subparagraph (signed by two Shareholders currently taking supply under a Water Agreement and for the time being qualified to vote and also by the candidate) shall be delivered or posted to the Company so that the same shall actually reach the Company not later than a date stated in notices communicated to Shareholders by email and/or post. Independent Directors shall not be subject to election. A person nominated as a Director must meet the Director Qualification.
- 51.3 Nomination papers shall be in the following form or a form as near thereto as circumstances admit:

To: *Opuha Water Limited*

We, _____

And _____

HEREBY NOMINATE _____

as a candidate for the office of Director at the next election of directors of the Company.

Signed this day of []

I HEREBY CONSENT TO THIS NOMINATION

- 51.4 Not less than twenty working days before the annual meeting of shareholders of the Company the Board shall cause a notice to be sent by email to all shareholders (where an email address is held) or by post, setting out the date and time for closing of nominations for the office of Director, the number of vacancies and whether any retiring Directors are available for re-election.
- 51.5 If on the expiration of the date for receiving the nominations as aforesaid the number of candidates for the office of director shall not exceed the number of vacancies then the candidates so nominated shall be deemed to be duly elected.

52 Voting Procedure

- 52.1 If the number of candidates exceeds the number of vacancies then not less than 10 working days prior to the date of the Annual Meeting of the Company the Company shall cause to be posted to each Shareholder having the right to vote (*Voting Shareholders*) a voting paper on which shall be printed the names and addresses of all candidates for election and Voting Shareholders shall be entitled to vote on that election. Every Voting Shareholder shall have one vote for each share held by the Voting Shareholder subject to the restrictions on the total number of votes set out in clause 6.8 and 46.2 and clause 16 of the Second Schedule.

53 Postal Ballot

- 53.1 A postal ballot shall be conducted for the election of Directors and proceed as follows:
- 53.1.1 The Directors shall cause voting papers to be prepared showing those persons who have been nominated for office as Directors. The order in which the Directors appear on the voting paper shall be settled by lot conducted by the Board.
- 53.1.2 The voting paper shall be in the form following or in such other form as the Board shall approve:

OPUHA WATER LIMITED

Voting Paper for Election of Director(s)

Serial No: _____ Maximum Number of Votes: _____

VOTE HERE (✓) [Name and address of each Candidate:]

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Instructions and Information for Voters

This voting paper shows, at the top right hand corner, the maximum number of votes to which you are entitled. Each share may be voted (to a maximum number of votes which equals 15% of the total number of shares held and entitled to be cast) as votes by Voting Shareholders and any candidate for whom you vote will receive from you that number of votes shown above.

Place a tick (✓) in the brackets beside the name of the candidate(s) for whom you wish to vote.

You must not vote for more than [] candidate(s). Your voting paper will be invalid if more than the required number of names are marked with a tick.

You may decline to vote at all, or vote for less than the number of candidates sought, if you wish.

This voting paper, to be valid, must be deposited at the registered office of the Company not later than three working days prior to the day for the holding of the meeting of the Shareholders of the Company, i.e., not later than am/pm on the day of 20 .

- 53.1.3 Provided the Company shall cause voting papers to be posted to Voting Shareholders within the prescribed time, no objection shall be taken by any Voting Shareholder that he or she did not receive the same. The declaration of any Director or other person authorised as aforesaid that such voting papers were duly posted to Voting Shareholders at the address shown in the Register of Shareholders shall be accepted as conclusive evidence that they were posted to such Shareholders.
- 53.1.4 The Company shall provide on the voting papers to be sent to Voting Shareholders the number of votes to which the Voting Shareholder to whom it is to be posted is entitled in respect of the election of Directors. Each voting paper shall have printed thereon a serial number and the Secretary or other person so authorised to issue voting papers shall keep a record of the serial number of the voting paper sent to each Voting Shareholder.
- 53.1.5 Each Voting Shareholder entitled to vote shall be entitled to the number of votes which equals one vote for every share held in the Company by that Voting Shareholder with a maximum number of votes which is equal to 15% of the total number of shares held and entitled to be cast as votes by all Voting Shareholders of the Company.
- 53.1.6 Any Voting Shareholder who shall lose or destroy their voting paper shall as of right be entitled to apply to the Company for and to receive another voting paper in the place of that so lost or destroyed. The voting paper issued in replacement of that lost or destroyed shall be endorsed at the top thereof so as to show that it is a replacement voting paper and shall show the serial number of the voting paper which it replaces. Neither the original voting paper issued to the Voting Shareholder nor the replacement voting paper shall be deemed to be valid if both such voting papers shall be deposited at the registered office of the Company for the purpose of voting upon any election of Directors.
- 53.1.7 Voting shall be undertaken by placing a tick against the name or names of the nominee(s) for whom the voter wishes to vote. The vote of any person who votes for more than the number of Directors required or who defaces his or her voting paper by any writing thereon or whose voting paper is deposited at the registered office of the Company later than five clear working days before the time for holding the relevant meeting of Shareholders shall be treated as invalid and shall not be counted.

- 53.1.8 A returning officer and such poll clerks as the Directors shall consider necessary shall be appointed by the Directors to count the votes and report to the chairperson the result of the voting. The candidates for the vacant position(s) receiving the highest number of votes in the election of Directors shall be declared elected.
- 53.2 The Board in its discretion may authorise the postal ballot for any election of Directors to be carried out by electronic means as well as by the posting and returning of voting papers in hard copy. The postal ballot by electronic means shall be carried out in a form approved by the Board and notified to the relevant Voting Shareholders at the same time as voting papers are sent to Voting Shareholders in hard copy. The form of postal ballot by electronic means must enable:
- 53.2.1 the maximum number of votes to which the Voting Shareholder is entitled to be clearly identified;
- 53.2.2 voting instructions (including deadlines) to be clearly notified to the voter;
- 53.2.3 the Voting Shareholder casting the votes to be clearly and uniquely identified as the voter; and
- 53.2.4 the voter to clearly indicate which nominee(s) for whom the voter wishes to vote.
- 53.3 The Company shall not be required to cause a voting paper to be posted in hard copy to any Voting Shareholder who has given notice to the Company that the Voting Shareholder wishes to receive a voting paper by electronic means.
- 53.4 Any candidate for appointment as a director shall be entitled to require the Company to send to all Voting Shareholders at the same time as the postal voting papers are sent to Voting Shareholders a summary of the qualifications of the candidate and their view of how their experience can benefit the Company and its shareholders. That summary must not exceed 1,000 words and must be received by the Company at least 5 working days prior to the ballot papers being sent.

54 Board may fill casual vacancy on the Board

Subject to clause 48, the Board may appoint any person to be a Director to fill a casual vacancy provided that the person so appointed must resign at the next annual meeting of the Company but may (as applicable):

- 54.1 in respect of a Director that meets the Director Qualification, be re-elected at that meeting; or
- 54.2 in respect of an Independent Director, be reappointed by the Board at that meeting (or at such other time as the Board deems appropriate).

CHAIRPERSON

55 Directors to elect chairperson of the Board

The Directors must elect one of their number as chairperson of the Board.

56 Chairperson to hold office on certain terms

The chairperson of the Board holds that office until he or she vacates office or the Directors elect a chairperson in his or her place.

VACATION OF OFFICE

57 Office of Director vacated in certain cases

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

- 57.1 dies; or
- 57.2 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.
- 57.3 becomes disqualified from being a director pursuant to the Act; or
- 57.4 retires from office under *clause 50* and is not re-elected; or
- 57.5 resigns that office in accordance with this constitution; or
- 57.6 is removed from office in accordance with this constitution; or
- 57.7 ceases to meet the Director Qualification but subject to the provisions of clause 49.2.2.

58 Directors' resignation procedure

A Director may resign office:

- 58.1 by signing a written notice of resignation and delivering it to the address for service of the Company, the notice being effective when it is received at that address or at a later time specified in the notice; or
- 58.2 in any other manner permitted by the Act.

MANAGEMENT OF THE COMPANY

59 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.

60 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.

61 Special resolutions necessary for major transactions

The Company must not enter into a major transaction unless the transaction is:

61.1 approved by a special resolution of shareholders; or

61.2 contingent on approval by a special resolution of shareholders.

PROCEEDINGS OF THE BOARD

62 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.

63 Written resolutions of Board permitted

A written resolution signed or assented to by at least 75% in number then entitled to receive notice of a meeting of the Board of the Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. That resolution can be approved by email or facsimile, or other electronic means approved by the Board, within 5 working days of a resolution being passed in accordance with this clause, the Company must send a copy of the resolution to every Director who did not sign the resolution or on whose behalf the resolution was not signed.

64 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 facsimile or any similar means of communication, will satisfy the requirements of this clause.

DELEGATION OF POWERS

65 Restriction on Board's right to delegate its powers

Subject to the restrictions on delegation in the Act, the Board may delegate any one or more of its powers to a committee of Directors, a Director, an employee of the Company or any other person.

66 Board delegates to comply with regulations

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

67 Committee proceedings

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

INTERESTED DIRECTORS

68 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 with the Company, 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 disclose that interest in accordance with the Act.

69 Failure to disclose does not affect validity of transaction

Any failure by a Director to comply with *clause 68* does not affect the validity of a transaction entered into by the Company or the Director. However, the transaction may be avoided under *clause 70*.

70 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 will not apply.

71 Interested Director may vote

A Director of the Company who is interested in a transaction entered into, or to be entered into, by the Company may unless a majority of the Directors request that Director who has an interest to refrain from voting or taking part in any discussions relating to that transaction:

- 71.1 vote on a matter relating to the transaction;
 - 71.2 attend a meeting of Directors at which a matter relating to the transaction arises, and be included among the Directors present at the meeting for the purpose of a quorum;
 - 71.3 sign a document relating to the transaction on behalf of the Company; and
 - 71.4 do anything else as a Director in relation to the transaction,
- as if he or she were not interested in the transaction.

REMUNERATION

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

- 72.1 The Board may authorise:
 - 72.1.1 the payment of remuneration or the provision of other benefits by the Company to a Director for services as a Director or in any other capacity;
 - 72.1.2 the entering into of a contract to do any of the things set out in this clause;
- only if the relevant action has been approved by an ordinary resolution. Each resolution must express Directors' remuneration as either:

- 72.1.3 an annual monetary sum payable among all Directors (other than an executive Director); or
- 72.1.4 an annual monetary sum payable to any person holding office as a Director.
- 72.2 If remuneration is expressed in accordance with *clause 72.1.4* and if there is an increase in the number of Directors holding office, the Board may, without the authorisation of an ordinary resolution, increase the total remuneration by the amount required to enable the Company to pay the additional Director or Directors remuneration not exceeding the average amount then being paid to each of the other non-executive Directors (other than the chairperson).
- 72.3 No resolution which increases the amount fixed under a previous resolution is to be passed at a meeting of shareholders of the Company unless notice of the amount of the proposed increase has been given in the notice of meeting.
- 72.4 The Board may authorise:
- 72.4.1 the making of loans by the Company to a Director;
- 72.4.2 the giving of guarantees by the Company for debts incurred by a Director; and
- 72.4.3 the entering into of a contract to do any of the things set out in this clause.
- 72.5 Any Director who has entered into a Water Agreement or has a relevant interest (as defined by Section 146 of the Companies Act 1993) shall not be precluded from voting on any matter at any Board meeting.

73 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 shareholders.

MANAGING DIRECTOR

74 Board may appoint Managing Director

The Board may appoint a person to the office of Managing Director for such period and on such terms as the Board thinks fit. Subject to the terms of any agreement entered into between the Board and the Director concerned, the Board may revoke the appointment.

75 Remuneration of Managing Director

A Managing Director will receive in addition to remuneration and benefits for services as a Director such remuneration and benefits as the Board may determine.

76 Powers conferred on Managing Director

Subject to the restrictions on delegation in the Act, the Board may:

- 76.1 confer on a Managing Director any of the powers exercisable by the Board; and

76.2 without affecting the powers of the Managing Director to act as a member of the Board, impose such terms and conditions and such restrictions as the Board thinks fit; and

76.3 alter or revoke any of the powers it confers under this clause.

77 Managing Director has no power to appoint alternate Managing Director

The power to appoint an alternate Director conferred on Directors by this constitution does not confer on any Managing Director the power to appoint an alternate Managing Director.

PART D: GENERAL

CHANGE OF COMPANY NAME

78 A Director may apply to change Company name

A Director may apply to the Registrar of Companies to change the name of the Company if the Board has approved the Directors doing so.

INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES

79 Company may indemnify directors and employees for certain liabilities

The Company may 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.

80 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.

EXECUTION OF CONTRACTS

81 Manner of execution

A contract or other enforceable obligation may be entered into by the Company as follows:

81.1 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 –

81.1.1 two or more Directors; or

81.1.2 a Director, or any other person authorised by the Board whose signature must be witnessed; or

81.1.3 one or more attorneys appointed by the Company in accordance with this constitution;

81.1.4 any two persons authorised by the Board.

81.2 an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and

81.3 an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

82 Company may appoint attorneys

The Company may, by an instrument in writing executed in accordance with *clause 81.1*, appoint one or more persons as its attorney or attorneys either generally or in relation to a specified matter or matters. An act of an attorney in accordance with the instrument binds the Company.

LIQUIDATION

83 Distribution of assets in kind

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

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

83.1.1 fix such values for assets as the liquidator considers to be appropriate, and

83.1.2 determine how the division will be carried out as between shareholders or different classes of shareholder;

and

83.2 vest the whole or any part of any such assets in trustees upon such trusts for the benefit 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.

REMOVAL OF COMPANY FROM REGISTER

84 Directors may remove Company from register

If the Company:

84.1 has ceased to carry on business, discharged in full its liabilities to all known creditors, and distributed its surplus assets in accordance with the Act; or

84.2 has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court for an order putting the Company into liquidation,

the Board may request the Registrar to remove the Company from the New Zealand register.

FIRST SCHEDULE: CALLS, FORFEITURE AND LIENS

INTERPRETATION

1 Clause references

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' written 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 he or she 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. 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 a Share or under a contract for the issue of a Share, 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 holders as to calls

On the issue of Shares, the Board may differentiate between the holders of Shares as to the amount of calls to be paid and the times of payment.

8 Board may accept payment in advance for calls

Where a shareholder is willing to advance some or all of the money unpaid and uncalled on any Share or Shares 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.

FORFEITURE OF SHARES

9 Directors may by notice require forfeiture of Shares if calls unpaid

The Directors may during the time that a call, instalment, or other amount remains unpaid on a Share, serve a notice on the shareholder requiring payment of:

- 9.1 any unpaid amount, call, instalment or other moneys payable on Shares; and
- 9.2 any moneys owing or payable under a Water Agreement; and
- 9.3 any costs of enforcement incurred by the Company in taking action against the shareholder; and
- 9.4 any other moneys owing to the Company including any interest payable on moneys owing or payable to the Company.

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:

- 11.1 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; and
- 11.2 may cancel any share certificate relating to any Share which has been forfeited pursuant to any such resolution; or
- 11.3 may surrender the relevant shares at the nominal value of \$1.00 each.

12 Board may deal with forfeited Share

The Board must first offer any forfeited Shares to existing shareholders, other than the shareholder holding the forfeited Shares at the time of forfeiture, as if they were new shares about to be issued by the Company. Subject to this requirement, 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 he or she owes the Company, but that liability shall cease if the Company receives payment in full of all money owing for those Shares.

14 Director's statutory declaration is conclusive

A statutory declaration given by a Director that a Share has been duly forfeited on a stated date shall be conclusive evidence of the facts stated in that declaration against any person claiming an entitlement to that Share.

15 Company may sell forfeited Share

The Company may receive 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 shall not be bound to see to the application of the purchase money, if any, nor shall the title to the Share be affected by any irregularity or invalidity in the procedures under this constitution in respect of the forfeiture, sale or disposal of that Share.

LIENS

16 Company's lien

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

16.1 all Shares registered in the name of a shareholder (whether solely or jointly with others);

16.2 the proceeds of sale of such Shares; and

16.3 all rebates or dividends payable in respect of such Shares,

16.4 all moneys payable on the surrender of such Shares;

16.5 all moneys receivable by the shareholder on the sale of such Shares;

for:

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

16.7 interest on any such calls or instalments;

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

16.9 any moneys owing under a Water Agreement;

16.10 any money, debts or other liabilities owing or due and payable to the Company on any account whatsoever and whether solely or jointly with any other person;

16.11 any amounts that the Company may be called on to pay under any statute, regulation, ordinance or other law in respect of the Shares of a 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 first gives notice to the contrary to the transferee.

18 Company may sell Share on which it has a lien

The Company may sell a Share on which it has a lien or surrender such Shares for the nominal value of those Shares 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 him or her with written notice demanding payment of that sum;
- 18.3 the Shareholder has breached a Water Agreement and the continued compliance of the terms of that contract could place at risk the continued ability or right of the Company to provide water to other Shareholders.

19 The Company may transfer Share and apply proceeds

- 19.1 The Company may receive the consideration given for a Share sold or surrendered under clause 18, and may execute a transfer of the Share in favour of the person to whom the Share is sold or to the Company if surrendered, and register that person as the holder of the Share discharged from all calls due prior to the purchase. The purchaser shall not be bound to see to the application of the purchase money, and his or her title to the Shares shall not be affected by any irregularity or invalidity in the proceedings relating to the sale.
- 19.2 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 entitled to the Shares at the date of sale.

20 The Company may surrender Shares

- 20.1 Where any shares are surrendered in accordance with the provisions of the Constitution or the Co-op Act the Company has a lien on and may receive the moneys payable on surrender for those Shares and apply those surrender proceeds in paying any amount to which the Company is entitled from the Shareholder as set out in clause 16 of this Schedule or otherwise payable under the Constitution.

SECOND SCHEDULE: PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

INTERPRETATION

1 Construction

- 1.1 Unless stated otherwise, references to clauses are references to clauses in this Schedule.
- 1.2 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.

NOTICE

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

Written notice of the time and place of a meeting of shareholders must be sent 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.

3 Notice must state nature of business

The notice must state:

- 3.1 the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgement in relation to it; and
- 3.2 the text of any special resolution to be submitted to the meeting.

4 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 agree to the waiver.

5 Company's accidental failure to send notice does not invalidate meeting

If the Company accidentally fails to send notice of a meeting to any person entitled to that notice, the failure to send the notice will not invalidate the proceedings at that meeting.

6 Notice of an adjournment

- 6.1 If a meeting is adjourned for less than 30 days no notice of the time and place of the adjourned meeting need be given other than by announcement at the meeting from which the adjournment took place.
- 6.2 If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same way as notice was given of the meeting from which the adjournment took place.

MEETING AND QUORUM

7 Methods of holding meetings

A meeting of shareholders may be held either:

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

The Company is not required to hold meetings of shareholders in the manner specified in *clause 7.2*. Meetings will be held in that manner only if the notice of meeting so specifies or the Board otherwise decides that the Company should do so.

8 Business to be transacted only if a quorum is present

Business may be transacted at a meeting of shareholders only if a quorum is present at the time when the meeting proceeds to business.

9 Quorum for shareholders' meeting

- 9.1 A quorum for a meeting of shareholders is present if 10 or more shareholders holding Water Shares are present in person or by proxy or if less than 10 shareholders are so present at least 5 shareholders holding Water Shares able to exercise votes on 10% or more of the voting shares on issue are present.
- 9.2 A quorum for a meeting of holders of an I Class of Shares shall be five or more shareholders holding shares of that class present in person or by proxy and able to exercise votes on 25% or more of the voting shares of that class on issue.

10 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 at least 5 percent of the voting rights entitled to be exercised, the meeting will be dissolved automatically.

11 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 convened under *clause 44.2* of this constitution), 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 present will constitute a quorum.

CHAIRPERSON

12 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.

13 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 Directors present may elect one of their number to be chairperson of the meeting.

14 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.

15 Chairperson's power to adjourn meeting

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

15.1 may adjourn the meeting with the consent of the shareholders entitled to attend and vote at that meeting; and

15.2 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.

VOTING

16 Voting restriction

16.1 The following restrictions shall apply to voting in addition to the restrictions under clause 16.3:

- (a) At any meeting of shareholders (except a class meeting of holders of I Shares) on a poll each qualifying shareholder shall have one vote for each Water Share held provided that no shareholder holding a relevant interest in any Water Shares shall be entitled to exercise more than 15% of the votes cast at that meeting with that calculation including all of the shares represented at that meeting holding voting rights.
- (b) If a resolution at a meeting of shareholders is determined by a show of hands then each holder of Water Shares present in person or by proxy shall have one vote.

16.2 For the purposes of the application of the provisions for voting by shareholders the following shall apply:

- (a) A shareholder holds a relevant interest in Water Shares where that person holds a '*relevant interest*' as defined in the Securities Markets Act 1988 in any Water Shares.

- (b) *Associated Person* is a person who would be held to be an associated person under the Listing Rules of the New Zealand Exchange if the Company was an issuer under those Rules with each percentage in the relevant Listing Rule being changed to 15%.
- (c) If any person, other than the Chairman of the meeting, is appointed by shareholders who are associated persons to act as a proxy and the aggregate votes held by that person exceeds 15% of the votes that the holders present in person or by proxy at that meeting could cast on a poll, then that person shall be restricted as to voting and shall only be entitled to cast a maximum of 15% of the Potential Votes that could be cast on a poll at that meeting and one vote on a show of hands. Any other votes exercised by that proxy holder shall be invalid and if a dispute arises the auditors shall determine which votes shall be permitted. If the Chairman of the meeting is appointed as the proxy holder, and is directed how to vote by the shareholder, then the aforesaid restriction on voting shall not apply to the Chairman provided the votes are cast as so directed.
- (d) A shareholder who transfers any part of the Water Shares held to an Associated Person will be subject to the provisions that the shares of that shareholder and any Associated Person (including any subsequent transferees who are Associated Persons) will be aggregated for the purposes of determining voting rights and on a show of hands shall be restricted to one vote.
- (e) *Potential Votes* means the total number of Water Shares held by any person or group of persons who are Associated Persons of each other who have the right to vote including that number of Shares held by those persons which would have the right to vote but for the exceptions and restrictions resulting from any of those Shares being declared a Restricted Holding under clause 16.4 of this Schedule.
- (f) For the purposes of determining the Shares having the right to vote under clauses 16.2 (c) and 16.3 the following principles shall be applied:
 - i. the total number of Water Shares having the right to vote shall be ascertained (called '*Total Voting Securities*');
 - ii. the number of such Water Shares having the right to vote and held by a person or group of persons who are Associated Persons of each other or otherwise fall within subclause 16.2(d), or where the relevant Water Shares have been declared a Restricted Holding under clause 16.4 of this Schedule, shall be ascertained and any such Water Shares in excess of 15% of the Total Voting Securities shall not have the right to vote.
 - iii. after excluding the Water Shares not having a right to vote under subclause (b) the calculation of Total Voting Securities shall not be recalculated to deduct the said number of Water Shares excluded from voting.

16.3 *Maximum Voting Rights*: No person or group of persons who are Associated Persons of each other may exercise, or control the exercise of, more than 15% of the maximum number of Potential Votes that may be exercised at a meeting of the shareholders (or, at a Class meeting of shareholders, 15% of the maximum number of Potential Votes that may be exercised for that class of Shares). For the purposes of this clause and for the right to vote under clause 16.1, a person shall be deemed to control the exercise of votes attributable to any Water Shares if:

- (a) any of those Water Shares have been declared a Restricted Holding under clause 16.4 of this Schedule; or

- (b) an Associated Person of that person may exercise or control the exercise of the votes attributable to those Water Shares; or
- (c) the grandparent, parent, child or grandchild (whether natural or adopted), spouse, de facto spouse or sibling of that person may exercise or control the exercise of the votes attributable to those Water Shares; or
- (d) that person has a relevant interest in those Water Shares; or
- (e) that person is appointed as the proxy by the holder of the relevant Water Shares.

16.4 Declaration of Restricted Holding

- (a) For the purpose of giving effect to clause 16.3 in relation to Water Shares, the Board may declare any Water Shares exceeding the 15% threshold specified in clause 16.3 to constitute a Restricted Holding, if the Board is satisfied that one person may exercise or control the exercise of the votes attributable to those Water Shares. The Board shall determine, on such basis as it sees fit, the particular shares which shall comprise such Restricted Holding.
- (b) If the Board declares any Water Shares to constitute a restricted Holding, the Board may:
 - (i) declare the Water Shares in that Restricted Holding to be Restricted Securities;
 - (ii) if such Water Shares are held by more than one person, determine, on such basis as the Board sees fit, the number of such shares held by each such person which are Restricted Securities.

16.5 No Vote on Restricted Securities: For so long as any Water Shares are Restricted Securities, they shall carry no vote.

16.6 Cessation: The Board may at any time determine that any Water Shares have ceased to form part of a Restricted Holding, or have ceased to be Restricted Securities.

16.7 Provision of information: The Board may at any time give written notice to any shareholder requiring that shareholder to provide to the Board, if so required by the Board in the form of a statutory declaration, such information as the Board may specify which the Board considers necessary or desirable to establish:

- (a) whether the foregoing provisions may apply to Water Shares held by that shareholder; or
- (b) who are Associated Persons of that Shareholder for the purposes of clause 16.2(b) of this Schedule

or otherwise to enable the Board properly to administer the foregoing provisions.

16.8 Failure to provide information: If any shareholder fails to provide, to the satisfaction of the Board, the information requested by the Board pursuant to clause 16.7 within 10 Business Days after the Board gives notice under clause 16.7, the Board may, by notice to that shareholder, determine that no votes shall be exercised in respect of the Shares held by that shareholder until such time as that information is provided to the satisfaction of the Board.

16.9 **Declaration conclusive:** Any declaration or determination made by the Board under clause 16.4 shall be final and conclusive for all purposes and not open to challenge.

17 Application to I Shares

That in the event there is a requirement to hold a separate class meeting of holders of any I Shares or class of I Shares where at that meeting the holders of that class of shares are required to vote on any matter affecting the rights attached to any class of I Shares then the provisions of clauses 16.1 to 16.9 shall apply for the purposes of the procedure at that meeting and the same percentage of votes that may be cast by any holder of I Shares in accordance with the provisions of clauses 16.1 and 16.2 shall apply for the purposes of that meeting.

18 Voting by show of hands or voice vote at meeting

In the case of a meeting of shareholders held under *clause 7.1*, 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.

19 Voting by voice if audio-conference meeting

In the case of a meeting of shareholders held under *clause 7.2*, 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.

20 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.

21 Shareholder loses certain voting rights if calls unpaid

If a sum due to the Company in respect of any class of Share registered in a shareholder's name has not been paid then that Share may be voted at a meeting of an interest group but not at any other meeting of shareholders.

22 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 of the meeting is not entitled to a casting vote.

23 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 manner as the chairperson may have decided under *clause 18* is carried by the requisite majority or lost, shall be conclusive evidence of that fact.

POLLS

24 Poll may be demanded by chairperson or shareholders

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

- 24.1 the chairperson, at his or her absolute discretion;
- 24.2 at least 5 shareholders having the right to vote at the meeting;
- 24.3 a shareholder or shareholders having the right to exercise at least 10 percent of the total votes to be cast on the business to be transacted at the meeting; or
- 24.4 shareholder or shareholders holding Shares of the relevant class that confer a right to vote at the meeting and on which the total amount paid up is at least 10 percent of the total amount paid up on all the relevant class of Shares that confer that right.

25 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.

26 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 and voting.

27 Result of a poll to be treated as resolution of the meeting

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.

28 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.

29 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.

30 Dissolved meetings - unfinished business

If the chairperson proposes to dissolve a meeting pursuant to *clause 29*, 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.

SHAREHOLDER PROPOSALS

31 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.

32 Board to give notice of proposal at Company's expense

If the Board receives the notice at least 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

33 Board to give notice of proposal at shareholder's expense

If the Board receives the notice at least 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board must, at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

34 Board may give notice of proposal on short notice

If the notice is received by the Board less than 5 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board may, if reasonably practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

35 Proposing shareholder may include statement

If the Directors intend that shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.

36 Board may exclude statement in some cases

The Board is not required to include in or with the notice given by the Board a statement prepared by a shareholder which the Directors consider to be defamatory, frivolous or vexatious.

37 Shareholder to give security for costs for proposal with short notice

Where the costs of giving notice of the shareholder proposal and the text of any proposed resolution are required to be met by the proposing shareholder, the proposing shareholder must, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

PROXIES

38 Proxies permitted

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

39 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.

40 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 and if a term is not specified the proxy will continue until revoked by that shareholder giving notice to the Company or that shareholder dies or transfers the shares held by that shareholder. A proxy need not be a shareholder of the Company.

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

No 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.

42 Form of notice of proxy

A notice appointing a proxy shall be in the form set out in the Fourth Schedule or in a form as near to it as circumstances allow, or in such other form as the Board may direct.

43 Vote by proxy valid where Company not notified before meeting of disqualified proxy

Where:

43.1 the shareholder has died or become incapacitated; or

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

43.3 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

44 Postal votes are permitted

If the Board determines that a postal vote is to be held in respect of any resolution then a shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with the following provisions.

45 Notice of meeting to state name of person authorised to receive and count postal votes

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

46 Directors may be regarded as authorised to receive and count postal votes

If no person has been authorised to receive and count postal votes at a meeting, or if no authorised person is named in the notice of the meeting, every Director is regarded as being authorised for that purpose.

47 Manner in which postal vote to be cast

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

48 Duties of person authorised to collect and count postal votes

It is the duty of a person authorised to receive and count postal votes at a meeting:

48.1 to collect together all postal votes received by him or her or by the Company; and

48.2 in relation to each resolution to be voted on at the meeting, to count:

48.2.1 the number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and

48.2.2 the number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution; and

48.3 to sign a certificate stating that he or she has carried out the duties set out in *clauses 48.1* and *48.2* and setting out the results of the counts required by *clause 48.2*; and

48.4 to ensure that the certificate required by *clause 48.3* is presented to the chairperson of the meeting.

49 Chairperson to take postal votes into account

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

49.1 on a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution;

49.2 on a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.

50 Chairperson must call for poll if postal votes will affect result

Where the chairperson of a meeting holds sufficient postal votes on a resolution so as to lead the chairperson to believe that if a poll were taken the result may differ from that obtained on a show of hands, then he or she must call for a poll on that resolution.

51 Certificate of postal votes to be annexed to minutes

The chairperson of a meeting must ensure that a certificate of postal votes held by him or her is annexed to the minutes of the meeting.

52 Form of postal vote

A postal vote shall be in the form set out in the Fifth Schedule or in a form as near to it as circumstances allow, or in such other form as the Board may direct.

CORPORATE REPRESENTATIVES

53 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 shall be entitled to attend and be heard at a meeting of shareholders as if the representative were the shareholder.

MINUTES

54 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 prima facie evidence of the proceedings.

OTHER PROCEEDINGS

55 Meeting may regulate other proceedings

Except as provided in this Schedule, a meeting of shareholders may regulate its own procedure through the chairperson.

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 sent to the address or facsimile number, 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 facsimile number, or electronic mail address, is not provided, then a written notice to his or her last place of employment or residence or facsimile number 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 and an indication of the matters to be discussed in sufficient detail to enable a reasonable Director to appreciate the general import of the matters.

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, 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.

5 Absent Directors

If a Director, who is for the time being absent from New Zealand, supplies the Company with a facsimile number or address or 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 either:

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

8 Quorum for Board meeting

The quorum necessary for the transaction of business at a meeting of the Board is a majority of the Directors. The shareholders may change the number of Directors required for a quorum by ordinary resolution. 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 meeting will be adjourned automatically until the following working day 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 of the Board will chair all meetings of the Board at which he or she is present. If no chairperson of the Board is elected, or if at a meeting of the Board the chairperson of the Board is not present within 5 minutes from the time appointed for the meeting, then the Directors present may elect one of their number to chair 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 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 casting vote

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

MINUTES

13 Board must keep minutes of proceedings

The Board must ensure that minutes are kept of proceedings at 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: PROXY FORM

***[NAME] LIMITED**

PROXY FORM

SECTION 1: SHAREHOLDER DETAILS (please print clearly)

Full name:

Full address:

If shares are held jointly, enter details of other joint holders:

Full name:

Full address:

Full name:

Full address:

SECTION 2: APPOINTMENT OF PROXY

(Please note that if the shares are held jointly, the appointment made in this section is made on behalf of each joint holder).

I appoint

Full name:

Full address:

as my proxy to exercise my vote at the *[annual/special] meeting of shareholders of the Company to be held on *[date], and at any adjournment of that meeting. If the person I have appointed is unable to be my proxy then I appoint

Full name:

Full address:

SECTION 3: VOTING INSTRUCTIONS

(Please note that if the shares are held jointly, the voting instructions given in this section are given on behalf of each joint holder).

(Tick the box that applies)

I direct my proxy to vote in the following manner: For Against

***[General Business]**

- | | | |
|----|--------------------------|--------------------------|
| 1. | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. | <input type="checkbox"/> | <input type="checkbox"/> |

***[Special Business]**

- | | | |
|----------------------------------|--------------------------|--------------------------|
| *[4. <i>Identify resolution]</i> | <input type="checkbox"/> | <input type="checkbox"/> |
|----------------------------------|--------------------------|--------------------------|

Signed by each shareholder named in Section 1

Date:

NOTES

1. *As a shareholder you may attend the meeting and vote, or you may appoint a proxy to attend the meeting. A proxy need not be a shareholder of the Company.*
2. *If you are joint holders of shares each of you must sign this proxy form. If you are a Company this proxy form must be signed on behalf of the Company by a person acting under the Company's express or implied authority.*
3. *For this proxy form to be valid, you must complete it and produce it to the Company at least 48 hours before the time for holding the meeting. You can produce it to the Company by:*
 - *Delivering it to the *[Company's registered office at [full address]/other addressee details]; or*
 - *Posting it to the *[Company's registered office at [postal address]/other addressee details]; or*

in each case, so that it is received at least 48 hours before the time for holding the meeting.
4. *If this proxy form has been signed under a 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 be produced to the Company with this proxy form.*
5. *If you return this form without directing the proxy how to vote on any particular matter, the proxy will vote as he or she thinks fit.*

FIFTH SCHEDULE: POSTAL VOTING FORM

***[NAME] LIMITED**

POSTAL VOTING FORM

To: *[Name of person authorised to receive and count postal votes at the meeting]

*[Full postal address]

SECTION 1: SHAREHOLDER DETAILS (please print clearly)

Full name:

Full address:

If shares are held jointly, enter details of other joint holders:

Full name:

Full address:

Full name:

Full address:

SECTION 2: VOTE

(Tick the box that applies)

I/We vote in the following manner:

For

Against

***[General Business]**

1.

2.

3.

***[Special Business]**

*[4. Identify resolution]

Signed by the shareholders named in Section 1

Date:

NOTES

1. *As a shareholder you may attend the meeting and vote, or you may cast a postal vote. In casting a postal vote you may vote on any one or more of the matters set out in Section 2 of this form.*
2. *If you are joint holders and intend to cast a postal vote, ideally each of you should sign this form. But if for any reason that is not possible, at least one of you must sign this form. If you are a Company this form must be signed on behalf of the Company by a person acting under the Company's express or implied authority.*
3. *For this postal voting form to be valid, you must complete it and send it to *[name of person authorised to receive and count postal votes] at *[full postal address] so as to ensure that it reaches *[him/her] by *[time] on *[day and date]. If it has been signed under a power of attorney please send 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 with this form.*

SIXTH SCHEDULE: CLASS RIGHTS

CLASS RIGHTS ATTACHED TO K SHARES

Holders of K Shares may access and use the infrastructure known as the Kakahu Infrastructure being intakes, pipes, valves, delivery channels and other infrastructure in the Kakahu area as set out and described on the website of the Company. Access to that infrastructure may be given to other persons at the discretion of the Board.

Any holder of K Shares must also be party to an agreement with the Company under which that holder has agreed to pay all charges relating to the right to access and use that infrastructure. Those charges may be varied from time to time.

Holders of K Shares shall have the right as between all holders of K Shares to an equal share in the distribution of Surplus Assets of the Company in accordance with the following formula:

$$\frac{\left(\frac{10,683,000 - RD}{81,002,000}\right)}{\text{number of K Shares on issue}} \times SA = \$ \text{ per K Share}$$

where:

RD (Residual Debt) = amount of the debt owing in respect of the Kakahu assets at the time of liquidation provided that RD shall not be less than zero;

SA = the value of the Surplus Assets of the Company as a whole remaining after the payment of creditors' claims and available for distribution in accordance with section 131 of the Act.

CLASS RIGHTS ATTACHED TO T SHARES

Holders of T Shares may access and use the infrastructure known as the Totara Valley Infrastructure that services shareholders in that Valley by delivering water to those shareholders through intakes, open channels, pipes, valves and other water distribution infrastructure as described in detail on the website of the Company. Access to that infrastructure may be given to other persons at the discretion of the Board.

Any holder of T Shares must also be party to an agreement with the Company under which that holder has agreed to pay all charges relating to the right to access and use that infrastructure. Those charges may be varied from time to time.

Holders of T Shares shall have the right as between all holders of T Shares to an equal share in the distribution of Surplus Assets of the Company in accordance with the following formula:

$$\frac{\left(\frac{1,230,000 - RD}{81,002,000}\right)}{\text{number of T Shares on issue}} \times SA = \$ \text{ per T Share}$$

where:

RD (Residual Debt) = amount of the debt owing in respect of the Totara assets at the time of liquidation provided that RD shall not be less than zero;

SA = the value of the Surplus Assets of the Company as a whole remaining after the payment of creditors' claims and available for distribution in accordance with section 131 of the Act.

CLASS RIGHTS ATTACHED TO L SHARES

Holders of L Shares may access and use the infrastructure known as the Levels Plains Infrastructure being intakes, pipes, valves, delivery channels and other infrastructure in the Levels Plain area as set out and described on the website of the Company. Access to that infrastructure may be given to other persons at the discretion of the Board.

Any holder of L Shares must also be party to an agreement with the Company under which that holder has agreed to pay all charges relating to the right to access and use that infrastructure. Those charges may be varied from time to time.

Holders of L Shares shall have the right as between all holders of L Shares to an equal share in the distribution of Surplus Assets of the Company in accordance with the following formula:

$$\frac{\left(\frac{2.631}{81.002}\right)}{\left(\text{number of L Shares on issue} \times 4\right) + \left(\text{plus number of D Shares on issue}\right)} \times 4 \times SA = \$ \text{ per L Share}$$

where SA = the value of the Surplus Assets of the Company as a whole remaining after the payment of creditors' claims and available for distribution in accordance with section 131 of the Act.

GENERAL CLASS RIGHTS – POLICY DOCUMENT

The Board will prepare and adopt a policy document relating to the rights of holders of I Shares and each class of I Shares which will be applicable to any material matter occurring which could alter the position of the holders of any class of I Shares.