



Agenda

Appointments and Chief Executive Relationship Committee Meeting

**Tuesday 13 May 2025
at 1.00pm**



NOTICE OF MEETING

A MEETING OF THE WAITOMO DISTRICT COUNCIL APPOINTMENTS AND CHIEF EXECUTIVE RELATIONSHIP COMMITTEE IS TO BE HELD IN THE WAITOMO DISTRICT COUNCIL CHAMBERS, QUEEN STREET, TE KUITI ON TUESDAY 13 MAY 2025 COMMENCING AT 1.00PM

COUNCIL MEMBERS

Mayor John Robertson
Deputy Mayor Allan Goddard

Cr Dan Tasker
Cr Janene New

Cr Eady Manawaiti
Cr Janette Osborne

Cr Gavin Todd

MICHELLE HIGGIE
MANAGER – GOVERNANCE SUPPORT

ORDER PAPER

Items of Business	Page No.
1. Karakia Tuwhera	
2. Apologies	
3. Confirmation of Minutes – 12 November 2024	3
4. Inframax Construction Limited – Board Governance (Succession Planning)	6
5. Karakia Whakamutunga	

PLEASE NOTE

1. The business papers attached to this Order Paper set out recommendations and suggested resolutions only. Those recommendations and suggested resolutions **DO NOT** represent Council policy until such time as they might be adopted by Council resolution.
2. This Order Paper may be subject to amendment either by the addition or withdrawal of items contained therein.
3. As the majority of business to be considered at this meeting is public excluded, this Meeting will NOT be recorded or webcast.

WAITOMO DISTRICT COUNCIL
Appointments and Chief Executive Relationship Committee

MINUTES OF A MEETING OF THE WAITOMO DISTRICT COUNCIL APPOINTMENTS AND CHIEF EXECUTIVE RELATIONSHIP COMMITTEE HELD IN THE MAYORS MEETING ROOM, QUEEN STREET, TE KUITI ON TUESDAY 12 NOVEMBER 2024 AT 9:00AM

PRESENT: Mayor John Robertson
Deputy Mayor Allan Goddard
Gavin Todd
Janene New
Janette Osborne

IN ATTENDANCE: Greg Tims (Greg Tims & Associates)
Chief Executive, Ben Smit

1.	Karakia Tuwhera
-----------	------------------------

2.	Apologies
-----------	------------------

Resolution

The apologies from Councillors Dan Tasker and Eady Manawaiti be received and leave of absence granted.

Robertson/Goddard Carried

3.	Confirmation of Minutes: 11 June 2024 (Public Section Only)
-----------	--

Resolution

The public section of the Minutes of the Waitomo District Council Appointments and Chief Executive Relationship Committee meeting of 11 June 2024 be confirmed as a true and correct record.

Goddard/Todd Carried

4.	Motion to Exclude the Public
-----------	-------------------------------------

The Committee considered a business paper enabling the Committee to consider whether or not the public should be excluded from the consideration of Council business.

Resolution

- 1 The public be excluded from the following part of the proceedings of this meeting.
- 2 The general subject of the matters to be considered while the public is excluded and the reason for passing this resolution are specified by Section 48(1) of the Local Government Official Information and Meetings Act 1987, as follows:

General Subject of matter to be considered	Reason for passing this resolution in relation to each matter	Grounds for the passing of this resolution
1. Confirmation of Minutes: 11 June 2024 (Public Excluded Section only)	Section 7(2)(a) - To protect the privacy of natural persons, including that of deceased natural persons	Section 48(1)(d)

General Subject of matter to be considered	Reason for passing this resolution in relation to each matter	Grounds for the passing of this resolution
2. Chief Executive's Performance Review (6 Month)	Section 7(2)(a) - To protect the privacy of natural persons, including that of deceased natural persons	Section 48(1)(d)

- 3 Council agree the following staff, having relevant knowledge to assist in the consideration of the items of business to be public excluded, remain in attendance to assist the Committee with its decision making:

Staff Member	Reason for Remaining in Attendance
Chief Executive	Council Chief Executive
Greg Tims	Greg Tims & Associates (Human Resource Consultants)

- 4 This resolution is made in reliance on Section 48(1)(d) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in the public.

Robertson/Goddard Carried

5. Public Excluded Items to be made public following Council's decision taking

Resolution

Following Committee's consideration and decision taking of the public excluded items -

1 Confirmation of Minutes (Public Excluded Section Only) – 11 June 2024

The Public Excluded Minutes not be made public.

2 Chief Executive's Performance Review (6 Month)

Only Resolution 1 be made public following the meeting.

Robertson/Goddard Carried

6. Karakia Whakamutunga

There being no further business the meeting closed at 11.15pm

Dated this day of 202

JOHN ROBERTSON
MAYOR

Confidential

Document ID: 838513

Report To: Appointments and Chief Executive Relationship Committee



Meeting Date: 13 May 2025

Subject: **Inframax Construction Limited – Board Governance (Succession Planning)**

Type: Decision Required

Author(s): Michelle Higgie
Manager – Governance Support

1. Purpose of Report

- 1.1 The purpose of this business paper is for the Appointments and Chief Executive Relationship Committee to adopt a process and timeline for succession planning required for the Board of Directors of Inframax Construction Limited.

2. Suggested Resolutions

- 2.1 The following are suggested resolutions only and do not represent Council policy until such time as they are adopted by formal resolution.
- 1 The business paper on Inframax Construction Limited – Board Governance (Succession Planning) be received.
 - 2 A Director position be advertised to attract suitably qualified candidates.
 - 3 Advertisements be placed via the Institute of Directors New Zealand website.
 - 4 The process be managed inhouse.
 - 5 A Working Party be established consisting of the Mayor, Deputy Mayor and Director Hugh Goddard for the shortlisting, interviewing of candidates and making a recommendation to the Appointments and Chief Executive Relationship Committee on a preferred Candidate.
 - 6 A meeting of the Appointments and Chief Executive Relationship Committee be scheduled for Tuesday 19 August 2025 for the Working Party to make its recommendation on a preferred candidate.
 - 7 At the Tuesday 19 August 2025 meeting, the Appointments and Chief Executive Relationship Committee pass a resolution recommending appointment of the preferred candidate for Council's consideration at the August Council meeting.

3. Background

- 3.1 Inframax Construction Limited (ICL) is a Council Controlled Organisation (CCO) in accordance with Section 6 of the Local Government Act 2002, with Waitomo District Council (WDC) having full ownership by way of a 100% shareholder investment.
- 3.2 In accordance with the Appointments and Chief Executive Relationship Committee's Terms of Reference (ToR), the Committee is responsible for undertaking processes relative to the appointment of Directors to CCOs and to make recommendations to Council on such appointments. A copy of the Committee's TOR is attached to and forms part of this business paper.

- 3.3 The Board of Directors (BoD) of ICL is appointed by Council in accordance with ICL's Constitution and Council's Policy on the Appointment of Directors to CCOs. Copies of both these documents are attached to and form part of this business paper.

3.4 **Current Board Membership**

- 3.5 The current membership of the ICL BoD is as follows:

Chair Earl Rattray	<i>First appointed as a Director effective 3 May 2011. Re-appointed as a Director after each retirement by rotation since (the last being October 2022). Appointed as Chair effective October 2022.</i>
Director Janie Elrick	<i>Appointed as a Director effective 1 April 2022 Re-appointed as a Director following retirement by rotation October 2023.</i>
Director Hugh Goddard	<i>Appointed as a Director effective 1 April 2022</i>
Director Chris Ryan	<i>Appointed as a Director effective 1 April 2022 Re-appointed as a Director following retirement by rotation October 2024.</i>

3.6 **Number of Directors**

- 3.7 With respect to the number of Directors, Clause 11.1 of the ICL Constitution provides:

"The minimum and maximum number of Directors may be determined from time to time by the Council, and unless so determined, the minimum number shall be four and the maximum number shall be six."

- 3.8 Prior to the 20-24 ICL Annual General Meeting, the BoD recommended to Council the retaining of a Board of four directors in the basis that this provides opportunity to ensure the right level of diversity of experience, skills and expertise around the Board table.

- 3.9 Council at its 29 October 2024 meeting resolved:

Council confirms the number of Directors for Inframax Construction Limited pursuant to Clause 11.1 of the ICL Constitution i.e. "unless so determined, the minimum number shall be four and the maximum number shall be six."

3.10 **Retirement by Rotation**

- 3.11 Section 11.6 of the ICL Constitution refers to the Rotation of Directors as follows:

11.6.1 *One Third Retire:* *At the annual meeting in every year, one third of the Directors (with a minimum of two) or if the number is not a multiple of three then the number nearest to one third, shall retire from office.*

Note: Since the number of directors has been four or less, Council has proceeded with a retirement by rotation on the basis of "the nearest number to one third" (being one director) rather than "(with a minimum of two)". This is to assist with consistency of the directorship moving forward i.e. directors retire by rotation every fourth year instead of every second year.

- 3.12 Section 11.6 of the ICL Constitution also provides:

11.6.2 *Longest Serving Retire:* *The Directors to retire shall be those who have been longest in office, but as between persons who became Directors on the same day, the directors to retire shall, unless otherwise agreed between them, be determined by lot.*

11.6.3 Re-Election: *A retiring Director shall be eligible for re-election.*

- 3.13 In accordance with Clause 11.6.1 of the ICL Constitution, with the current number of directors being four (including the Chair), the nearest number to one third is one, and therefore one director must retire by rotation at each Annual General Meeting (AGM).
- 3.14 In accordance with Clause 11.6.2, the longest serving Director is required to retire by rotation. As the current three Directors (excluding the Chair) were initially all appointed at the same time (April 2022), the BoD recommended to Council ahead of the 2023 AGM that the Directors retire by rotation as follows:
- 2023 – Janie Elrick
2024 – Chris Ryan
2025 – Hugh Goddard
- 3.15 Council at its meeting on 31 October 2023 resolved to approve the BoD's recommendation for the above retirement by rotation plan.
- 3.16 Janie Elrick retired by rotation and was re-appointed as a Director at the 2023 AGM.
- 3.17 Chris Ryan retired by rotation and was re-appointed as a Director at the 2024 AGM.
- 3.18 Hugh Goddard is due to retire by rotation at this year's AGM and has confirmed he will be making himself available for re-appointment.

3.19 Succession Planning

- 3.20 At the 2024 AGM the current Chair, Earl Rattray, indicated his intention to retire from the BoD at the 2025 AGM and that WDC would need to make a new Director appointment at the 2025 AGM in order to retain a minimum of four Directors.

<h2>4. Commentary</h2>

- 4.1 Mayor Robertson has been in liaison with both Chair Earl Rattray and Director Hugh Goddard relating to the required succession planning.
- 4.2 Hugh Goddard, who is due to retire by rotation at this year's ICL AGM, has confirmed he is making himself available for re-appointment and is also available to take on the role of Chair should Council wish to appoint him to the role.
- 4.3 Hugh Goddard has advised he is available to assist Council with the recruitment process, and specifically relating to assessing the compliment of skills, experience and expertise required by the BoD.

4.4 Recruitment Process

- 4.5 Section Three of Council's Policy on Appointment of Directors to Council Controlled Organisations outlines the general process for the appointment of Directors to Inframax Construction Limited as follows:

Procedures for Appointment of Directors to Inframax Construction Limited

NOTE: This section is to be read in conjunction with the Constitution of Inframax Construction Limited.

3.1 Appointment Process

- 1.1.1 *Directors on the board of Inframax Construction Limited (ICL) will be appointed by way of Council resolution on receipt of advice/recommendation by the Appointments and Chief Executive Relationship Committee. The Appointments and Chief Executive Relationship Committee will provide advice to Council on the following matters:*

- a) *Whether to advertise a particular vacancy or make an appointment without advertisement, and outline the process for appointment and setting of remuneration including:*
- i. *Recruiting of candidates,*
 - ii. *Contract development and negotiation,*
 - iii. *Ongoing performance monitoring.*
- b) *In preparation of this advice the Appointments and Chief Executive Relationship Committee will consider:*
- i. *The costs and benefits of any advertisement,*
 - ii. *The availability of qualified candidates,*
 - iii. *The urgency of the appointment,*
 - iv. *The degree of public interest in the issue.*
- c) *The Appointments and Chief Executive Relationship Committee will select and interview a shortlist of candidates, undertake a structured evaluation and make recommendation to Council for final approval. Council may consider applications and resolve an appointment in committee (this protecting the privacy of natural persons). Public notice of the appointment will be made as soon as practicable after Council has made its decision.*
- d) *An elected member who is under consideration to fill a particular vacancy may not be present in the discussion or vote on that appointment and may not continue to be an elected member if appointed as a director of ICL.*

4.6 It is proposed that the recruitment process be similar to that utilised for the 2022 Director appointments –

- The Director vacancy position be advertised to attract suitably qualified candidates.
- Advertisements be placed via the Institute of Directors New Zealand website.
- The process be managed inhouse.
- The shortlisting and interviewing of candidates be conducted by a Working Party consisting of the Mayor, Deputy Mayor and Director Hugh Goddard.

4.7 **Recruitment Process Timeline**

4.8 Due to the Triennial Elections, it is recommended that the recruitment process and appointment be completed before the Elections, and in turn before the 2025 ICL AGM. This will mean that leading into the ICL AGM there will be five directors, which still fits with the size of the BoD as resolved by Council in October 2024 (minimum of 4 and maximum of 6).

4.9 The following timeline is proposed:

Action	Dates
Advertising of Directors Position	5 June to 4 July 2025
Short listing of applications	7 July to 11 July 2025
Interviewing of shortlisted candidates	14 July to 25 July 2025
Selection of preferred candidate	28 July to 1 August 2025
Complete negotiations with preferred candidate	4 August to 8 August 2025
Committee Meeting: Recommend preferred candidate to Council	19 August 2025
Council Meeting: Appointment of Director	26 August 2025

5. Analysis of Options

- 5.1 Council resolved at its 29 October 2024 meeting that the size of the BoD be a minimum of 4 and a maximum of 6. The current Chairperson has advised that he will be retiring at the 2025 ICL AGM. If Council does not make a Director appointment prior to the 2025 ICL AGM, the size of the BoD will be outside that resolved by the Council.

6. Considerations

6.1 Risk

- 6.2 There is no risk to WDC in appointing a Director. The risk in not making an appointment is as outlined in 5.1 above.

6.3 Consistency with Existing Plans and Policies

- 6.4 Appointment of a Director to ICL is consistent with Council's Policy on the Appointment of Directors to Council Controlled Organisations.

6.5 Significance and Community Views

- 6.6 Appointment of Directors is not considered significant in accordance with Council's Significance and Engagement Policy.

7. Recommendation

- 7.1 It is recommended that -

1. The Director vacancy position be advertised to attract suitably qualified candidates.
2. Advertisements be placed via the Institute of Directors New Zealand website.
3. The process be managed inhouse.
4. A Working Party be established consisting of the Mayor, Deputy Mayor and Director Hugh Goddard for the shortlisting, interviewing of candidates and making a recommendation to the Appointments and Chief Executive Relationship Committee on a preferred Candidate.
5. A meeting of the Appointments and Chief Executive Relationship Committee be scheduled for Tuesday 19 August 2025 for the Working Party to make its recommendation on a preferred candidate, and for the Committee to pass a resolution making a recommendation for Council's consideration at the August Council meeting.

6. Attachments/Separate Enclosures

Attachments:

- 1 Appointments and Chief Executive Relationship Committee Terms of Reference (#501257)
- 2 WDC Policy on the Appointment of Directors to Council Controlled Organisations (A712869)
- 3 Inframax Construction Limited - Constitution

Waitomo District Council

Appointments and Chief Executive Relationship Committee

Terms of Reference

First Adopted:	29 November 2022
Review History:	
Date of Next Review:	November 2025 (or sooner if required)
Responsibility:	Manager – Governance Support
Adopted by:	Council

CONTENTS

1.	PURPOSE AND SCOPE.....	4
2.	RESPONSIBILITIES	4
3.	DELEGATIONS	4
4.	MEETINGS	4
5.	REVIEW OF TERMS OF REFERENCE	4



Appointments and Chief Executive Relationship Committee

Terms of Reference

1. PURPOSE AND SCOPE

- 1.1 The purpose of the Committee is to undertake processes relative to –
- a. Reviewing the Chief Executive's performance
 - b. Appointment of directors to Council Controlled Organisations

2. RESPONSIBILITIES

- 2.1 To review the Chief Executive's performance and recommend to Council the terms and conditions of the Chief Executive's employment including any performance agreement measures and annual remuneration.
- 2.2 To conduct the performance review required in the Chief Executive's employment agreement.
- 2.3 To oversee any recruitment and selection process for a Chief Executive and make recommendations to Council.
- 2.4 To assist the Chief Executive with newly elected member induction programmes and oversee any development and training needs for Councillors.
- 2.5 To oversee any appointment process for directors to Council Controlled Organisations and make recommendations to Council.

3. DELEGATIONS

- 3.1 The Council delegates to the Committee the following powers and duties:
- a. Recommend changes to its Terms of Reference to the Council for adoption.
 - b. Receive and consider staff reports.
 - c. Make recommendations to Council with respect to any of the matters listed in the Purpose and Scope in Section 2 above.

4. MEETINGS

- 4.1 Meetings of the Committee shall be conducted in accordance with Standing Orders for Meetings of the Waitomo District Council.
- 4.2 The Committee will meet a minimum of twice per year.

5. REVIEW OF TERMS OF REFERENCE

- 5.1 These Terms of Reference will be reviewed by the Council no later than the November following every triennial election.

Waitomo District Council

Policy on Appointment of Directors to Council Controlled Organisations

First adopted	June 2003
Review History	2008, 2011, 2014, 2017, 2018, June 2024
Date of next review	June 2027
Responsibility	Leadership
Adopted by:	Council (25 June 2024)



CONTENTS

PURPOSE AND SCOPE TE ARONGA ME TE KORAHİ	3
DEFINITIONS NGĀ WHAKAMĀRAMATANGA.....	3
POLICY KAUPAPA HERE	3
1. CRITERIA FOR SELECTING DIRECTORS (GENERAL).....	3
2. PROCEDURES FOR APPOINTMENT OF DIRECTORS (GENERAL)	4
3. PROCEDURES FOR APPOINTMENT OF DIRECTORS TO INFRAMAX CONSTRUCTION LIMITED.....	5
4. WAITOMO DISTRICT COUNCIL CONTROLLED ORGANISATIONS.....	6
5. CCOs AND CCTOs IN WHICH COUNCIL HAS A MINORITY INTEREST	6

PURPOSE AND SCOPE | TE ARONGA ME TE KORAHĪ

1. This purpose of this policy is to set out, in accordance with Section 57 of the Local Government Act 2002 (the “Act”) an objective and transparent process for:
 - (a) Identifying and considering the skills, knowledge and experience required of directors of a Council organisation.
 - (b) Appointing directors to a Council organisation.
 - (c) Determining the remuneration of directors of a Council organisation.
2. This policy will:
 - (a) Comply with section 57 of the Local Government Act 2002.
 - (b) Disclose the process and criteria Council will apply to the appointment, removal and setting of remuneration for directors of Council organisations.
3. When Council is involved with CCO’s under the definitions of Section 6(1) of the LGA, Council will disclose its interests in these organisations in the Long Term Plan.

DEFINITIONS | NGĀ WHAKAMĀRAMATANGA

Council Organisation (“CO”)	as defined in Section 6 of the Act of the Local Government Act 2002 a CO is an organisation in which Council has a voting interest and/or the right to appoint a director, trustee or manager.
Council Controlled Organisation (CCO)	means a CO in which one or more local authorities’ control, directly or indirectly, 50% or more of the voting rights and/or have the right, directly or indirectly, to appoint 50% or more of the directors, trustees or managers.
Council Controlled Trading Organisation CCTO	means a CCO which operates a trading undertaking for which making a profit is one of its purposes.
Appointments and Chief Executive Relationship Committee	means a committee appointed by Council consisting elected members that has the authority to appoint directors to CCO’s.

POLICY | KAUPAPA HERE

1. Criteria for Selecting Directors (General)

1.1 General Criteria

- 1.1.1. Council will appoint persons as directors of CCO’s under the criteria outlined in Section 57(2) and Section 57(3) of the LGA, specifically, persons that Council considers have the skills, knowledge and experience to:

- a) Guide the organisation given the nature and scope of its activities
- b) Contribute to the achievement of the objectives of the organisation.
- c) Knowledge of tikanga Māori (if relevant).

1.2 Skill Criteria

1.2.1. Council considers that any person that it appoints to be a director of a CCO should clearly demonstrate the following skills/attributes:

- a) Intellectual ability
- b) Business experience or other experience, skills or qualifications that are relevant to the activities of the organisation
- c) Sound judgement
- d) High standard of personal integrity
- e) Ability to work as a team member
- f) Understanding of governance issues
- g) Knowledge of tikanga Māori (if relevant)

1.3 Specific Exclusions from Directorship of a Council Controlled Organisation

1.3.1. No person shall be appointed as a director of a CCO who:

- a) Has served a jail sentence of three months or longer or has been convicted of a crime that carries such sentence.
- b) Has been convicted of fraud, theft, or robbery.
- c) Has been declared bankrupt at any point in time or been the director of a company at the time it was placed in receivership or liquidation.

2. Procedures for Appointment of Directors (General)

2.1 Appointment Process

2.1.1 When vacancies arise in the directorship of any CCO, Council will follow the following appointment process:

- a) Council will decide whether to advertise a particular vacancy or make an appointment without advertisement, and outline the process for appointment and setting of remuneration including:
 - i. Recruiting of candidates,
 - ii. Contract development and negotiation,
 - iii. Ongoing performance monitoring.
- b) When taking a decision on this matter, Council will consider:
 - i. The costs and benefits of any advertisement,
 - ii. The availability of qualified candidates,
 - iii. The urgency of the appointment,
 - iv. The degree of public interest in the issue
- c) Council will consider applications and resolve an appointment in committee (this protecting the privacy of natural persons). Public notice of the appointment will be made as soon as practicable after Council has made its decision.

- d) An elected member who is under consideration to fill a particular vacancy may not be present in the discussion or vote on that appointment.

2.2 Length of Tenure

- 2.2.1 Council will decide length of tenure prior to appointment.

2.3 Remuneration

- 2.3.1 Remuneration will be determined on a case by case basis taking in to account the size, form and purpose of the organisation, any previous level of fees paid by the shareholder and any other relevant requirements contained in the organisation's constitution.

2.4 Removal of Directors

- 2.4.1 Directors appointed to CCO's by Council are in the role at the pleasure preference of Council. Council may terminate a director's appointment at any time by way of written notice.

2.5 General

- 2.5.1 Council expects that directors appointed to CCO's will avoid situations where their actions could give rise to a conflict of interest. To minimise these situations, Council requires directors to follow the provisions of the Institute of Directors in New Zealand Code of Practice for Directors and the provisions of the Companies Act 1993. All directors are appointed at the pleasure of the Council and may be dismissed for breaches of these stated documents.

3. Procedures for Appointment of Directors to Inframax Construction Limited

NOTE: This section is to be read in conjunction with the Constitution of Inframax Construction Limited.

3.1 Appointment Process

- 3.1.1 Directors on the board of Inframax Construction Limited (ICL) will be appointed by way of Council resolution on receipt of advice/recommendation by the Appointments and Chief Executive Relationship Committee. The Appointments and Chief Executive Relationship Committee will provide advice to Council on the following matters:
 - a) Whether to advertise a particular vacancy or make an appointment without advertisement, and outline the process for appointment and setting of remuneration including:
 - i. Recruiting of candidates,
 - ii. Contract development and negotiation,
 - iii. Ongoing performance monitoring.
 - b) In preparation of this advice the Investment Representative Committee will consider:
 - i. The costs and benefits of any advertisement,
 - ii. The availability of qualified candidates,
 - iii. The urgency of the appointment,
 - iv. The degree of public interest in the issue.
 - c) The Appointments and Chief Executive Relationship Committee will select and interview a shortlist of candidates, undertake a structured evaluation and make recommendation to Council for final approval. Council may consider applications and resolve an

appointment in committee (this protecting the privacy of natural persons). Public notice of the appointment will be made as soon as practicable after Council has made its decision.

- d) An elected member who is under consideration to fill a particular vacancy may not be present in the discussion or vote on that appointment and may not continue to be an elected member if appointed as a director of ICL.

3.2 Appointment of Temporary Directors

- 3.2.1 Temporary directors for ICL will be appointed by the Appointments and Chief Executive Relationship Committee.

3.3 Remuneration

- 3.3.1 The Council will set ICL directors' remuneration either by resolution at the Annual General Meeting or by way of resolution of Council. The resolution will state whether the remuneration is set as a fixed cap for Board Remuneration, to be allocated by the Board, or specifying the salaries to be paid to the directors and chairperson.
- 3.3.2 Remuneration for directors will be determined by an analysis of market rates for comparable positions at the time appointment(s) are being made and thereafter assessed every three years.

3.4 Removal of Directors

- 3.4.1 The Appointments and Chief Executive Relationship Committee may terminate the appointment of an ICL director at any time by way of written notice.

4. Waitomo District Council Controlled Organisations

4.1 Companies in which Waitomo District Council directly owns the shares and trades for profit (CCTO).

- 4.1.1 Inframax Construction Limited.

4.2 Companies in which Waitomo District Council holds shares with other local authorities. (CCO)

- 4.2.1 Waikato Local Authority Shared Services Ltd (WLASS) trading as CoLab.

4.3 Other Entities in which Waitomo District Council holds shares (not CCO)

- 4.3.1 NZ Local Government Insurance Corporation Limited trading as Civic Financial Services Ltd.

5. CCOs in Which Council Has a Minority Interest

- 5.1.1 Where Council has a minority interest in a CCO (i.e. where a CCO is controlled by a number of councils and this Council does not have a majority stake) then the process for the appointment and remuneration of directors will be agreed with other stakeholders (by whatever name) in the CCO. As far as practicable, Council's involvement in the process will be consistent with this policy.

The Companies Act 1993

**NOTICE OF ADOPTION, ALTERATION, OR
REVOCATION OF CONSTITUTION**
(Section 32(3))

10046036027

(for office use only)

Please note that the information in this form must be either typewritten or printed. It must not be handwritten.

Company
Name

INFRAMAX CONSTRUCTION LIMITED

Company Number

HN 508698

The abovenamed company has -
(Place a tick ✓ in the appropriate box)

☐

adopted a constitution

☒

altered its constitution

☐

revoked its constitution

The company adopted a new constitution on October 28th 2003 and altered the constitution on

2	6
---	---

Day

0	5
---	---

Month

0	4
---	---

Year

A copy of the constitution as adopted is attached to this notice.

Signature of Director/Authorised Person

Name of Director/Authorised Person

Kevin Francis Were

Date

May 26th 2004

Presented by

Simpson Grierson
Solicitors

Account No.

Postal Address

Private Bag 92518
Wellesley Street
AUCKLAND
JAR

Telephone

0-9-358 2222

Facsimile

0-9-307 0331



B/C9

-3 JUN 2004

CONSTITUTION

May 2004

INFRAMAX CONSTRUCTION LIMITED



INFRAMAX CONSTRUCTION LIMITED

CONSTITUTION

1. INTERPRETATION

In this Constitution, unless the context otherwise requires:

1.1 Definitions:

"Act" means the Companies Act 1993 as amended from time to time;

"Board" means the Directors of the Company who number not less than the required quorum acting together as a Board of directors;

"Company" means Inframax Construction Limited;

"Constitution" means this Constitution as amended from time to time;

"Council" means The Waitomo District Council, duly constituted under the provisions of the Local Government Act 1974 and the Local Government Act 2002;

"Director" means a person appointed and continuing in office, in accordance with this Constitution, as a director of the Company;

"Local Government Act" means the Local Government Act 2002 as amended from time to time; and

"Statement of Intent" means each Statement of Intent to be completed by the Board in terms of section 64 of the Local Government Act 2002.

2. CONSTITUTION

2.1 Effect of Constitution: The Company, the Board, each Director and each shareholder of the Company have the rights, powers, duties, and obligation to set out in the Act except to the extent that they are negated or modified by the Constitution. Subject to the Act, the Constitution is binding on and enforceable by each of the Company, the Board, each Director and each shareholder against any other of them in accordance with its terms.

2.2 Relationship of Constitution to Act and Local Government Act: Where there is any conflict between the Constitution and any mandatory provision in the Act or the Local Government Act, the mandatory provision in the applicable Act shall prevail.

- 2.3 Constitution Of No Effect:** This Constitution has no effect to the extent that it contravenes, or is inconsistent with, the Act, the Local Government Act or the Statement of Intent.

3. MANAGEMENT OF THE COMPANY

- 3.1 Local Government Act and Statement of Intent:** The business and affairs of the Company must be managed strictly in accordance with the applicable provisions of the Local Government Act and the Statement of Intent.
- 3.2 Decisions Relating to Operation:** All decisions of the Board relating to the operation of the Company must be made in accordance with the Statement of Intent and this Constitution.
- 3.3 Role of Director:** Without limitation to any other duties that a Director has, the role of each Director is to assist the Company to meet its objectives and any other requirements in its Statement of Intent.

4. CALLS ON SHARES

- 4.1 Board May Make Calls:** The Board may from time to time make such calls as it thinks fit upon the shareholders in respect of any amount unpaid on their shares and not by the conditions of issue made payable at a fixed time or times, and each shareholder shall, subject to receiving at least 14 days' written notice specifying the time or times and place of payment, pay to the Company at the time or times and place so specified the amount called. A call may be revoked or postponed as the Board may determine.
- 4.2 Timing of Calls:** A call may be made payable at such times and in such amount as the Board may determine.
- 4.3 Liability of Joint Holders:** The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
- 4.4 Interest:** If an amount called in respect of a share is not paid before or on the time appointed for payment thereof, the person from whom the amount is due shall pay interest on that amount from the time appointed for payment thereof to the time of actual payment at such rate not exceeding 10% per annum as the Board may determine, but the Board shall be at liberty to waive payment of that interest wholly or in part.
- 4.5 Instalments:** Any amount which by the terms of issue of a share becomes payable on issue or at any fixed time shall for all purposes be deemed to be a call duly made and payable at the time at which by the terms of issue the same becomes payable and, in case of non-payment, all the relevant provisions of this Constitution relating to payment of interest and expenses, forfeiture, or otherwise shall apply as if the amount had become payable by virtue of a call duly made and notified.

- 4.6 **Differentiation as to Amounts:** The Board may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

5. FORFEITURE OF SHARES

- 5.1 **Notice of Default:** If any person fails to pay any call or any instalment of a call for which such person is liable at the time appointed for payment, the Board may at any time thereafter serve notice on such person requiring payment of the amount unpaid together with any interest which may have accrued.
- 5.2 **Final Payment Date:** The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment on or before the time appointed, the shares in respect of which the amount was owing will be liable to be forfeited.
- 5.3 **Forfeiture:** If the requirements of any such notice are not complied with, any share in respect of which the notice has been given may be forfeited, at any time before the required payment has been made, by a resolution of the Board to that effect. Such forfeiture shall include all dividends and bonuses declared in respect of the forfeited share and not actually paid before the forfeiture.
- 5.4 **Sale of Forfeited Shares:** A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board in its sole discretion thinks fit and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the Board thinks fit. If any forfeited share shall be sold within 12 months of the date of forfeiture, the residue, if any, of the proceeds of sale after payment of all costs and expenses of such sale or any attempted sale and all amounts owing in respect of the forfeited share and interest thereon shall be paid to the person whose share has been forfeited.
- 5.5 **Cessation of Shareholding:** A person whose share has been forfeited shall cease to be a shareholder in respect of the forfeited share, but shall, nevertheless, remain liable to pay to the Company all amounts which, at the time of forfeiture, were payable by such person to the Company in respect of the share, but that liability shall cease if and when the Company receives payment in full of all such amounts.
- 5.6 **Evidence of Forfeiture:** A statutory declaration in writing declaring that the declarant is a director of the Company and that a share in the Company has been duly forfeited on a date stated in the declaration shall be conclusive evidence of such facts as against all persons claiming to be entitled to the share.
- 5.7 **Validity of Sale:** The Company may receive the consideration, if any, given for a forfeited share on any sale or disposition thereof and may

execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and such person shall then be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall such person's title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

6. TRANSFER OF SHARES

- 6.1 Freedom to Transfer is Qualified:** Every shareholder, who desires to sell or transfer any shares (the "proposing transferor") shall give notice in writing (a "transfer notice") to the Company that the proposing transferor desires to transfer the shares. The transfer notice must nominate the sum the proposing transferor considers to be the value of the shares referred to in the transfer notice.
- 6.2 Board to Act as Agent:** A transfer notice shall (subject to the provisions of clauses 6.1 to 6.8) constitute the Board as the agent of the proposing transferor for the sale of such shares to any shareholder or shareholders of the Company at the sum specified in the transfer notice, or, at the option of any of the shareholders at the fair value to be fixed in accordance with clause 6.5.
- 6.3 All Shares to be Transferred:** If a transfer notice includes several shares it shall not operate as if it were a separate transfer notice in respect of each share and the proposing transferor shall be under no obligation to sell or transfer part only of the shares specified in the transfer notice. Except as provided in clause 6.5 the transfer notice shall not be revocable without the sanction of the Board in writing.
- 6.4 Purchaser:** If the Board, within the space of one calendar month after being served with a transfer notice, finds a shareholder or shareholders willing to purchase the shares (the "transferee" or "transferees"), and gives notice thereof to the proposing transferor, the proposing transferor shall, subject to clause 6.5, be bound to transfer the shares to the transferee or transferees upon payment of the sum specified in the transfer notice or the fair value determined in accordance with clause 6.5 (as the case may be) (subject to any lien which the Company may have under the Constitution or the terms of issue of the shares and to deduction in respect thereof).
- 6.5 Determination of Fair Value:** If any difference arises between the proposing transferor and the transferee as to the fair value of the shares, the price of the share or shares shall be the fair value determined by the Council. If the fair value fixed as aforesaid is less than the sum nominated in the transfer notice, the proposing transferor may revoke the transfer notice by giving notice in writing to the Company within 7 days of receipt by the proposing transferor of notice of the "fair value" determined by the Council.

- 6.6 Default by Transferor:** If, in any case the proposing transferor after becoming bound to transfer the shares makes default in transferring the shares, the Company may execute a transfer or transfers of the shares on behalf of the proposing transferor and the Company may receive the purchase money and shall thereupon cause the name or names of the transferee or transferees to be entered in the register as the holder or holders thereof and shall hold the purchase money (subject to any lien in favour of the Company) in trust for the proposing transferor. A Director's receipt will be a good discharge to the transferee or transferees for the purchase price and no question can be raised as to the title of the transferee or transferees to the shares after the transferee or transferees are registered as the holders thereof.
- 6.7 Disposition of Shares:** Subject to the provisions of this Constitution, the shares specified in any transfer notice given to the Company pursuant to clause 6.1 shall be dealt with as follows:
- 6.7.1 Shareholders of Same Class of Shares:** The said shares must be offered in the first instance to holders of the class of shares contained in the transfer notice and, if after satisfying the claims of such holders including their claims to any excess (which shall be satisfied pro rata according to their holdings), in the second instance to holders of other classes of shares in each case as nearly as may be in proportion to the number of existing shares in that class held by them respectively, and the offer shall in each case limit the time within which the same if not accepted will be deemed to be declined and may at the same time contain a notification that any such shareholder who desires an allotment of shares in excess of that shareholder's proportion should in the reply to the Company state how many excess shares that shareholder desires to purchase;
- 6.7.2 Unclaimed Shares:** If all such shareholders do not claim their proportions, the unclaimed shares shall be used for satisfying the claims in excess pro rata according to the number of shares applied for.
- 6.8 No Shareholder to Purchase:** If the Company cannot within the space of one month after being served with a transfer notice find a shareholder or shareholders willing to purchase the shares and give notice in the manner aforesaid, the proposing transferor may unless the proposing transferor has revoked the transfer notice pursuant to clause 6.5, at any time within 3 calendar months after the expiration of the said period of one month sell and transfer the shares to any person at a price not lower than the value specified in the transfer notice or the fair value fixed as aforesaid and clauses 6.1 to 6.7 shall not apply to such transfer provided that the right herein conferred on a shareholder shall in all cases be subject to the provisions of clause 7.

- 6.9 All Shareholders Consent:** Clauses 6.1 to 6.8 shall not apply in the case of any transfer of a share or shares approved in writing by all the shareholders of the Company.

7. REFUSAL TO REGISTER TRANSFERS

- 7.1 Directors' Right to Refuse Registration:** Subject to compliance with the provisions of section 84 of the Act, the Board may refuse or delay the registration of any transfer of any share to any person whether an existing shareholder or not:

- 7.1.1 Required by Law:** if so required by law;
- 7.1.2 Imposition of Liability:** if registration would impose on the transferee a liability to the Company and the transferee has not signed the transfer;
- 7.1.3 Failure to Pay:** if a holder of any such share has failed to pay on due date any amount payable thereon either in terms of the issue thereof or in accordance with the Constitution (including any call made thereon);
- 7.1.4 Infant or Unsound Mind:** if the transferee is an infant or a person of unsound mind;
- 7.1.5 More Than One Class:** if the transfer is in respect of more than one class of shares;
- 7.1.6 Proof of Ownership:** if the transfer is not accompanied by such proof as the Board reasonably requires of the right of the transferor to make the transfer; or
- 7.1.7 Pre-emptive Rights:** if the pre-emptive provisions contained in clause 6 have not been complied with.

8. NEW ISSUE OF SHARES

New shares offered to shareholders pursuant to section 45 of the Act and not accepted within the prescribed time or in respect of which an intimation is received from the person to whom the offer is made declining such offer may be disposed of by the Board in such manner as it thinks most beneficial to the Company provided that the Board may not offer terms to third parties which are more favourable than the terms upon which the shares were offered to shareholders. If the Board shall dispose of any such share at a price in excess of that at which it was offered to a shareholder, it may in its discretion pay the whole or any part of such excess to such shareholder.

9. ACQUISITION OF COMPANY'S OWN SHARES

- 9.1 Authority to Acquire Own Shares:** For the purposes of sections 59 and 60(1)(b)(ii) of the Act, the Company is expressly authorised to purchase or otherwise acquire shares issued by it.
- 9.2 Authority to Hold Own Shares:** Subject to any restrictions or conditions imposed by law the Company is expressly authorised to hold shares acquired by it pursuant to section 59 or section 112 of the Act.

10. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

- 10.1 First Schedule Modified:** The first schedule to the Act is modified as provided in this section 10.
- 10.2 Chairperson:** Sub-clause 1(2) of the first schedule to the Act is deleted and replaced with the following:

"1(2) If no chairperson of the Board has been appointed, 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, at the option of the Shareholders, the meeting shall be cancelled or the Shareholders may agree a person present to act as the chairperson.

- 10.3 Notice of Meetings:** Clause 2 of the first schedule to the Act is amended as follows:

10.3.1 By deleting sub-clause (4) and replacing it with the following:

"(4) The chairperson may, and if so directed by the meeting shall, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting."

10.3.2 By adding the following sub-clause:

"(5) The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person entitled to receive

such notice shall not invalidate the proceedings at that meeting."

10.4 Voting: Clause 5 of the first schedule to the Act is amended as follows:

10.4.1 By adding the following words to the end of sub-clause (7):

- "(7) In the case of an equality of votes, whether voting is by voice or show of hands or poll the motion or resolution being voted on shall be deemed to be defeated.

10.4.2 By adding the following sub-clauses:

- "(9) Subject to any rights or restrictions for the time being attached to any class of shares, every shareholder present in person or by proxy and voting by voice or on a show of hands shall have one vote."
- "(10) The chairperson may demand a poll on a resolution either before or after a vote thereon by voice or on a show of hands."
- "(11) The demand for a poll may be withdrawn."
- "(12) Except as provided in sub-clause (13), if a poll is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded."
- "(13) A poll demanded on the question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time and place as the chairperson of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll."

10.5 Postal Votes: Clause 7 of the first schedule to the Act providing for postal votes is deleted.

10.6 Proxies and Representatives:

10.6.1 Right to Proxy: The Council may exercise the right to vote either by being present or by proxy or representative.

- 10.6.2 Right to Attend and be Heard:** A proxy or representative for the Council is entitled to attend and be heard and vote at a meeting as if the proxy or representative were the Council.
- 10.6.3 Appointment of Proxy:** A proxy must be appointed by notice in writing signed by the Council and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.
- 10.6.4 Proxy to be Produced:** No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.
- 10.6.5 Proxy Form to be Sent:** A proxy form shall be sent with each notice calling a meeting.
- 10.6.6 Form of Proxy:** An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:

INFRAMAX CONSTRUCTION LIMITED

INSTRUMENT APPOINTING A PROXY

The Waitomo District Council being a member of **Inframax Construction Limited** hereby appoints (print name of proxy) _____ of or failing him/her _____ of _____ as my/our proxy to vote for me/us on my/our behalf at the [.....th Annual] [Special] Meeting of the Company to be held at _____ on _____ commencing at [am/pm] [or all meetings of the Company held within twelve months of the date hereof] and at any adjournment of any such meeting.

Signed this _____ day of _____
(Usual signature/s)"

- 10.6.7 Alternative Form:** Where it is desired to give the Council an opportunity of voting for or against a resolution, the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:

INFRAMAX CONSTRUCTION LIMITED

INSTRUMENT APPOINTING A PROXY

The Waitomo District Council being a member of **Inframax Construction Limited** hereby appoints (print name of proxy) _____ of _____ or _____

failing him/her of as my/our proxy to vote for me/us on my/our behalf at the [.....th Annual] [Special] Meeting of the Company to be held at on commencing at [am/pm] and at any adjournment thereof.

I/We direct my/our proxy to vote in the following manner

Vote with a Tick

Resolutions	For	Against
1.	_____	_____
2.	_____	_____

Signed this day of
(Usual signature/s)"

10.7 Representatives: A body corporate which is a shareholder may appoint a representative to attend a meeting on its behalf in the same manner as that in which it can appoint a proxy.

10.8 Resolutions in Lieu of Meeting:

10.8.1 Resolutions in Writing: A shareholders' resolution in lieu of a meeting signed in accordance with section 122 of the Act is as valid as if it had been passed at a meeting, and may consist of several documents in like form, each signed by one or more shareholders. A facsimile of any such signed resolution shall be as valid and effectual as the original signed document with effect from completion of its transmission.

10.8.2 Prior Notice Unnecessary: A resolution in accordance with clause 10.8.1 may be signed under clause 10.8.1 without any prior notice being given.

10.8.3 Representative to Sign Resolutions: A representative appointed by the Council to attend a meeting shall be deemed to have authority from the Council to sign any resolution.

11. DIRECTORS

11.1 Number of Directors: The minimum and maximum number of Directors may be determined from time to time by the Council, and unless so determined, the minimum number shall be four and the maximum number shall be six.

- 11.2 Qualification:** A person will be disqualified from being appointed or holding office as a director of the Company if that person is a member, officer or employee of a Territorial Authority as defined in the Local Government Act.
- 11.3 Tenure of Office:** Each Director shall hold office until:
- 11.3.1 Removal:** removal in accordance with the Constitution; or
- 11.3.2 Vacation of Office:** vacation of office pursuant to section 157 of the Act; or
- 11.3.3 Dies:** the Director dies; or
- 11.3.4 Absence from Meetings:** vacation of office resulting ipso facto from being absent without permission of the Board from three consecutive meetings of the Board.
- 11.4 Appointment and Removal of Directors by Shareholders:** The Directors of the Company shall be such person or persons as may from time to time be appointed either by the shareholders by ordinary resolution or by notice in writing to the Company signed by the holder or holders of a majority of the shares in the capital of the Company but so that the total number of directors shall not at any time exceed the maximum number, if any, fixed pursuant to clause 11.1. Every Director shall hold office subject to the provisions of this Constitution and may at any time be removed from office by ordinary resolution of the shareholders or by notice in writing to the Company signed as aforesaid. Directors may be appointed individually or together unless the shareholders by ordinary resolution require any director's appointment to be voted on individually.
- 11.5 Casual Vacancies:** The Board shall not have power at any time to appoint any person to be a Director either to fill a casual vacancy or as an additional Director. A person may be appointed by notice in writing to the Company from the Council to be a Director either to fill a casual vacancy or as an additional Director but so that the total number of Directors shall not at any time exceed the number determined in accordance with clause 11.1 (if any). The person appointed to fill a casual vacancy shall retire at the same time as if he or she had become a Director on the day on which the director in whose place he or she is appointed was last elected a Director.
- 11.6 Rotation of Directors:**
- 11.6.1 One Third Retire:** At the annual meeting in every year, one third of the Directors (with a minimum of two) or if the number is not a multiple of three then the number nearest to one third, shall retire from office.

11.6.2 Longest Serving Retire: The Directors to retire shall be those who have been longest in office, but as between persons who became Directors on the same day, the directors to retire shall, unless otherwise agree between them, be determined by lot.

11.6.3 Re-Election: A retiring Director shall be eligible for re-election.

11.7 Cross Directorships: A Director of the Company may be or become a director or other officer of, or otherwise interested in, any Company promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such Director shall be accountable to the Company for any remuneration or other benefits received by him or her as a Director or officer of, or from his or her interests in, any such other Company unless the Company otherwise directs or the law requires.

11.8 Professional Directors: Any Director may act by himself or herself or his or her firm in a professional capacity for the Company, and a director or firm shall be entitled to remuneration for professional services as if he or she were not a Director provided that nothing herein shall authorise a Director or his or her firm to act as auditor of the Company.

11.9 Directors' Gratuities: The Company shall not:

11.9.1 On Retirement: pay any gratuity or pension or allowance on retirement to any Director or in the case of a Director's death to his or her spouse or dependants; and

11.9.2 Retirement Benefit: make contributions to any fund and pay premiums for the purchase or provision of any such benefit.

The Board shall not authorise the payment of any such benefits and shall not authorise any contributions to any fund for the payment of any premiums for the purchase or provision of any such benefit.

11.10 Alternate Directors:

11.10.1 Appointment of Alternate Directors: The Council may by notice in writing to the Company appoint any person who is:

- (a) not a Director; and
- (b) qualified to be a director in terms of the Act and this Constitution,

to be an alternate director during any Director's absence or inability to act as a director.

11.10.2 Notice of Appointment: The notice of appointment of an alternate Director must include an address for service of notice of meetings of Directors. Failure to give an address will not invalidate the appointment but notice of meetings of Directors need not be given to the alternate Director until an address is provided to the Company.

11.10.3 Powers of Alternate Director: The appointee, while he or she holds office as an alternate Director, shall be entitled to all notices of meetings of Directors and any paper minutes or documents sent to Directors and to attend and vote at any meetings of Directors. The appointee shall not vote at any meeting or sign any resolution in lieu of a meeting under clause 13.6 of this Constitution except in place of the director for whom he or she is an alternate and shall not be entitled to be remunerated otherwise than out of the remuneration of the director for whom he or she is an alternate.

11.10.4 Revocation and Cancellation of Appointment: Any appointment of an alternate Director may be revoked at any time by the Council. The appointment of an alternate Director shall be cancelled and the alternate Director shall cease to hold office whenever the Director for whom he or she is an alternate ceases to be a Director.

11.10.5 No Other Appointments: No Director shall appoint a deputy or agent or alternate director. No alternate Director shall be appointed otherwise than by way of appointment of an alternate director by the Council in accordance with this clause 11.

12. DIRECTORS DUTIES

12.1 Wholly Owned Subsidiary: If the Company is a wholly owned subsidiary, a Director may act in a manner in which he or she believes is in the best interests of the Company's holding company (which, for the avoidance of doubt, means the Council) even though it may not be in the best interests of the Company.

12.2 Not Wholly Owned: If the Company is a subsidiary (but not a wholly owned subsidiary), a Director may with the prior agreement of the shareholders (other than the Company's holding company), act in a manner which he or she believes is in the best interests of the Company's holding company (which, for the avoidance of doubt, means the Council) even though it may not be in the best interests of the Company.

12.3 Directors to Comply with the Act and Constitution: A Director must not act, or agree to the Company acting, in a manner that contravenes the Act or the Constitution and, without limitation, must comply with the Statement of Intent.

13. PROCEEDINGS OF THE BOARD

- 13.1 Third Schedule Deleted:** The provisions of the third schedule to the Act are deleted and replaced as provided in this section 13.
- 13.2 Regulation of Meetings, Quorum and Convening:** The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. The quorum necessary for the transaction of business by the Board may be fixed by the Council and, unless so fixed, shall be a majority of Directors. A Director may, and an employee at the request of a Director shall, at any time, by any means of communication, summon a meeting of the Board. It shall be necessary to give notice of a meeting of the Board to each and all Directors regardless if for the time being any such Director or Directors is or are absent from New Zealand.
- 13.3 Voting:** Questions arising at any meeting of the Board shall be decided by a majority of votes. In cases of an equality of votes a motion shall be lost. No business shall be transacted when a quorum is not present.
- 13.4 Chairperson:** The chairperson shall be appointed from time to time by notice in writing from the Council to the Company; but if no such chairperson is appointed at any time, or if at any meeting the chairperson is not present within fifteen minutes after the time appointed for the meeting, the meeting shall be cancelled.
- 13.5 Resolution in Writing:** A resolution in writing, signed by all the Directors for the time being entitled to receive notice of a meeting of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Directors. A facsimile of any such signed resolution shall be as valid and effectual as the original signed document with effect from completion of its transmission.
- 13.6 Method of Meeting:** A meeting of the Board may be held either:
- 13.6.1 Physical Meeting:** by a number of the Directors who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or
- 13.6.2 Other Means:** 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.
- 13.7 Minutes:** The Board shall ensure that minutes are kept of all proceedings at meetings of the Board.

14. STATEMENT OF INTENT

- 14.1 Obligation to Prepare:** The Board shall deliver to the Council a draft Statement of Intent on or before 1 March in each year.
- 14.2 Content of Statement of Intent:** Each Statement of Intent must, to the extent that it is appropriate given the organisational form of the Company, specify for the Company and its subsidiaries (if any) and in respect of the financial year following the financial year in which it is required by clause 14.3.2 to be delivered and each of the immediately following two financial years, the following information:
- 14.2.1 Objectives:** the objectives of the Company, including the objectives of shareholders and the other objectives which are specified as requirements applicable to the Company under the Local Government Act 2002 (including, without limitation, the requirements of section 59 of the Local Government Act 2002).
 - 14.2.2 Governance:** a statement of the Board's approach to governance of the Company; and
 - 14.2.3 Nature:** the nature and scope of the activities to be undertaken by the Company; and
 - 14.2.4 Shareholders' Funds to Assets:** the ratio of consolidated shareholders' fund to total assets, and the definitions of those terms; and
 - 14.2.5 Accounting Policies:** the accounting policies of the Company; and
 - 14.2.6 Targets:** the performance targets and other measures by which the performance of the Company may be judged in relation to its objectives; and
 - 14.2.7 Distributions:** an estimate of the amount or proportion of accumulated profits and capital reserves that is intended to be distributed to the shareholders; and
 - 14.2.8 Information to Council:** the kind of information to be provided to the shareholders by the Company during the course of those financial years, including the information to be included in each half yearly report (and, in particular, what prospective financial information is required and how it is to be presented); and
 - 14.2.9 Acquisitions:** the procedures to be followed before the Company or any of its subsidiaries subscribes for, purchases or otherwise acquires shares in any Company or other organisation; and

14.2.10 Compensation: any activities for which the Board seeks compensation from any local authority (whether or not the local authority has agreed to provide the compensation); and

14.2.11 Council's Investment: the Board's estimate of the commercial value of the shareholders' investment in the Company and the manner in which, and the times at which, that value is to be reassessed; and

14.2.12 Other Matters: any other matters that are agreed by the shareholders and the Board.

Any financial information, including (but not limited to) forecast financial information, must be prepared in accordance with generally accepted accounting practice.

14.3 Completion of Statement of Intent: The Board:

14.3.1 Board to Consider: must consider any comments on the draft Statement of Intent that are made to it within two months of 1 March by the shareholders or any of them; and

14.3.2 Board to Deliver: must deliver the completed Statement of Intent to the shareholders on or before 30 June each year.

14.4 Modifications of Statement of Intent:

14.4.1 Requirements: the Board may, by written notice, modify a Statement of Intent at any time if the Board has first:

- (a) given written notice to the shareholders of the proposed modification; and
- (b) considered any comments made on the proposed modification by the shareholders or any of them within:
 - (i) one month after the date on which the notice under paragraph (a) of this clause 14.4 was given; or
 - (ii) any shorter period as the shareholders may agree.

14.4.2 Shareholders' Directions: the shareholders may from time to time require the Board to modify the Statement of Intent by including or omitting any provision or provisions of a kind referred to in clause 14.2.1 to 14.2.9 inclusive, and the Board shall comply with the notice.

14.4.3 Matters to be Considered: before giving any notice under clause 14.4.2 the shareholders must consult the Board concerned as to the matters to be referred to in the notice.

14.5 Statement of Intent Publicly Available: Every completed Statement of Intent and every modification that is adopted to a Statement of Intent must be made available to the public by the Board within one month after the date on which it is delivered to the shareholders or adopted, as the case may be.

15. INDEMNITIES

The Company is expressly authorised to indemnify and/or insure any director or employee against liability for acts or omissions and/or costs incurred in connection with claims relating thereto of the type specifically contemplated by sub-sections (3),(4) and (5) of section 162 of the Act to the maximum extent permitted by those sub-sections.

16. DIVIDENDS

16.1 Dividends on Shares Not Fully Paid Up to be Paid Pro Rata: Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends on shares not fully paid up shall be authorised and paid in proportion to the amount paid to the Company in satisfaction of the liability of the shareholder to the Company in respect of the shares either under this Constitution or pursuant to the terms of issue of the shares. No amount paid or credited as paid on a share in advance of calls shall be treated for these purposes as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but if any share is issued on terms providing that it shall rank for dividend as from a particular date that share shall rank for dividend accordingly.

16.2 Deduction of Unpaid Calls: The Board may deduct from any dividend payable to any shareholder any amount presently payable by such shareholder to the Company on account of calls or otherwise in relation to the shares on which such dividends are payable.

16.3 Payment by Cheque or Warrant: Any dividend, interest, or other money payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder, or, in the case of joint holders, to the registered address of that one of the joint holders who is first named in the share register or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses, or other money payable in respect of the shares held by them as joint holders.

16.4 No Interest: No dividend shall bear interest against the Company.

- 16.5 Unclaimed Dividends:** All dividends unclaimed for one year after having been authorised may be invested or otherwise made use of by the Board for the benefit of the Company until claimed, and all dividends unclaimed for five years after having been declared may be forfeited by the Board for the benefit of the Company. The Board may, however, annul any such forfeiture and agree to pay a claimant who produces evidence of entitlement to the Board's satisfaction of the amount due to such claimant unless in the opinion of the Board such payment would embarrass the Company.

17. ACCOUNTS

The Board must ensure that financial statements that comply with the Financial Reporting Act 1993 and the Local Government Act are:

- 17.1 Completed:** completed in relation to the Company and each balance date; and
- 17.2 Signed:** dated and signed by two Directors of the Company.

18. REPORTS

- 18.1 Preparation:** The Board must within the time limits prescribed by the Act and the Local Government Act, prepare a formal half year report and an annual report on the affairs of the Company during the relevant accounting period. The Board shall provide the shareholders with any other reports and information upon written request by any shareholder.
- 18.2 Copies to Shareholders:** The Board must cause a copy of the half year report and annual report to be sent to every shareholder of the Company within the time limits prescribed by the Act and the Local Government Act. The Board must make the Annual Report available to the public within the time limit prescribed by the Local Government Act.
- 18.3 Form of Report:** Every half yearly and annual report for the Company must be in writing and be dated and must contain the reports, financial statements and information required by the Act and the Local Government Act.

19. NOTICES

- 19.1 Service:** A notice may be served by the Company upon any Director or shareholder either personally, or by posting it by fast post in a prepaid envelope or package addressed to such Director or shareholder at such person's last known address or by delivery to a document exchange or by facsimile to the facsimile telephone number of such director or shareholder or by e-mail to the e-mail address given to the Company by such Director or shareholder.

19.2 Time of Service: Without limiting any other ways for the Company to prove that a Director or shareholder has received a notice, a notice will be treated as received:

19.2.1 Time of Service by Facsimile: if sent by facsimile, at 5.00 pm on the day following completion of transmission or if such day is a Saturday or a Sunday or a day on which major trading banks are closed for usual business in the place of intended receipt then on the next day (not being a Saturday or a Sunday) on which such banks are open for usual business;

19.2.2 Time of Service by Post: If sent by post:

- (a) in the case of a person whose last known address is in New Zealand, at the expiration of 72 hours after the envelope or package containing the same was duly posted or delivered in New Zealand; and
- (b) in the case of a person whose last known address is outside New Zealand, at the expiration of seven days after the envelope or wrapper containing the same was duly posted by fast post in New Zealand; and

19.2.3 Time of Service by E-Mail: if sent by e-mail on the sender's receipt of an e-mail message indicating that the e-mail has been opened at the recipient's terminal.

19.3 Proof of Service: In proving service by post or delivery to a document exchange, it shall be sufficient to prove that the envelope or package containing the notice was properly addressed and posted or delivered with all attached postal or delivery charges paid. In proving service by facsimile, it shall be sufficient to prove that the document was properly addressed and sent by facsimile.

19.4 Service on Joint Holders: A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the share register in respect of the share.

19.5 Service on Representatives: A notice may be given by the Company to the person or persons entitled to a share in consequence of the death or bankruptcy of a shareholder by addressing it to such person or persons by name or by title or by any appropriate description, at the address, if any, within New Zealand supplied for the purpose by the person or persons claiming to be so entitled, or (until such an address has been so supplied), by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

20. LIQUIDATION

20.1 Distribution of Surplus Assets: Subject to the terms of issue of any shares in the Company and to clause 20.2, upon the liquidation of the

Company the assets, if any, remaining after payment of the debts and liabilities of the Company and the costs of winding-up ("surplus assets") shall be distributed among the shareholders in proportion to their shareholding provided however that the holders of shares not fully paid up shall only receive a proportionate share of their entitlement being an amount which is in proportion to the amount paid to the Company in satisfaction of the liability of the shareholder to the Company in respect of the shares either under the Constitution of the Company or pursuant to the terms of issue of the shares.

- 20.2 Distribution In Specie:** Upon a liquidation of the Company, the liquidator, with the sanction of an ordinary resolution and any other sanction required by law, may divide amongst the shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose set such value as the liquidator deems fair upon any property to be divided as aforesaid and may determine how the division shall be carried out as between the shareholders or different classes of shareholders. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the shareholders as the liquidator thinks fit, but so that no shareholder shall be compelled to accept any shares or other securities whereon there is any liability.

21. REMOVAL FROM THE NEW ZEALAND REGISTER

In the event that:

- 21.1 Cessation of Business:** the Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with its Constitution and the Act; or
- 21.2 No Surplus Assets:** the Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the court under section 241 of the Act for an order putting the Company into liquidation; the Board may in the prescribed form request the Registrar to remove the Company from the New Zealand register.

22. AUDITORS

The Company must at each annual meeting, appoint an auditor to:

- 22.1 Hold Office:** hold office from the conclusion of the meeting until the conclusion of the next annual meeting; and
- 22.2 Audit:** audit the financial statements of the Company for the accounting period next after the meeting.

The auditor must be the Auditor-General (as defined in the Public Audit Act 2001) appointed in terms of that Act.

Certified as the Constitution of the Company



Director

26.5.04

Date