

## Registered document

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**CONSTITUTION OF**

**TRANSWASTE CANTERBURY  
LIMITED**

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## CONSTITUTION OF TRANSWASTE CANTERBURY LIMITED

### 1. INTERPRETATION

1.1 **Definitions:** In this Constitution, unless the context otherwise requires:

- (a) **Act** means the Companies Act 1993;
- (b) **Board** means Directors who number not less than the required quorum acting together as the board of directors of the Company;
- (c) **Business Day** means any day of the week other than Saturday, Sunday or a public holiday in Christchurch, New Zealand, which is deemed to commence at 8.30am and end at 5:00pm;
- (d) **Canterbury Regional Landfill Joint Committee** means the existing Canterbury Regional Landfill Joint Committee formed and maintained by the Territorial Local Authorities;
- (e) **Class** means a class of Shares having attached to them identical rights, privileges, limitations and conditions;
- (f) **Company** means Transwaste Canterbury Limited;
- (g) **Constitution** means this constitution, as altered from time to time;
- (h) **Director** means a person appointed as a director of the Company;
- (i) **Fair Value** has the meaning given in clause 11.11;
- (j) **Group** means a Group of Shares;
- (k) **Group of Shares** means the Group A Shares or the Group B Shares, as the case may require;
- (l) **Group A Director** or **Group B Director** means a person who has been appointed as a Director by the holders of a majority of the Group A Shares or the Group B Shares, as the case may require;
- (m) **Group A Shares** and **Group B Shares** mean the Shares referred to in clause 2.1;
- (n) **Interested** in relation to a Director, has the meaning set out in section 139 of the Act;
- (o) **Interest Group** has the meaning set out in section 116 of the Act;
- (p) **Local Government Act** means the Local Government Act 2002;
- (q) **New Share** has the meaning given in clause 4.2;
- (r) **Ordinary Resolution** means a resolution passed by a simple majority of the votes of Shareholders entitled to vote and voting on the resolution;
- (s) **Personal Representative** means:
  - (i) in relation to a deceased individual Shareholder, the executor, administrator or trustee of the estate of that Shareholder;

- (ii) in relation to a bankrupt individual Shareholder, the assignee in bankruptcy of that Shareholder; and
- (iii) in relation to any other individual Shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed thereunder, and a donee of an enduring power of attorney complying with that Act;
- (t) **Representative** means a person appointed as a proxy or representative under clause 19 or a Personal Representative;
- (u) **Share** means a share issued, or to be issued, by the Company;
- (v) **Shareholder** means a person whose name is entered in the share register as the holder for the time being of one or more Shares;
- (w) **Special Resolution** means a resolution passed by a majority of 75% or more of the votes of those Shareholders entitled to vote and voting on the resolution;
- (x) **Territorial Local Authority** means a city council or district council represented by Canterbury Regional Landfill Joint Committee which is or intends to become a shareholder in the Company; and
- (y) **Treasury Stock** means Shares which have been acquired by the Company and are held by the Company as treasury stock in accordance with the Act.

**1.2 Construction:** In this Constitution, unless the context otherwise requires:

- (a) the headings appear as a matter of convenience and shall not affect the construction of this Constitution;
- (b) in the absence of an express indication to the contrary, references to sections, clauses or paragraphs are to sections, clauses and paragraphs of this Constitution;
- (c) a reference to any statute, statutory regulations or other statutory instrument includes the statute, statutory regulations or instrument as from time to time amended or re-enacted or substituted;
- (d) the singular includes the plural and vice versa and one gender includes the other genders;
- (e) the words "written" and "writing" include email communications and any other means of communication resulting in permanent visible reproduction;
- (f) the word "person" includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality; and
- (g) words or expressions defined in the Act have the same meaning in this Constitution.

## **2. RIGHTS ATTACHING TO SHARES**

**2.1 Ordinary Shares:** Ordinary Shares at the date of this Constitution are held and divided into the following Groups, each of which constitutes a separate Class:

- (a) Group A Shares comprising the 10,000,000 shares held by Waste Management NZ Limited; and
- (b) Group B Shares comprising the 10,000,000 shares held collectively in accordance with the respective percentages set out in Schedule 1 of this Constitution by Ashburton District Council, Christchurch City Council, Hurunui District Council, Selwyn District Council and Waimakariri District Council.

**2.2 Rights attaching to Shares:** Except as expressly provided in this Constitution, all the Group A Shares and the Group B Shares have the same rights and privileges and are subject to the same restrictions and shall in particular confer on the holders the rights set out below:

- (a) the right to receive notice of, and attend, every meeting of the Shareholders;
- (b) the right to vote at a meeting of the Shareholders on any resolution, including any resolution to:
  - (i) appoint or remove a Director or auditor;
  - (ii) adopt a constitution;
  - (iii) alter the Company's constitution;
  - (iv) approve a major transaction;
  - (v) approve an amalgamation of the Company under section 221 of the Act; or
  - (vi) put the Company into liquidation;
- (c) subject to the rights of Shares which confer special rights as to dividends, the right to an equal share in dividends authorised by the Board on a per Share basis;
- (d) the right to receive an offer to acquire New Shares as set out in clause 4; and
- (e) subject to the rights of Shares which confer special rights as to surplus assets, the right to an equal share in the distribution of the surplus assets of the Company on a per Share basis.

### **3. ISSUE, CONSOLIDATION, SUBDIVISION AND REPURCHASE OF SHARES**

**3.1 Issue of New Shares:** Subject to clause 4, the Board may issue further Shares in the Company (including different Classes of Shares) which:

- (a) rank equally with, or in priority to, existing Shares; or
- (b) have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise; or
- (c) confer preferential rights to distributions of capital or income; or
- (d) confer special, limited or conditional voting rights; or
- (e) do not confer voting rights; or
- (f) are redeemable in accordance with section 68 of the Act.

**3.2 Consolidation and Subdivision of Shares:** The Board may:

- (a) consolidate and divide the Shares or Shares of any Class in proportion to those Shares or the Shares in that Class; or
- (b) subdivide the Shares or Shares of any Class in proportion to those Shares or the Shares in that Class.

**3.3 Bonus Issues:** The Board may resolve to apply any amount which is available for distribution to Shareholders either:

- (a) in paying up in full Shares or other securities of the Company to be issued credited as fully paid to:
  - (i) the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
  - (ii) if applicable, the holders of any other securities of the Company who are entitled by the terms of issue of those securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some time later, in accordance with their respective entitlements; or
- (b) in paying up any amount which is unpaid on any Shares held by the Shareholders referred to in sub-clause 3.3(a)(i),  
or partly in one way and partly in the other.

**3.4 Shares in Lieu of Dividends:** The Board may exercise the right conferred by section 54 of the Act to issue Shares to any Shareholders who have agreed to accept the issue of Shares, wholly or partly in lieu of proposed dividends or proposed future dividends.

**3.5 Share Repurchases:** The Company may purchase or otherwise acquire Shares issued by it and hold its own Shares.

**4. PRE-EMPTIVE RIGHTS ON ISSUE OF NEW SHARES**

**4.1 Pre-emptive Rights:** All Shares proposed to be issued or transferred by the Company must be offered for acquisition in the manner set out in this clause 4 to the existing Shareholders, except to the extent that the terms of any Shares already issued do not entitle the holders of those Shares to receive an offer or to the extent that the existing Shareholders unanimously resolve who the Shares are to be issued or transferred to.

**4.2 Pro Rata Entitlements:** Subject to the following sub-clauses (a) and (b), all new Shares offered for acquisition pursuant to clause 4.1 (**New Shares**) must be offered to the existing Shareholders in proportion to the number of Shares held:

- (a) if any existing Shares do not have rights to receive an offer to acquire New Shares or have special or disproportionate rights to receive an offer to acquire New Shares, the offer to acquire New Shares must be made in accordance with the relative proportionate entitlements of all Shareholders; and
- (b) fractional entitlements to New Shares must be disregarded.

4.3 **Offer Notice:** The offer must be made by written notice, specifying:

- (a) the number, Class and terms of the New Shares offered, including the number of New Shares to which the offeree is entitled;
- (b) the issue price and payment conditions; and
- (c) the date (being not less than 10 Business Days nor more than 20 Business Days after the date of the written notice) by which the offeree must give an acceptance notice in writing to the Company containing the details set out in clause 4.4.

4.4 **Acceptance Notices:** Each acceptance notice must state whether or not the offeree wishes to purchase:

- (a) the offeree's entitlement or some lesser number of New Shares; and
- (b) any New Shares offered to, but declined by, other offerees (**Declined New Shares**) and if so what number.

4.5 **Contingent Entitlements:** If, and to the extent that, offerees do not, within the period referred to in clause 4.3, accept the offer, their entitlements to Declined New Shares will be used for satisfying the requests for the Declined New Shares upon the basis that the Declined New Shares not claimed by the holders of Shares in a particular Group will be allocated first to the other holders of Shares in that Group who have requested Declined New Shares, in proportion to their existing holdings in that Group, and thereafter to the holders of Shares in the other Group who have requested Declined New Shares in proportion to their existing holdings in that Group, but no Shareholder will be allocated more Declined New Shares than the number requested by that Shareholder.

4.6 **Treasury Stock:** The provisions of this clause 4 also apply to the transfer of Shares held by the Company in itself as if the transfer was an issue of New Shares by the Company.

## 5. ALTERATION OF SHAREHOLDERS' RIGHTS

5.1 **Special Resolution Required:** Any action affecting the rights, privileges, limitations or conditions attached to any Shares by this Constitution, the Act, or the terms on which of the Shares were issued, must be approved by Special Resolution of each Interest Group.

5.2 **Meetings of Interest Groups:** The provisions of this Constitution relating to meetings of Shareholders shall apply to separate meetings of the Shareholders in each Interest Group, except that the necessary quorum shall be a Shareholder or Shareholders or their Representatives holding or representing the holders of not less than one third of the Shares of the relevant Interest Group. Any Shareholder in the Interest Group present in person or by Representative may demand a poll.

5.3 **Issue of Further Shares:** The issue of further Shares ranking equally with, or in priority to, existing Shares whether as to voting rights, distribution or otherwise, is deemed not to be an action affecting the rights attaching to the existing Shares of that Class provided the issue is made in accordance with clause 4 of this Constitution.



## 6. SHARE CERTIFICATES

- 6.1 **Issue of Share Certificates:** The Company may issue Share certificates in respect of all or any Shares and must, within 20 Business Days after receiving an application by a Shareholder, send to that Shareholder a Share certificate, in accordance with section 95 of the Act.
- 6.2 **Replacement Share Certificates:** The Company:
- (a) may issue a replacement certificate for any Share certificate that is worn out or defaced; and
  - (b) shall issue a replacement Share certificate for one 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.

## 7. CALLS ON SHARES

- 7.1 **Board's Power:** The Board may, by notice in writing to a Shareholder or Shareholders, make calls in respect of all moneys unpaid on Shares and which are not, by the terms applicable to the Shares, payable at fixed times. The Board may revoke or postpone a call before payment is received.
- 7.2 **Liability to Pay:** Each relevant Shareholder shall be liable (jointly and severally in the case of joint Shareholders) to pay, in accordance with the relevant notice, every call and shall remain liable to do so notwithstanding the subsequent transfer of the relevant Shares.
- 7.3 **Differential Calls:** The Board may, at the time of issue of any Shares, differentiate between the holders as to the amount of calls to be paid and the time of payment.
- 7.4 **Instalments:** The Board may determine that a call is payable by instalments.
- 7.5 **Time Call is Made:** A call shall be deemed to have been made at the time the resolution of the Board authorising the call was passed.
- 7.6 **Interest on Overdue Amounts:** A call not paid when due shall bear interest from the due date to the date of actual receipt by the Company at the rate fixed in the notice of call or the terms applicable to the relevant Shares or, if there is no such rate, as the Board determines. The Board may waive payment of interest wholly or in part.
- 7.7 **Unpaid Instalments:** Any amount payable on issue of a Share or on any fixed date or as an instalment of a call shall be deemed to be a call and if not paid, the provisions of this clause 7 and clauses 8 and 9 shall apply as if that sum had become payable by the making of a call.
- 7.8 **Calls in Advance:** The Board may, in its discretion, receive any moneys uncalled and unpaid upon any Shares in advance of its due date and, may pay interest on the amount received at such rate (if any) and on such terms as the Board determines.
- 7.9 **Evidence:** In any proceedings for the recovery of moneys due in respect of any call a statutory declaration by a Director or any other person authorised by the Board that:
- (a) the name of the Shareholder is entered in the Share register as the holder (or one of the holders) of the relevant Shares;
  - (b) the resolution making the call is recorded in the records of the Company; and

(c) notice of the call was sent to the Shareholder,

shall be conclusive evidence of the indebtedness of the Shareholder to the Company in respect of the call.

## **8. LIEN ON SHARES**

**8.1 Lien on Unpaid and Partly Paid Shares:** The Company shall have a first and paramount lien on every Share which is not a fully paid Share (and any dividends or other distributions in respect of that Share) for:

- (a) all unpaid calls, instalments, or other amounts, and any interest payable on those amounts, relating to that Share; and
- (b) any amounts the Company may be called upon to pay under any legislation in respect of that Share.

**8.2 Power of Sale:** If any amount due in respect of a Share on which the Company has a lien is unpaid for more than 10 Business Days after notice in writing demanding payment has been given to the Shareholder or the person entitled to receive notices in respect of that Share:

- (a) the Company may sell the Share in the manner set out in clause 4 as if it constituted an issue of New Shares; and
- (b) to give effect to any such sale, the Board may authorise any person to execute a transfer of the Share to, or at the direction of, the purchaser.

**8.3 Absolute Title of Purchaser:** The title of a purchaser of any Shares sold pursuant to clause 8.2 shall not be affected by any irregularity or invalidity in any sale.

**8.4 Application of Sale Proceeds:** The net proceeds of sale of any Share sold pursuant to clause 8.2, after deducting expenses of sale shall be applied in and towards satisfaction of any unpaid calls, instalments or other amounts and any interest on those amounts and the balance (if any) shall be paid to the person entitled to the Share at the date of sale.

## **9. FORFEITURE OF SHARES**

**9.1 Notice:** If a call on a Share is not paid when due, the Directors may give 10 Business Days' notice to the Shareholder requiring payment of the call, together with interest on the amount of the call. The notice shall specify the place of payment and state that if the notice is not complied with the relevant Share will be liable to be forfeited.

**9.2 Forfeiture:** If the notice is not complied with the Share may, before payment of the overdue amount has been made, be forfeited by resolution of the Board.

**9.3 Sale of Forfeited Shares:** A forfeited Share may be sold or otherwise disposed in the manner set out in clause 4 as if it constituted an issue of New Shares. To give effect to any sale or disposal the Board may authorise any person to execute any relevant documentation. The Board may, at any time before the sale or disposal, cancel the forfeiture.

**9.4 Application of Sale Proceeds:** The net proceeds of sale of any forfeited Share shall be applied in the same manner as set out in clause 8.4.

- 9.5 **Absolute Title of Purchaser:** The title of a purchaser of a forfeited Share shall not be affected by any irregularity or invalidity in the forfeiture, sale or other disposal of the Share.
- 9.6 **Consequences of Forfeiture:** A person whose Shares have been forfeited shall cease to be a Shareholder in respect of those Shares and shall surrender the Share certificate for cancellation but shall remain liable to the Company for all moneys due to the Company at the date of forfeiture in respect of the Shares together with interest thereon.
- 9.7 **Evidence of Forfeiture:** A statutory declaration by a Director or any other person authorised by the Board that a Share has been forfeited on a specified date shall be conclusive evidence of that forfeiture.

## 10. TRANSFER OF SHARES

- 10.1 **Transferor to Remain Holder Until Registration:** The transferor of a Share shall remain the holder of the Share until the name of the transferee is entered in the Share register.
- 10.2 **Authorised Transactions:** Any shares disposed of by an "authorised transaction" within the meaning of the Securities Transfer Act 1991 may be transferred by an instrument of transfer complying with the provisions of that Act or by an instrument complying with clause 10.4.
- 10.3 **Transfer Executed Outside New Zealand:** Where an instrument of transfer would have complied with the provisions of the Securities Transfer Act 1991 if it had been executed by the transferor in New Zealand, it may nevertheless be registered by the Company if is executed under the common seal of a corporation as transferor or otherwise in any usual manner for execution by such a corporation, or in any other case if the signature of the transferor has been witnessed by a person who has added his or her occupation and address after his or her signature.
- 10.4 **Form of Transfer:** Every instrument of transfer of Shares not falling within clauses 10.2 and 10.3 shall comply with the following provisions:
- (a) the form of the instrument of transfer shall be any usual or common form or any other form which the Board may approve;
  - (b) the instrument of transfer must be signed or executed by or on behalf of the transferor; and
  - (c) where the Shares being transferred are not fully paid up, the instrument of transfer must also be signed or executed by or on behalf of the transferee.
- 10.5 **Power to Refuse to Register:** The Board may decline to register any transfer of Shares where:
- (a) the Company has a lien on any of the Shares;
  - (b) the Shares are not fully paid up;
  - (c) the transfer is not accompanied by the certificate (if any) for the Shares to which it relates or other evidence as the Board may reasonably require to show the right of the transferor to make the transfer;
  - (d) the Board has notice of any agreement by the Shareholder to transfer the Shares only to some specified person or subject to some specified condition;
  - (e) the transferor has not complied with the provisions of clauses 11 or 13; or

- (f) the transfer is not accompanied by a deed of covenant properly executed by the offeree whereby the offeree covenants on terms acceptable to the Board to be bound by the terms of any applicable shareholders' agreement,

provided that the Board resolves to exercise its powers under this clause within 30 Business Days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five Business Days of the resolution being passed by the Board.

- 10.6 **Registration of Transfers:** Every instrument of transfer shall be delivered to the Company's Share register, together with the Share certificate (if any) for the Shares to be transferred. If there is no Share certificate for those Shares or if the Share certificate has been lost, damaged or destroyed, the transferee shall provide such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer.
- 10.7 **Power to Divide Share Register:** The Share register may be divided into two or more registers kept in different places.
- 10.8 **Transfer of Securities Other Than Shares:** This section 10 shall also apply to transfers of securities of the Company other than Shares with any necessary modifications.

## 11. PRE-EMPTIVE RIGHTS ON TRANSFERS OF SHARES

- 11.1 **Transfer Notices:** Subject to the exceptions set out in clause 11.19, every Shareholder who desires to sell or transfer any legal or beneficial interest in Shares in the Company (other than pursuant to clause 4.6) (the **Intending Seller**) must give notice in writing (a **Transfer Notice**) to the Board that the Intending Seller desires to sell or transfer those Shares. For the purposes of this clause, the word "Shareholder" includes a manager, protection attorney, assignee in bankruptcy or Personal Representative of any Shareholder.
- 11.2 **Contents of Transfer Notice:** The Transfer Notice must specify:
  - (a) the Group which the Shares to be sold or transferred form part or all of (the **Specified Group**);
  - (b) the number of Shares the Intending Seller intends to sell or transfer (the **Specified Shares**); and
  - (c) the sum which the Intending Seller proposes as the sale price of the Specified Shares (the **Proposed Sale Price**).
- 11.3 **Board Appointed Agent:** A Transfer Notice constitutes the Board as the agent of the Intending Seller for the sale of the Specified Shares in accordance with the provisions of this clause 11. A Transfer Notice is not revocable by the Intending Seller except as provided in clause 11.7.
- 11.4 **Offer to Shareholders:** Immediately upon receipt of a Transfer Notice, the Board must promptly give written notice to Shareholders offering the Specified Shares in accordance with the provisions of this clause 11.4;
  - (a) if the Specified Shares comprise all the Shares in the Specified Group, they must be offered in accordance with sub-clauses 11.4(c) and 11.4(d) to the holders of the Shares in the other Group of Shares.

- (b) if the Specified Shares comprise part only of the Shares in the Specified Group, they must be first offered in accordance with sub-clauses 11.4(c) and 11.4(d) to the holders of the remaining Shares in the Specified Group and if any of the Specified Shares are not sold to those holders they must then be offered in accordance with sub-clauses 11.4(c) and 11.4(d) to the holders of the Shares in the other Group of Shares.
- (c) an offer pursuant to sub-clause 11.4(a) or 11.4(b) must be made by written notice to each of the relevant Shareholders, in proportion to their existing holdings in their relevant Group. The notice must state:
  - (i) the number of Specified Shares to which the offeree is entitled;
  - (ii) the Proposed Sale Price; and
  - (iii) the date (being not less than 15 Business Days nor more than 20 Business Days after the date of the offer by which the offeree must give notice (an **Acceptance Notice**) containing the details set out in clause 11.5.
- (d) If all the offerees in the relevant Group do not claim their full entitlements, the unclaimed Shares (**Declined Shares**) must be used to satisfy the requests for Declined Shares. If there are insufficient Declined Shares to satisfy such requests, the Declined Shares must be divided among those offerees who requested Declined Shares, in proportion to their existing holdings in the relevant Group but no Shareholder shall be allocated more Declined Shares than the number which that Shareholder has requested.
- (e) If any Specified Shares remain unallocated after the procedure set out in the proceeding sub-clauses have been followed, the Company may offer those Shares to any person nominated by the holders of the majority of the Shares in the Group other than the Specified Group.

**11.5 Acceptance Notices:** Each Acceptance Notice must state whether or not the offeree:

- (a) wishes to purchase the offeree's entitlement or some lesser number of Specified Shares;
- (b) wishes to purchase any Declined Shares and if so what number; and
- (c) accepts the Proposed Sale Price or wishes the sale price to be the Fair Value determined in accordance with clause 11.11.

**11.6 Notice to Intending Seller:** After receipt of Acceptance Notices from all offerees or the expiry of the date specified in clause 11.4(c)(iii) (whichever is the earlier) the Board must within five Business Days either send to the Intending Seller copies of all Acceptance Notices received or notify the Intending Seller that no Acceptance Notices have been received.

**11.7 Intending Seller's Right to Withdraw:** If Acceptance Notices are received which do not contain acceptances for all of the Specified Shares the Intending Seller may within five Business Days of being given notice under clause 11.6, revoke the Transfer Notice by giving a notice in writing to the Board (**Withdrawal Notice**). If the Intending Seller gives a Withdrawal Notice under this clause 11.7 the Transfer Notice will be revoked and the Intending Seller may, within three months after the Withdrawal Notice is given, sell or transfer all of the Specified Shares (but not part only) at a price which is not less than the Proposed Sale Price and otherwise on terms no more favourable to a Purchaser than the terms offered to the existing Shareholders.

- 11.8 **Sale and Purchase:** The Intending Seller will become bound to sell the Specified Shares in respect of which Acceptance Notices have been received when:
- (a) Acceptance Notices are given under clause 11.5 which relate to all of the Specified Shares in a Transfer Notice; or
  - (b) Acceptance Notices are given under clause 11.5 which relate only to some of the Shares specified in a Transfer Notice and the Intending Seller does not give a Withdrawal Notice under clause 11.7.
- 11.9 **Purchasers:** The purchasers of the Specified Shares will be determined as follows:
- (a) if all offerees have accepted their entitlements then each offeree will become bound to purchase that number of Specified Shares equivalent to that offeree's entitlement; and
  - (b) in any other case:
    - (i) each offeree will become bound to purchase that number of Specified Shares equal to the lesser of the number of Specified Shares the offeree agreed to accept in the offeree's Acceptance Notice and the number of Specified Shares equivalent to the offeree's entitlement; and
    - (ii) each offeree who has agreed to accept Declined Shares and, if more than one, pro rata according to their respective entitlements, will become bound to purchase that number of Declined Shares.
- 11.10 **Price:** If an offeree's Acceptance Notice states that the offeree accepts the Proposed Sale Price that offeree will be bound to purchase the relevant Specified Shares at that price.
- 11.11 **Fair Value if No Agreement:** If an offeree's Acceptance Notice states that the offeree does not accept the Proposed Sale Price the sale price will be the fair value (**Fair Value**) fixed by a person (the **Expert**) appointed by agreement between the Intending Seller and the Remaining Shareholder or, failing agreement, appointed by the President of the Institute of Chartered Accountants of New Zealand. The Expert will be an expert, not an arbitrator. The Arbitration Act 1996 does not apply.
- 11.12 **Settlement:** Settlement of the sale and purchase of the Shares must take place:
- (a) within 10 Business Days after the Intending Seller becomes bound to sell the Specified Shares pursuant to clause 11.8 (if at the Proposed Sale Price); or
  - (b) in any other case within 10 Business Days after the determination of the Fair Value.
- 11.13 **Payment:** On settlement:
- (a) the offeree must pay the price for the Shares to the Intending Seller in cleared funds; and
  - (b) in return, the Intending Seller must deliver to the offeree the signed Share transfer and relevant Share certificate (if any).
- 11.14 **Execution by Company:** If the Intending Seller does not transfer the Shares in accordance with clause 11.13(b), the Company shall execute transfers of the Shares on behalf of the Intending Seller and receive the price for the Shares.

- 11.15 **Actions by Company:** Upon receipt of the price for the Shares, the Company must cause the name of the relevant offeree to be entered in the Share register as the holder of those Shares and hold the amount paid in trust for the Intending Seller.
- 11.16 **Validity:** The Board's receipt is a good discharge to the offeree for the purchase price. No question may be raised as to the title of the offeree to the Shares.
- 11.17 **Seller's Rights If No Acceptance Notices Received:** If an Intending Seller has given a Transfer Notice and no Acceptance Notices are received during the Acceptance Period, the Intending Seller may, within three months after the expiry of the Acceptance Period, sell or transfer all of the Specified Shares (but not part only) at a price which is not less than the Proposed Sale Price and otherwise on terms no more favourable to a purchaser than the terms offered to the Remaining Shareholders.
- 11.18 **Approved Transfer:** Any Share may be transferred by a Shareholder to any person if the transfer is approved in writing by the holders of all the Shares in the Company and the restrictions in the preceding provisions of this clause 11 shall not apply to any transfer authorised by this clause 11.18.
- 11.19 **Exception:** The provisions of this clause 11 do not apply to the transfer of any Group 'B' Shares to a Territorial Local Authority.

## **12. BANKRUPTCY**

- 12.1 If a Shareholder is adjudicated bankrupt, then the adjudication constitutes the Board the agent of the bankrupt Shareholder (and of his or her estate in bankruptcy or death):
- (a) to give the Board a Transfer Notice; and
  - (b) to sell the Shares as provided in clause 11.
- 12.2 The Proposed Sale Price will be the Fair Value and will be fixed prior to the offer to Shareholders. The Intending Seller will have no right to withdraw the Transfer Notice under clause 11.

## **13. TRANSMISSION OF SHARES**

- 13.1 **Transmission on Death of Shareholder:** If a Shareholder dies the survivor, if the deceased was a joint Shareholder, or the Shareholder's Personal Representative, shall be the only person recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder. Nothing in this clause shall release the estate of a deceased joint Shareholder from any liability in respect of any Share or constitute a release of any lien which the Company may have in respect of any Share.
- 13.2 **Rights of Personal Representatives:** A Shareholder's Personal Representative:
- (a) is entitled to exercise all rights (including without limitation the rights to receive distributions, to attend meetings and to vote in person or by Representative), and is subject to all limitations, attached to the Shares held by that Shareholder; and
  - (b) is entitled to be registered as holder of those Shares, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative pursuant to this sub-clause.

- 13.3 **Joint Personal Representatives:** Where a Share is subject to the control of two or more persons as Personal Representatives, they shall, for the purposes of this Constitution, be deemed to be joint holders of the Share.
- 13.4 **Change of Trustees:** Shares in the Company standing in the name of the Personal Representatives of a deceased Shareholder may be transferred to the new Personal Representative upon any change of Personal Representative of the deceased Shareholder.
- 13.5 **Transfer of Shares by Personal Representatives:** The Personal Representative of a deceased Shareholder must, not later than six months after the death of the Shareholder, give a Transfer Notice in respect of all the Shares held by the deceased Shareholder and all the provisions of section 11 shall apply accordingly. If the Personal Representative fails to do so then, at the expiration of the six month period, the Personal Representative shall be deemed to have given a Transfer Notice in respect of all of the Shares held by the deceased Shareholder unless the requirements of this clause have previously been waived by written notice to the Company signed by all of the Shareholders. The Proposed Sale Price will be the Fair Value and will be fixed prior to the offer to Shareholders. The Intending Seller will have no right to withdraw the Transfer Notice under clause 11.

#### **14. EXERCISE OF POWERS OF SHAREHOLDERS**

- 14.1 **Methods of Holding Meetings:** A meeting of Shareholders may be held either:
- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
  - (b) if determined by the Board, by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.
- 14.2 **Exercise of Power by Meeting or Written Resolution:** A power reserved to the Shareholders by the Act or by this Constitution may be exercised either:
- (a) at a meeting of Shareholders; or
  - (b) by a resolution in writing signed in accordance with section 122 of the Act.

#### **15. MEETINGS OF SHAREHOLDERS**

- 15.1 **Annual Meetings:** Subject to clause 15.2, the Company shall hold an annual meeting not later than:
- (a) six months after the balance date of the Company or, if the Company is an "exempt company" (as that term is defined in the Financial Reporting Act 1993) and all the Shareholders agree, ten months after the balance date of the Company; and
  - (b) fifteen months after the previous annual meeting.
- 15.2 **Resolution in Lieu of Annual Meeting:** It is not necessary for the Company to hold an annual meeting if everything required to be done at the meeting (by resolution or otherwise) is done by resolution in writing signed in accordance with section 122 of the Act.



15.3 **Special Meetings:** All meetings other than annual meetings shall be called special meetings.

15.4 **Adjourned Meetings:** If a meeting of Shareholders is adjourned for less than 20 Business Days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

## 16. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

16.1 **Chairperson of the Board to Act:** If there is a chairperson of the Board, and the chairperson of the Board is present at a meeting of Shareholders, that person must chair the meeting.

16.2 **Other Chairperson:** If there is no chairperson of the Board 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 the chairperson is unwilling or unable to act, the Directors present, if any, may elect one of their number to be chairperson of the meeting. If 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 choose one of their number to be chairperson.

16.3 **Adjourned Meetings:** The chairperson may, and if directed by the meeting must, adjourn the meeting to a new time and place. No business can be transacted at any adjourned meeting other than unfinished business at the original meeting.

16.4 **Regulation of Procedure:** Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairperson may regulate the proceedings at meetings of Shareholders.

## 17. QUORUM FOR MEETINGS OF SHAREHOLDERS

17.1 **Quorum Required:** Subject to clause 17.3 no business may be transacted at a meeting of Shareholders if a quorum is not present.

17.2 **Size of Quorum:** A quorum for a meeting of Shareholders is present if Shareholders or their Representatives are present who between them hold or represent the holders of the majority of the Shares in each Group.

17.3 **Lack of Quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) in the case of a meeting called by the Board on the written request of Shareholders under section 121(b) of the Act, the meeting is dissolved; or
- (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the Directors may appoint and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the commencement of the meeting, the Shareholders or their Representatives present will constitute a quorum.

## **18. VOTING AT MEETINGS OF SHAREHOLDERS**

**18.1 Meetings in One Place:** In the case of a meeting of Shareholders held under clause 14.1(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson:

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

**18.2 Audio-Visual Meetings:** In the case of a meeting of Shareholders held under clause 14.1(b), unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

**18.3 Postal Votes:** Unless the Board determines otherwise, Shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines that Shareholders may exercise the right to vote at a meeting by casting postal votes, the procedures in relation to postal voting shall be those set out in clause 6 of the First Schedule to the Act together with any other procedures determined by the Board.

**18.4 Number of Votes:** Subject to any rights or restrictions attached to any Share:

- (a) where voting is by voice or a show of hands, the Group 'A' Shareholders shall have one vote in total and the Group 'B' Shareholders shall have one vote in total; and
- (b) on a poll every Shareholder present in person or by Representative has:
  - (i) one vote in respect of every fully paid Share held by that Shareholder; and
  - (ii) in respect of each Share held by that Shareholder which is not fully paid, a proportion of the vote or votes which would be exercisable if that Share was fully paid equivalent to the proportion of the total issue price of that Share which has been paid (disregarding any payment in advance).

**18.5 Declaration of Chairperson Conclusive:** A declaration by the chairperson that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 18.6.

**18.6 Right to Demand Poll:** At a meeting of Shareholders a poll may be demanded by:

- (a) not less than five Shareholders having the right to vote at the meeting;
- (b) a Shareholder or Shareholders representing not less than 10% of the total voting rights of all Shareholders having the right to vote at the meeting;
- (c) a Shareholder or Shareholders holding Shares in the Company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Shares that confer that right; or
- (d) the chairperson.

For the purposes of this clause, the instrument appointing a proxy to vote at a meeting of the Company 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.

- 18.7 **Time of Demand for Poll:** A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.
- 18.8 **Timing of Poll:** The chairperson may determine the time and manner in which a poll is to be taken and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.
- 18.9 **Counting of Votes on Poll:** If a poll is taken, votes must be counted according to the votes attached to the Shares of each Shareholder present in person or by Representative and voting.
- 18.10 **Votes of Joint Holders:** Where two or more persons are registered as the holder 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.
- 18.11 **Validity of Votes:** In the case of any dispute as to the admission or rejection of a vote the chairperson shall determine the same and such determination made in good faith shall be conclusive.
- 18.12 **No Vote if Amounts Unpaid:** No Shareholder shall be entitled to vote at any meeting in respect of Shares on which any call or other moneys are due and unpaid.

## 19. PROXIES AND CORPORATE REPRESENTATIVES

- 19.1 **Proxies Permitted:** A Shareholder may exercise the right to vote either by being present in person or by proxy. A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.
- 19.2 **Form of Proxy:** A proxy must be appointed by notice in writing signed by the Shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.
- 19.3 **Lodging Proxy:** No proxy is effective in relation to a meeting unless the proxy form is produced before the start of the meeting.
- 19.4 **Validity of Proxy Vote:** A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Share in respect of which the proxy is given, if no written notice of such death, mental disorder, revocation, or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.
- 19.5 **Corporate Representatives:** A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy. A corporate representative shall have the same rights and powers as if the representative were a proxy.

## 20. APPOINTMENT AND REMOVAL OF DIRECTORS

- 20.1 **Number:** The number of Directors must not at any time be more than seven comprising:
- (a) no more than three Group A Directors;
  - (b) no more than three Group B Directors; and

(c) an independent chairperson,

and at any time there must be an equal number of Group A Directors and Group B Directors.

**20.2 Appointment and Removal:** Subject to the limitations in clause 20.1:

- (a) the holders of a majority of the Shares in a Group may at any time by written notice to the Company appoint a person as a Director in respect of their Group and may similarly remove from office any Director previously appointed by the holders of a majority of the Shares in that Group;
- (b) the independent chairperson shall be appointed by Ordinary Resolution; and
- (c) section 156 of the Act shall not otherwise apply to the Company.

**20.3 Vacation of Office:** A Director shall cease to hold office as a Director if the Director:

- (a) becomes bankrupt or makes an arrangement or compromise with the Director's creditors generally;
- (b) becomes disqualified from being a Director pursuant to Section 151 of the Act;
- (c) resigns from office by notice in writing to the Company; or
- (d) is removed from office pursuant to this Constitution.

## **21. ALTERNATE DIRECTORS**

**21.1 Appointment:** Each Director may from time to time appoint any person who is not already a Director to be the Director's alternate director (an **Alternate Director**). No Director may appoint a deputy or agent otherwise than by way of appointment of an Alternate Director.

**21.2 Form of Appointment and Removal:** Any appointment or removal of an Alternate Director must be by notice in writing to the Company signed by the relevant Director.

**21.3 Rights of Alternate Director:** Each Alternate Director will be entitled to:

- (a) receive notices of all meetings of the Board if the Director who appointed the Alternate Director is known to be either outside of New Zealand or otherwise unavailable to attend meetings;
- (b) attend and vote at any such meeting at which the Director who appointed the Alternate Director is not personally present; and
- (c) in the absence of the Director who appointed the Alternate Director, perform all the functions, and exercise all the powers, of that Director.

**21.4 Remuneration and Expenses:** Each Alternate Director's:

- (a) remuneration (if any) must be paid by the Director who appointed the Alternate Director; and
- (b) expenses incurred in attending meetings of the Directors and otherwise in relation to the discharge of duties will be paid by the Company.

21.5 **Cessation of Appointment:** An Alternate Director will cease to be an Alternate Director:

- (a) if the Director who appointed the Alternate Director ceases to be a Director or revokes the appointment; or
- (b) on the occurrence of any event relating to the Alternate Director which, if the Alternate Director were a Director, would disqualify the Alternate Director from being a Director.

## 22. POWERS OF DIRECTORS

22.1 **Management of Company:** The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

22.2 **Exercise of Powers by Board:** The Board may exercise all the powers of the Company which are not required, either by the Act or this Constitution, to be exercised by the Shareholders.

22.3 **Delegation of Powers:** The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Act.

22.4 **Appointment of Attorney:** The Company may exercise the power conferred by section 181 of the Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

22.5 **Ratification by Shareholders:** Subject to the provisions of section 177 of the Act (relating to ratification of directors' actions) the Shareholders, or any other person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

22.6 **Board procedures:** The Board may regulate its own procedure. The provisions of the Third Schedule of the Act shall not apply to proceedings of the Board except to the extent that those provisions are included in this Constitution.

## 23. DIRECTORS' INTERESTS

23.1 **Disclosure of Interests:** A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of interest of directors) but failure to comply with that section does not affect the operation of clause 23.2.

23.2 **Personal Involvement of Directors:** Notwithstanding any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is Interested) and section 199(2) of the Act (prohibiting a director from acting as auditor of a company), a Director may:

- (a) contract with the Company in any capacity;
- (b) be a party to any transaction with the Company;

- (c) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly Interested or involved;
  - (d) become a director or other officer of, or otherwise Interested in, any company promoted by the Company or in which the Company may be directly or indirectly Interested as a shareholder or otherwise; and
  - (e) retain any remuneration, profit or benefits in relation to any of the foregoing,
- and no contract or arrangement of any kind referred to in this clause may be avoided by reason of a Director's Interest.

**23.3 Interested Directors May Vote:** A Director who is Interested in a transaction entered into, or to be entered into, by the Company may:

- (a) vote on any matter relating to the transaction;
  - (b) attend a meeting of the Board at which any matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum;
  - (c) sign a document relating to the transaction on behalf of the Company; and
  - (d) do any other thing in his or her capacity as a Director in relation to the transaction,
- as if the Director were not Interested in the transaction.

**23.4 Interests of Shareholders:** Any Director may, when exercising powers or performing duties as a Director, act in a manner which he or she believes is in the best interests of a Shareholder or Shareholders, even though it may not be in the best interests of the Company.

## **24. DIRECTORS' REMUNERATION AND OTHER BENEFITS**

**24.1** The Board may exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section.

## **25. INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES**

**25.1 Indemnity for Directors:** Every Director shall be indemnified by the Company for any costs referred to in section 162(3) of the Act and any liability or costs referred to in section 162(4) of the Act.

**25.2 Indemnities and Insurance:** In addition to the indemnity set out in clause 25.1, the Company may:

- (a) indemnify a director or employee of the Company or a related company for any costs referred to in section 162(3) of the Act;
- (b) indemnify a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(4) of the Act; and
- (c) effect insurance for a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(5) of the Act.

**25.3 Interpretation:** Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause.

## **26. DIVIDENDS**

- 26.1 **Deductions:** The Board may deduct from dividends payable to any Shareholder in respect of any Shares any:
- (a) unpaid calls, instalments, premiums or other amounts, and any interest payable on such amounts, relating to the specific Shares; and
  - (b) amounts the Company may be called upon to pay under any legislation in respect of the specific Shares.
- 26.2 **Entitlement Date:** Dividends and other distributions or payments to Shareholders will be payable to the persons who are the registered as Shareholders on an entitlement date fixed by the Board.
- 26.3 **Unclaimed Dividends:** Dividends or other monetary distributions unclaimed for one year after having been authorised may be used for the benefit of the Company until claimed. All dividends or other monetary distributions unclaimed for five years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board may, nevertheless, agree to pay a claimant who produces evidence of entitlement.

## **27. NOTICES**

- 27.1 **Method of Service:** All notices, reports, accounts or documents required to be sent to a Shareholder shall be sent in the manner set out in section 391 of the Act. Notices to any other person shall be sent in the same manner as if that person was a Shareholder.
- 27.2 **Joint Holders:** A notice may be given by the Company to the joint holders of a Share in the Company by giving the notice to the joint holder named first in the Share register in respect of the Share.

## **28. INSPECTION OF RECORDS**

- 28.1 **Records:** Except as provided in the Act or unless the Board determines otherwise in any particular case, no holder of securities shall be entitled to:
- (a) inspect any records, books, papers, correspondence or documents of the Company; or
  - (b) require or receive any information concerning the Company's business, trading or customers, or any trade secret or secret process of or used by the Company.

## **29. LIQUIDATION**

- 29.1 **Distribution of Surplus:** Subject to the rights of any Shareholders and to clauses 29.2 and 29.3, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed among the Shareholders in proportion to their Shareholding. If any Shareholder's Shares are not fully paid up the liquidator of the Company may require those Shares to be fully paid up before the Shareholder receives any distribution of the surplus assets of the Company in respect of those Shares.

29.2 **Distribution in Kind:** With the approval of the Shareholders by Ordinary Resolution, the liquidator of the Company may divide amongst the Shareholders in kind the whole or any part of the assets of the Company (whether or not they are of the same kind) and for that purpose the liquidator may:

- (a) attribute values to assets as the liquidator considers appropriate; and
- (b) determine how the division will be carried out as between the Shareholders or different classes of Shareholders.

29.3 **Trusts:** With the approval of the Shareholders by Ordinary Resolution, the liquidator may vest the whole or any part of any surplus assets of the Company in trustees upon trust for the benefit of Shareholders. The liquidator may determine the terms of the trust.

### 30. METHOD OF CONTRACTING

30.1 **Deeds:** A deed which is to be entered into by the Company may be signed on behalf of the Company, by:

- (a) two or more Directors, one of whom must be a Group A Director and one of whom must be a Group B Director;
- (b) one or more attorneys appointed by the Company.

30.2 **Other Written Contracts:** An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by two or more directors, including at least one Group A director and at least one Group B director or by a person acting under the express or implied authority of the Company.

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



## SCHEDULE

### Shareholding of Individual Councils

Name of Council	Number of Shares	Percentage of Group B Shares Held	Percentage of Total Shares Held
Christchurch City Council	7,780,000	77.8%	38.9%
Waimakariri District Council	780,000	7.8%	3.9%
Selwyn District Council	600,000	6%	3%
Ashburton District Council	600,000	6%	3%
Hurunui District Council	240,000	2.4%	1.2%
Total	<b>10,000,000</b>	<b>100%</b>	<b>50%</b>