

CONSTITUTION
of
GISBORNE HOLDINGS LIMITED

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1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Constitution, unless the context otherwise requires:

Act means the Companies Act 1993;

Board means Directors who number not less than the required quorum, acting together as a board of Directors;

Company means Gisborne Holdings Limited;

Constitution means this constitution, as altered from time to time;

Council-controlled Trading Organisation has the meaning set out in section 6 of the Local Government Act 2002;

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

Distribution means:

- a) The direct or indirect transfer of money or property, other than Shares, to or for the benefit of the Shareholder; or
- b) The incurring of a debt to or for the benefit of the Shareholder,

in relation to Shares held by the Shareholder, whether by means of a purchase of property, the redemption or other acquisition of Shares, a release of indebtedness or by some other means;

Gisborne District Council means the territorial authority constituted by the Local Government (Gisborne Region) Reorganisation Order 1989;

Interested, in relation to a Director, has the meaning set out in section 139 of the Act;

Local Authority means has the meaning set out in section 5 of the Local Government Act;

Local Government Act means the Local Government Act 2002;

Month means calendar month;

Ordinary Resolution means a resolution that is approved by the Shareholder;

Person includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, a state or government or any agency thereof, a municipal, local or regional authority, and any other entity or organisation, whether incorporated or not (in each case whether or not having a separate legal personality);

Records means the documents required to be kept by the Company under section 189(1) of the Act;

Share means a share issued, or to be issued, by the Company, as the case may be;

Shareholder means the Gisborne District Council;

Share register means the share register for the Company kept in accordance with the Act;

Special resolution means a resolution approved by the Shareholder;

Statement of Intent means the statement of intent to be completed by the Board in accordance with section 64 of the Local Government Act and, where the context so requires, means the most recent statement of intent (including any modification thereof) so completed by the Board; and

Working Day has the meaning set out in section 2 of the Act.

Interpretation

1.2 In this Constitution, unless the context otherwise requires:

- a) The table of contents, headings and descriptions relating to sections of the Act, are inserted for convenience only and will be ignored in construing this Constitution;
- b) The singular includes the plural and vice versa;
- c) References to any legislation or to any provision of legislation (including regulations and orders) are references to New Zealand legislation and include:
 - (i) That legislation or provision as from time to time amended, re-enacted or substituted;
 - (ii) Any statutory instruments, regulations, rules and orders issued under that legislation or provision;
- d) "Written" and "in writing" include any means of reproducing words, figures and symbols in a tangible and visible form;
- e) Words and expressions defined or explained in the Act have the same meaning in this Constitution;
- f) Where any word or expression is defined in the Constitution, any other grammatical form of that word or expression has a corresponding meaning; and
- g) References to clauses and sections (other than sections of the Act) are references to clauses and sections in this Constitution, unless stated otherwise.

2. CONSTITUTION

2.1 **Council-controlled Trading Organisation:** The Company is a Council-Controlled Trading Organisation, which is a wholly-owned subsidiary of Gisborne District Council.

2.2 **Gisborne District Council:** The Company's Shareholder is the Gisborne District Council and there shall be no other shareholders of the Company.

2.3 **Constitution to prevail:** If there is any conflict:

a) Between a provision in this Constitution and a mandatory provision in the Act or the Local Government Act, then the mandatory provision in the Act or the Local Government Act prevails; and

b) between:

(i) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; or

(ii) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,

then the provision, definition or explanation in this Constitution prevails.

3. OBJECTIVES AND CAPACITY

3.1 **Objectives:** As a Council-Controlled Trading Organisation, the Company has, in carrying out its activities and functions, the principal objectives (under section 59 of the Local Government Act) including to:

a) achieve the objectives of its shareholders, both commercial and non-commercial, as specified in the statement of intent; and

b) be a good employer; and

c) exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so; and

d) conduct its affairs in accordance with sound business practice.

3.2 **Treaty of Waitangi:** The Company must comply with all applicable statutory and regulatory obligations relating to Maori and the Treaty of Waitangi, including those in the Local Government Act, which apply to a Council Controlled Organisation.

3.3 **Capacity:** Subject to the Act, the Local Government Act, any other applicable law, this Constitution and the Statement of Intent, the Company has, both within and outside New Zealand, the capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act or enter into any transaction.

3.4 **Indebtedness:** For the avoidance of doubt, the capacity and powers of the Company under clause 3.3 include the capacity and power to borrow or raise money or otherwise incur indebtedness in any manner, for any purpose, and to issue debentures, debenture stock, bonds, notes or other financial instruments,

agreements or arrangements of any kind, subject to any restrictions contained in this constitution.

4. STATEMENT OF INTENT

- 4.1 In preparing the Statement of Intent, the Board must comply with its obligations under the Local Government Act with regard to the preparation and completion of a statement of intent for each financial year. In particular, the Board must:
- a) Prepare and deliver to the Shareholder the draft Statement of Intent before 1 March each year;
 - b) In preparing the draft Statement of Intent, the Board must comply with clauses 9 and 10 of Schedule 8 of the Local Government Act;
 - c) The Board must consider any comments on the draft Statement of Intent that are made to it by the Shareholder within two months of 1 March;
 - d) The Board must deliver the completed Statement of Intent to the Shareholder on or before 30 June each year.
- 4.2 Where the Shareholder requires the Board to modify the Statement of Intent, the Board must comply with the Shareholder's resolution in that regard, in accordance with clause 5 of Schedule 8 of the Local Government Act.

5. REPORTING

- 5.1 **Responsibility of Board:** The Board must ensure that proper accounting records are kept in accordance with the provisions of the Act.
- 5.2 **Half-yearly report:** Within two months after the end of the first half of the financial year of the Company, the Board must deliver to the Shareholder a report on the Company's operations during that half year. That report must include the information required to be included by the Statement of Intent.
- 5.3 **Annual report:** Within three months after the end of each financial year of the Company, the Board must deliver to the Shareholder, and make available to the public, a report on the Company's operations during that year. That report must include the information required to be included by:
- a) Sections 68 and 69 of the Local Government Act;
 - b) The Statement of Intent; and
 - c) The Act.
- 5.4 **Financial statements and auditor's report:** The Company must comply with section 69 of the Local Government Act (relating to the financial statements and auditor's report for the Company).
- 5.5 **Auditor:** Despite sections 207P to 207V of the Act, the Company is a public entity as defined in section 4 of the Public Audit Act and, in accordance with that Act, the Auditor-General is the Company's auditor.
- 5.6 **LGOIMA:** The Company must comply with the applicable parts of the Local Government Official Information and Meetings Act 1987.

5.7 **Protection from disclosure of sensitive information:** Nothing in this clause 5 requires the inclusion in any Statement of Intent, annual report, financial statement, or half-yearly report required to be produced under this Constitution by the Company of any information that may be properly withheld, if a request for that information was made under the Local Government Official Information and Meetings Act 1987.

6. MONITORING

6.1 The Shareholder must comply with section 65 of the Local Government Act in regularly undertaking performance monitoring of the Company.

6.2 The Board will provide reasonable assistance as requested by the Shareholder in undertaking performance monitoring of the Company.

7. APPOINTMENT AND REMOVAL OF DIRECTORS

7.1 **Number of Directors:** The minimum and maximum number of Directors may be determined from time to time by the Shareholder. If no such determination is made by the Shareholder, there must be at least three and no more than nine Directors at any time.

7.2 **Appointment:** Subject to clauses 7.3 to 7.5, a person may be appointed as a Director at any time by Ordinary Resolution or by written notice to the Company signed by the Shareholder (or executed by a Gisborne District Council Representative). Two or more persons may be appointed as Directors by a single resolution or notice, unless the Shareholder, by Ordinary Resolution, requires any Director being appointed to be voted on individually.

7.3 The Shareholder shall consult with the Board before appointing a new Director.

7.4 **Restrictions on appointment:** There must not be at any time more than one Director that is a member or employee of any Local Authority.

7.5 **Term of appointment:** Each person will be appointed as a Director for a term set in accordance with Council Policy. Any Director may be reappointed at the expiry of his or her term of appointment in accordance with Council Policy, provided that no Director may be appointed for more than three consecutive terms.

7.6 **Statutory requirements:** Any appointment or removal of Directors must at all times comply with the Local Government Act.

7.7 **Appointment of a Chairperson:** The Board must appoint a Chairperson annually.

7.8 **Removal of Directors:** A Director may at any time be removed from office by Ordinary Resolution or by written notice to the Company signed as provided for in clause 7.8.

7.9 **Alternate Directors:** The Shareholder may by Ordinary Resolution or by written notice to the Company, appoint a person who is not already a Director to act as an alternate Director for a Director. The following provisions apply to an alternate Director:

- a) The appointment of an alternate Director be revoked at any time by the Shareholder by Ordinary Resolution or written notice to the Company, and is automatically revoked when the Director in whose place the alternate Director acts vacates office.
- b) The alternate Director is not entitled in that capacity to any remuneration additional to that of the Director in whose place he or she acts.
- c) Unless otherwise provided by the terms of the appointment, the alternate Director:
 - (i) Has the same rights, powers and privileges (including, without limitation, the power to sign resolutions of Directors, and the power to execute documents on behalf of the Company) as; and
 - (ii) Must discharge all the duties and obligations of,

the Director in whose place he or she acts.

7.10 **Notice of appointment and removal:** Any notice to the Company pursuant to this section appointing or removing a Director must:

- a) be signed, or purport to be signed by a Gisborne District Council representative; and
- b) be given to the Company by delivering the notice, or by sending the notice through the post or by facsimile or other electronic means of communication, to its registered office,

and may be comprised in one or more separate notices, each signed or purporting to be signed by one or more persons. A notice will be effective from the time of receipt of the notice by the Company at its registered office.

7.11 **Vacation of Office:** A Director ceases to be a Director if he or she:

- a) Dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988;
- b) Resigns by written notice delivered to the Company at its address for service or at its registered office (such notice to be effective at the time when it is so received unless a later time is specified in the notice);
- c) Becomes disqualified from being a Director pursuant to section 151 of the Act;
- d) Is removed from office in accordance with clause 7.7;
- e) Becomes bankrupt or makes an arrangement or composition with his or her creditors generally;
- f) Becomes a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- g) Not being a member or employee of the Gisborne District Council at the time of his or her appointment as a Director, becomes such a member or

employee, and as a consequence, the maximum number of Directors who, pursuant to clause 7.3, may be members of the Gisborne District Council is exceeded; or

h) Is required to retire by drawing of lots in accordance with clause 7.4.

7.12 **Resignation of Directors:** Without limiting the proviso in clause 7.3, a Director who is elected as a member of the Gisborne District Council, or becomes an employee of the Gisborne District Council, will be required to resign as a Director before taking up such position. If such Director does not resign prior to his or her election or employment at the Gisborne District Council, that Director is deemed to have ceased to be a Director from the date of such election or employment.

8. MANAGING DIRECTOR

8.1 The Board may from time to time appoint one or more Directors to the office of managing director for such period, and on such terms, as the Board thinks fit. A managing director shall be subject to the same provisions as to vacation of office as apply to the other Directors and, if a managing director ceases for any reason to hold office as a Director, he or she will immediately cease to hold the office of managing director.

8.2 The Board may at any time give written notice to a managing director appointed under clause 8.1, requiring that managing director to vacate such office and, immediately upon receipt of such notice, that managing director will be deemed to have vacated such office without prejudice to his or her office as a Director. Any such notice will take effect notwithstanding the terms of the resolution by which that managing director was appointed.

9. REMUNERATION AND OTHER BENEFITS OF DIRECTORS

9.1 The Board may only 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 to or in respect of a Director in his or her capacity as such, with the prior approval of the Shareholder.

10. INDEMNITY AND INSURANCE

10.1 **Authority:** The Company is expressly authorised to, and will, indemnify and/or insure any Director or employee against liability for acts or omissions, and/or costs incurred in connection with claims relating to liability, of the type specifically contemplated by section 162 of the Act to the maximum extent permitted under that section.

10.2 **Indemnity:** The Company may (and will to the extent required by the Shareholder) enter into deeds of indemnity with its Directors and employees against liability and costs of the type referred to in clause 10.1, provided all such deeds are in a form approved by the Shareholder.

11. POWERS OF DIRECTORS

11.1 **Management of Company:** Subject to clause 11.4, the business and affairs of the Company must be managed by, or under the direction or supervision of, the Board.

- 11.2 **Role of Directors:** The role of a Director is to assist the Company to meet its objectives and any other requirements in the Statement of Intent. This clause does not limit or affect the other duties that a Director has.
- 11.3 **Exercise of powers by Board:** Subject to clause 11.4, 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 Shareholder.
- 11.4 **Exercise of powers by Shareholder:** The Shareholder may at any time by Special Resolution exercise any of the powers which would otherwise fall to be exercised by the Board but the exercise of any such power will not invalidate any prior act of the Board which would have been valid if the power had not been exercised by the Shareholder.
- 11.5 **Limitations on powers of Board:** Notwithstanding clauses 11.1, 11.2 and 11.3, the business and affairs of the Company must be managed in accordance with the applicable provisions of this Constitution, the Statement of Intent and the Local Government Act.
- 11.6 **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. The Board remains responsible at all times for any delegated powers.
- 11.7 **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.
- 11.8 **Ratification by Shareholder:** Subject to the provisions of section 177 of the Act (relating to ratification of directors' actions) the Shareholder, 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.

12. INTERESTS OF DIRECTORS

- 12.1 **Disclosure of Interests:** A Director must 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 12.2.
- 12.2 **Personal involvement of Directors:** 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), or any applicable rule of law or equity, a Director must not without the prior written approval of the Shareholder:
- 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 be Interested in, any corporation 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.

If a contract or arrangement of the kind referred to in this clause is approved by the Shareholder, it may not be avoided by reason of a Director's Interest. The foregoing does not apply to any transaction on which the director may vote under clause 12.3(e) and (f).

12.3 Interested Directors must not vote: A Director who is Interested in a transaction entered into, or to be entered into, by the Company must not do any of the following:

- a) vote on any matter relating to that transaction;
- b) be in attendance for the portion of a meeting of the Board at which any matter relating to that transaction arises and be included among the Directors present at the meeting for the purposes of a quorum;
- c) sign a document relating to that transaction on behalf of the Company; and
- d) do any other thing in his or her capacity as a Director in relation to that transaction,

provided that a Director may vote and be included in the quorum on any matter relating to the following:

- e) any payment or other benefit of the kind referred to in section 161 of the Act in respect of that Director in his or her capacity as such in accordance with clause 9; and
- f) the entry into an indemnity and/or insurance arrangement in respect of that Director in his or her capacity as such in accordance with clause 10.

12.4 Director may act in Gisborne District Council's interests: A 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 Gisborne District Council even though it may not be in the best interests of the Company.

13. PROCEEDINGS OF DIRECTORS

13.1 Third schedule to Act not to apply: The provisions of the third schedule to the Act (relating to proceedings of a board) do not apply to the Company, except to the extent expressly incorporated in this Constitution.

13.2 Alternative forms of meeting: A meeting of the Board may be held either:

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

13.3 Procedure: Except as provided in this Constitution, the Board may regulate its own procedure.

13.4 **Convening of meeting:** Without limiting clause 13.4 or 13.6, and except where otherwise agreed by all Directors in relation to any particular meeting or meetings, a Director has the right at any time to convene a meeting of the Board, or to require an employee of the Company to convene a meeting of the Board at the registered office of the Company or at the place where the meetings of the Board for the time being are customarily held, by giving at least two Working Days' notice of the meeting to every Director.

13.5 **Notice of meeting:** The following provisions apply in relation to meetings of the Board, except where otherwise agreed by all Directors in relation to any particular meeting or meetings:

- a) Notice to a Director of a meeting may be:
- (i) Given to the Director in person by telephone or other oral communication;
 - (ii) delivered to the Director;
 - (iii) posted to the address given by the Director to the Company for such purpose;
 - (iv) sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose; or
 - (v) sent by electronic means in accordance with any request made by the Director from time to time for such purpose.

Provided that:

- (vi) it is not necessary to give notice of a meeting to an alternate Director, unless the Director who appointed that person has given written notice to that effect to the Company.
- b) A notice of meeting must:
- (i) specify the date, time and place of the meeting;
 - (ii) in the case of a meeting by means of audio; or audio and visual, communication, specify the manner in which each Director may participate in the proceedings of the meeting; and
 - (iii) give an indication of the matters to be discussed, in sufficient detail to enable a reasonable Director to appreciate the general import of the matters, unless this is already known to all the Directors or is impracticable in any particular circumstances.
- c) A notice of meeting given to a Director pursuant to this clause is deemed to be given:
- (i) in the case of oral communication, at the time of notification;
 - (ii) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
 - (iii) in the case of posting, two Working Days after it is posted;
 - (iv) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Director;
 - (v) in the case of electronic means, at the time of transmission.

- d) If all reasonable efforts have been made to give notice of a meeting to a Director in accordance with clause 13.6(c) but the Director cannot be contacted, notice of the meeting will be deemed to have been duly given to that Director.
- 13.6 **Waiver of notice irregularity:** An irregularity in the giving of notice of a meeting is waived if each of the Directors entitled to receive notice of that meeting either attends the meeting without protest as to the irregularity or agrees to the waiver.
- 13.7 **Quorum:** A quorum for a meeting of the Board is a majority of the Directors. No business may be transacted at a meeting of the Board if a quorum is not present.
- 13.8 **Lack of Quorum:** If, within 30 minutes after the time appointed for a meeting of the Board, a quorum is not present, the meeting must be adjourned for three Working Days to the same time and place unless otherwise agreed by all Directors. At least three days' notice of the adjourned meeting must be given, and the notice must include a statement that it is given pursuant to this clause. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Director or Directors present are a quorum.
- 13.9 **Chairperson:** If at any meetings of Directors:
- a) no chairperson is appointed, the Directors present may choose one of their number to be chairperson of the meeting;
- b) a chairperson has been appointed, but that chairperson is not present within 15 minutes after the time determined for the commencement of the meeting, the deputy chairperson (if appointed by the Board) will be the chairperson of the meeting; or
- c) both the chairperson and deputy chairperson (if appointed by the Board) are not present within 15 minutes after the time determined for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.
- 13.10 **Voting:** Every Director has one vote. The chairperson does not have a casting 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 the resolution. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly dissents from or votes against, or expressly abstains from voting on, the resolution at the meeting (and such dissents, votes against or abstentions must be noted in the minutes).
- 13.11 **Written resolution:** A resolution in writing signed or assented to by a majority of the Directors entitled to vote on that resolution is as valid and effective as if passed at a meeting of the Board duly convened and held provided those Directors would constitute a quorum for consideration of the resolution at a meeting of the Board. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in substantially the same form, each signed or assented to by one or more Directors. A copy of any such resolution must be entered in the Records. The Company must, within five Working Days after any resolution is passed in accordance with this clause, send a copy of the resolution to each Director who has not signed or assented to the resolution.

- 13.12 **Committees:** A committee of Directors must, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.
- 13.13 **Validity of actions:** The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.
- 13.14 **Minutes:** The Board must ensure that minutes are kept of all proceedings at Shareholder meetings and meetings of the Board. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.
- 13.15 **Other Meetings/Briefings:** The Board may meet with or brief Gisborne District Council from time to time. Such meetings and briefings must be consistent with, and do not otherwise limit, any applicable Gisborne District Council policy and will not constitute part of Board proceedings.

14. METHOD OF CONTRACTING

- 14.1 **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; or
 - b) one Director, or any person authorised by the Board, whose signatures must be witnessed; or
 - c) one or more attorneys appointed by the Company.
- 14.2 **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 a person acting under the express or implied authority of the Company.
- 14.3 **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.

15. SHARES

- 15.1 **Board may Issue Shares:** Subject to clause 15.2, the Board may, with the approval of the Shareholder by Special Resolution, issue Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares, on such terms as the Board thinks fit.
- 15.2 **Restriction on issue:** No Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares may be issued to any person other than Gisborne District Council.
- 15.3 **Share Register:** The Company, or an agent appointed for the purpose by the Board, must maintain a Share Register in accordance with section 87 of the Act.

16. SHARE CERTIFICATES

16.1 **Issue of Share certificates:** The Company may issue Share certificates in respect of all or any Shares and must, within 20 Working Days after receiving an application by the Shareholder, send to the Shareholder a Share certificate, in accordance with section 95 of the Act.

16.2 **Replacement Share certificates:** The Company:

- a) may issue a replacement certificate for any Share certificate that is worn out or defaced; and
- b) must 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.

17. CALLS ON SHARES

17.1 **Board may make calls:** The Board may, from time to time, make such calls as it thinks fit upon the Shareholder in respect of any amounts unpaid on any Shares held by them which are not made payable at fixed times by the terms of issue of those Shares. A call may be made payable by instalments. The Board may revoke or postpone any call.

17.2 **Fixed instalments deemed calls:** An amount which, by the terms of issue of a Share, is payable on allotment or at a fixed date is deemed for the purposes of this Constitution to be a call duly made and payable on the date on which the amount is payable.

18. NO TRANSFER OF SHARES

18.1 The Shareholder may not sell, transfer or otherwise dispose of any Share to any person, while the Company is to remain a Council-Controlled Trading Organisation.

19. DISTRIBUTIONS

19.1 **Power to authorise:** The Board, if satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the solvency test, may, subject to the Act, this Constitution and the Statement of Intent, and with the prior approval of the Shareholder, authorise Distributions by the Company to the Shareholder at times, and of amounts, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.

19.2 **Deduction of amounts due:** The Board may deduct from a Distribution payable to the Shareholder any amount which is due and payable by the Shareholder to the Company on account of calls or otherwise in relation to any Shares held by the Shareholder.

19.3 **Method of payment:** A Distribution payable in cash may be paid in such manner as the Board thinks fit to the Shareholder, or to such other person and in such manner as the Shareholder may in writing direct.

19.4 **No interest on Distributions:** The Company is not liable to pay interest in respect of any Distribution.

20. EXERCISE OF POWERS OF SHAREHOLDER

20.1 **Alternative forms of meeting:** A Shareholder meeting may be held either:

- a) by Gisborne District Council (constituting a quorum as the only Shareholder of the Company), at the place, date and time appointed for the meeting; or
- b) if determined by the Shareholder, by means of audio, or audio and visual, communication by which Gisborne District Council (constituting a quorum as the only Shareholder of the Company), can hear any other person participating in the meeting throughout the meeting.

20.2 **Exercise of power by meeting or written resolution:** A power reserved to the Shareholder by the Act or by this Constitution may be exercised either:

- a) At a Shareholder meeting; or
- b) By a resolution in writing signed in accordance with section 122 of the Act. Such resolution may consist of one or more documents in substantially the same form (including letters, facsimiles, email or other similar means of communication) each signed or assented to by or on behalf of the Shareholder.

21. SHAREHOLDER MEETINGS

21.1 **Annual meetings:** The Company must hold an annual Shareholder meeting in each calendar year, in addition to any other meetings in that year, not later than:

- a) 6 months after the balance date of the Company; and
- b) 15 months after the previous annual meeting;

unless, everything required to be done at that meeting (by resolution or otherwise) is done by resolution in writing signed in accordance with section 122 of the Act.

21.2 **Special meetings:** All meetings other than annual meetings will be called special meetings. A special Shareholder meeting:

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

21.3 **Time and place of meetings:** Each Shareholder meeting will be held at such time and place as the Board appoints.

21.4 **Gisborne District Council Representative:** Gisborne District Council has the right to appoint a Gisborne District Council Representative as its proxy to attend and vote at Shareholder meetings on its behalf. Any Gisborne District Council Representative so appointed is entitled to attend and be heard at such meetings and to demand or join in demanding a poll, as if that Gisborne District Council Representative was the Gisborne District Council in accordance with the resolutions of the Gisborne District Council.

22. NOTICE OF SHAREHOLDER MEETINGS

- 22.1 **Written notice:** Written notice of the time and place of a Shareholder meeting must be sent to the Shareholder and to every Director, and to the auditor of the Company, not less than 10 Working Days before the meeting, provided that, with the consent of the Shareholder, it may be convened by such shorter notice and in such manner as the Shareholder agrees.
- 22.2 **Contents of notice:** A notice of a Shareholder meeting must state:
- a) the nature of the business to be transacted at the meeting in sufficient detail to enable the Shareholder to form a reasoned judgment in relation to it; and
 - b) the text of any Special Resolution to be submitted to the meeting.
- 22.3 **Waiver of notice irregularity:** An irregularity in a notice of a Shareholder meeting is waived if the Shareholder attends the meeting without protest as to the irregularity, or if the Shareholder agrees to the waiver.
- 22.4 **Accidental omission of notice:** The accidental omission to give notice of a Shareholder meeting to, or the failure to receive notice of a meeting by, any person, does not invalidate the proceedings at that meeting.
- 22.5 **Adjournment of meeting:** The chairperson may, with the consent of any meeting at which a quorum is present (and must, if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business must be transacted at any adjourned meeting other than the business left unfinished at the relevant meeting.
- 22.6 **Notice of adjourned meeting:** If a Shareholder meeting is adjourned for less than 30 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. In any other case, notice of the adjourned meeting will be given in accordance with clause 21.1.

23. CHAIRPERSON OF SHAREHOLDER MEETINGS

- 23.1 If the chairperson of the Board (as appointed by the Board under clause 7.6) is present at a Shareholder meeting, he or she must chair the meeting, unless or except to the extent that the chairperson considers it is not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting.
- 23.2 If the chairperson considers it is not proper or desirable to act as chairperson, or is not present within 15 minutes after the time determined for the commencement of the meeting, the deputy chairperson (if appointed by the Board) will be the chairperson of the meeting, or the relevant part of the meeting.
- 23.3 If no chairperson is appointed, or if both the chairperson and deputy chairperson (if appointed by the Board) consider it is not proper or desirable to act as chairperson, or if neither the chairperson or deputy chairperson is present within 15 minutes after the time determined for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting or the relevant part of the meeting.

23.4 If no Director is willing to act as chairperson, or if no Director is present within 15 minutes after the time determined for the commencement of the meeting, the representatives of the Shareholder present may choose one of their number to chair the meeting.

24. VOTING AT SHAREHOLDER MEETINGS

24.1 **Voting at meeting:** In case of a meeting held under clause 20.1(a), the chairperson of the meeting must determine whether voting will be by voice or by show of hands.

24.2 **Voting at AudioNisual meeting:** In case of a meeting held under clause 20.1(b), voting at the meeting must be by the Shareholder signifying individually their assent or dissent by voice.

24.3 **Postal votes:** The provisions of clause 7 of the first Schedule to the Act (relating to postal votes) do not apply to the Company.

24.4 **Votes on show of hands or by voice:** Where voting is by show of hands or by voice, every representative of the Shareholder present has one vote.

24.5 **Declaration by chairperson:** A declaration by the chairperson of a Shareholder meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact.

24.6 **No casting vote for chairperson:** The chairperson of a Shareholder meeting is not entitled to a casting vote.

24.7 **Voting restriction:** The Shareholder is not entitled to vote at a Shareholder meeting in respect of any Share if any amount is due and payable on that Share by the Shareholder to the Company.

25. SHAREHOLDER PROPOSALS AND MANAGEMENT REVIEW

25.1 **Shareholder proposals:** The Shareholder may give written notice to the Board of a matter which the Shareholder proposes to raise for discussion or resolution at the next Shareholder meeting. The provisions of clause 9 of the first schedule to the Act apply to any notice given pursuant to this clause.

25.2 **Management review by Shareholder:** The chairperson of a Shareholder meeting must allow a reasonable opportunity for the Shareholder to question, discuss, or comment on the management of the Company. The Shareholder may pass a resolution relating to the management of the Company at that meeting and any such resolution is binding on the Board.

26. INSPECTION OF RECORDS

26.1 **1 Inspection by Directors:** Subject to section 191(2) of the Act (which relates to the power of a court to limit inspection), all accounting and other records of the Company will be open to the inspection of any Director.

27. NOTICES

27.1 **Reports, etc to Shareholder:** Annual reports, notices and other documents required to be sent to the Shareholder will be sent in the manner provided in section 391 of

the Act and in accordance with any applicable requirements under the Local Government Act.

27.2 **Accidental omissions:** The failure to send an annual report, notice, or other document to the Shareholder in accordance with the Act or this Constitution does not invalidate the proceedings at a Shareholder meeting if the failure to do so was inadvertent.

27.3 **Waiver by Shareholder:** Subject to section 212(2) of the Act, the Shareholder may from time to time, by written notice to the Company, waive the right to receive all or any documents from the Company and may at any time thereafter revoke the waiver in the same manner. While any waiver is in effect, the Company need not send to the Shareholder the documents to which the waiver relates.

28. LIQUIDATION

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

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

GISBORNE HOLDINGS LIMITED
(the "Company")

**SPECIAL RESOLUTION ALTERING CONSTITUTION IN TERMS OF
SECTION 32(2) OF THE COMPANIES ACT 1993**

RESOLVED as a special resolution in accordance with Section 32(2) of the Companies Act 1993 that the Company alter its Constitution by revoking clause 7.5 and replacing it with the following clause 7.5 with effect from the date of this resolution:

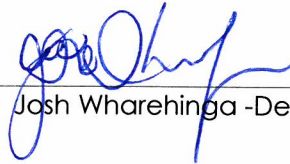
Clause 7.5 Term of appointment: Each person will be appointed as a Director for a term set in accordance with Council Policy. Any Director may be reappointed at the expiry of his or her term of appointment in accordance with Council Policy, provided that no Director may be appointed for more than three consecutive terms.

DATED: 25 June 2020

SIGNED for and on behalf the sole)
shareholder of the Company,)
GISBORNE DISTRICT COUNCIL by)



Rehette Stoltz -Mayor



Josh Wharehinga -Deputy Mayor