
Constitution of Tātau Tātau o Te Wairoa Trustee Limited

This document should be read together with the Companies Act 1993

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CONSTITUTION OF TĀTAU TĀTAU O TE WAIROA TRUSTEE LIMITED

PART A: INTRODUCTION

1 INTERPRETATION

1.1 Defined terms

(a) The following expressions have the following meanings:

Act means the Companies Act 1993;

Adult Registered Member has the meaning set out in the Tātau Tātau Trust Deed;

Assets means all property (whether real or personal) and includes choses in action, rights, interests and money;

Amendment Date has the meaning set out in the Tātau Tātau Trust Deed;

Balance Date means 30 June or any other date which the Company adopts by resolution as the date up to which accounts are to be made in each year;

Beneficial Entity has the meaning set out in the Tātau Tātau Trust Deed;

Board means the Directors of the Company from time to time;

Company means Tātau Tātau o Te Wairoa Trustee Limited;

Chairperson has the meaning set out in the Tātau Tātau Trust Deed;

Constitution means this constitution as altered from time to time in accordance with the Act;

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

Independent Beneficial Entity has the meaning set out in the Tātau Tātau Trust Deed;

First Directors has the meaning set out in the Tātau Tātau Trust Deed;

Kāhui has the meaning set out in the Tātau Tātau Trust Deed;

Kāhui Beneficial Unit has the meaning set out in the Tātau Tātau Trust Deed;

Member of the Iwi and Hapū of Te Rohe o Te Wairoa has the meaning set out in the Tātau Tātau Trust Deed;

Share means an ordinary share in the Company;

Tātau Tātau means Tātau Tātau o Te Wairoa Trust;

Tātau Tātau o Te Wairoa Group has the meaning set out in the Tātau Tātau Trust Deed;

Tātau Tātau Trust Deed means the trust deed of Tātau Tātau as amended from time to time;

Trustees has the meaning set out in the Tātau Tātau Trust Deed.

- (b) Expressions which are defined in the Act (whether in section 2 or elsewhere for the purposes of a particular subsection, section or sections) have the meanings given to them by the Act. Where an expression is defined in the Act more than once and in different contexts, its meaning will be governed by the context in which it appears in this Constitution.

1.2 **Construction**

- (a) Headings appear as a matter of convenience and do not affect the interpretation of this Constitution.
- (b) Including and similar words do not imply any limitation.
- (c) The singular includes the plural and vice versa, and words importing one gender include the other genders.
- (d) A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.
- (e) Any obligation to calculate a cost or value will include an obligation that the calculation will be conducted in accordance with generally accepted accounting principles in New Zealand.
- (f) Written or in writing in relation to words, figures and symbols includes all modes of presenting or reproducing those words, figures and symbols in a tangible and permanently visible form, including email or fax.

PART B: TĀTAU TĀTAU O TE WAIROA GROUP

2 RELATIONSHIP BETWEEN CONSTITUTION, THE ACT AND THE TĀTAU TĀTAU TRUST DEED

2.1 Effect of the Act on this Constitution

The Company, the Board, each Director, and the shareholder have the rights, powers, duties, and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this Constitution.

2.2 Effect of this Constitution

This Constitution has no effect to the extent that it contravenes the Act, or is inconsistent with it.

2.3 Constitution to be consistent with Tātau Tātau Trust Deed

- (a) Subject to clause 2.2, this Constitution is to be consistent with all relevant provisions of the Tātau Tātau Trust Deed. In the event of any amendments to the Tātau Tātau

Trust Deed, the Board will review those amendments and to the extent there are inconsistencies, use reasonable endeavours to procure that, as soon as is practicable and to the extent allowed by law, this Constitution is altered to accord with all relevant provisions of the Tātau Tātau Trust Deed. The terms of this Constitution will continue to apply until any such amendments are made.

- (b) In respect of any issues of ambiguity, phrases or expressions defined in the Tātau Tātau Trust Deed are intended to have a common meaning or understanding when used in this Constitution.

3 PURPOSE AND OBJECTIVES OF THE COMPANY

3.1 Purpose

The sole purpose of the Company is to act as the sole corporate trustee for Tātau Tātau.

3.2 Objectives

The Company's objectives are to hold the Assets of Tātau Tātau, enter into transactions, incur liabilities and comply with the powers and duties provided in the Tātau Tātau Trust Deed.

PART C: SHARES

4 SHARES AND ISSUE OF SHARES

4.1 Chairperson to be sole shareholder

- (a) The sole shareholder of the Company will be the Chairperson of Tātau Tātau from time to time, who will hold the Shares on trust for the benefit of the Members of the Iwi and Hapū of Te Rohe o Te Wairoa.

- (b) The Chairperson of Tātau Tātau is the only person eligible to hold Shares.

4.2 Board to issue Shares

- (a) Section 45 of the Act does not apply. The Board must only issue Shares to the Chairperson of Tātau Tātau.

- (b) Prior to the Board issuing any Shares to the Chairperson of Tātau Tātau, the Chairperson of Tātau Tātau must deliver to the Company:

- (i) a signed consent to be a shareholder of the Company; and
- (ii) any other documents required by the Board,

and all such documents to be in a form reasonably required by the Board from time to time.

- (c) Such Shares may rank as to voting or distribution rights, or both, equally with or prior to any existing Shares, and any such issue will not be treated as an action affecting the rights attached to existing Shares.

4.3 **Time of issue of Shares**

A Share is issued when the name of the holder is entered on the Company's share register. The Board will not enter the name of any person on the Company's share register until the Company has received the documents referred to in clause 4.2(b) above.

5 **TRANSFER OF SHARES**

5.1 **Restrictions on transfer of Shares**

No Share may be transferred except in accordance with this clause 5.

5.2 **Person ceasing to be Chairperson of Tātau Tātau must transfer Shares**

If a person ceases to be the Chairperson of Tātau Tātau, he or she must promptly and in accordance with clause 5.3, transfer the Shares he or she holds:

- (a) where a replacement Chairperson appointed in accordance with the Tātau Tātau Trust Deed, to that replacement Chairperson; or
- (b) if there is no replacement Chairperson, to any one of the other Directors, who must hold the Shares on trust until a person is elected as the replacement Chairperson, at which time that Director will promptly transfer the Shares to that replacement Chairperson in accordance with clause 5.3.

5.3 **Signed transfer and other documents delivered to Company**

(a) Where Shares are to be transferred by a shareholder that has ceased to be the Chairperson of Tātau Tātau, that shareholder (as transferor) must promptly deliver to the Company:

- (i) a signed share transfer form; and
- (ii) any other documents required by the Board,

all such documents to be in a form reasonably required by the Board from time to time.

(b) If the Shares are being transferred to a Director under clause 5.2(b), that Director must sign the transfer form (as transferee).

(c) Where Shares are to be transferred to a replacement Chairperson of Tātau Tātau:

(i) if a Director is holding Shares on trust under clause 5.2(b), that Director (as transferor) must promptly deliver to the Company:

- (A) a signed share transfer form; and
- (B) any other documents required by the Board;

(ii) whether under clause 5.2(a) (from the departing Chairperson) or 5.2(b) (from a Director holding the Shares on trust), the replacement Chairperson (as transferee) must promptly deliver to the Company:

- (A) a signed share transfer form; and

(B) any other documents required by the Board,

and all such documents to be in a form reasonably required by the Board from time to time.

5.4 **Shares transferred by entry on share register**

Shares will be transferred by entry on the Company's share register of the name of the transferee which appears on the transfer form delivered to the Company. The Board will not enter the name of any person on the Company's share register until the Company has received all necessary documents referred to in clause 5.3 above.

5.5 **Board may refuse or delay a Share transfer in certain cases**

The Board may in its absolute discretion refuse or delay the registration of any transfer of Shares if:

- (a) the transfer is not made in accordance with clause 5.3 of this Constitution;
- (b) the transferee has not signed the transfer form;
- (c) the transfer is not accompanied by such evidence as the Board may reasonably require to establish the right of the transferor to make the transfer; or
- (d) the transfer would cause the Company to breach the Tātau Tātau Trust Deed.

6 **MEETINGS OF SHAREHOLDERS**

6.1 **Company must hold annual meeting of shareholders**

(a) Subject to clause 6.1(b), the Board must call an annual meeting of shareholders to be held:

- (i) once in each calendar year;
- (ii) not later than 15 months after the date of the previous annual meeting of shareholders; and
- (iii) not later than 6 months after the Balance Date of the Company.

However no annual meeting need be called and held if everything required to be done at the meeting is done by resolution passed in accordance with clause 6.3.

(b) The Company does not have to hold its first annual meeting in the calendar year of its registration but must hold that meeting within 18 months of its registration.

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

6.2 **Company may hold special meetings of shareholders**

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

- (a) may be called at any time by the Board; and

(b) must be called by the Board on the written request of the Shareholder.

6.3 Written shareholders' resolution instead of holding a meeting

A written resolution signed by the Shareholder is as valid as if it had been passed at a meeting of shareholders. A copy of a resolution, which has been signed and sent by facsimile or any similar means of communication, will satisfy the requirements of this clause 6.3.

6.4 Proceedings at meetings of shareholders

The First Schedule of the Act governs the proceedings at meetings of shareholders.

PART D: DIRECTORS

7 APPOINTMENT AND REMOVAL

7.1 Number of Directors

The minimum number of Directors shall be one (1) and the maximum number of Directors shall be fourteen (14).

7.2 Appointment of Directors

The Directors are appointed and removed by each Kāhui in accordance with clause 3.5 of the Tātau Tātau Trust Deed.

7.3 Disrepute

The Directors must not, either as a Board or individually, act in a manner which brings or is likely to bring Tātau Tātau, the Company or any other member of the Tātau Tātau o Te Wairoa Group, into disrepute.

7.4 Removal of Directors

Any Director that acts in a manner that brings or is likely to bring into disrepute Tātau Tātau, the Company or any member of the Tātau Tātau o Te Wairoa Group may, by a resolution passed by a majority of not less than 75% of the other Directors, be formally censured or removed from office, provided that the procedure set out in clause 30.4 of the Tātau Tātau Trust Deed must first be followed.

8 MANAGEMENT OF THE COMPANY

8.1 Board to manage Company

The Company's business and affairs must be managed by, and under the direction or supervision of, the Board, except to the extent that the Act or this Constitution provides otherwise.

8.2 Board has powers necessary to manage Company

The Board has all the powers necessary for managing, and for directing and supervising the management of, the Company's business and affairs, except to the extent that the Act or this Constitution provides otherwise.

9 **PROCEEDINGS OF THE BOARD**

9.1 **Meetings of the Board**

The Second Schedule of the Tātau Tātau Trust Deed governs the proceedings at meetings of the Board. The Third Schedule to the Act does not apply to proceedings of the Board.

10 **DELEGATION OF POWERS**

10.1 **Restriction on Board's right to delegate its powers**

The Board may delegate to a committee of Directors, a Director or any other person, any one or more of its powers other than its powers under any of the sections of the Act set out in the Second Schedule to the Act.

10.2 **Board delegates to comply with regulations**

In exercising the Board's delegated powers, any committee of Directors, Director or any other person must:

- (a) comply with any regulations that the Board may impose; and
- (b) refer any final decision, determination, or recommendation to the Directors for final determination before implementing that decision, determination or recommendation.

10.3 **Directors to remain responsible**

In the event that the Directors delegate any powers pursuant to clause 10.1 above, the Directors will continue to be responsible for the exercise of that delegated power by the delegate, as if the Directors had exercised that power themselves, unless the Directors:

- (a) believed on reasonable grounds when making the delegation that the delegate would exercise the power in accordance with the provisions of, and the duties owed by the Directors' pursuant to, this Constitution, the Act, and the Tātau Tātau Trust Deed; and
- (b) used reasonable methods to monitor the exercise of the power by the delegate.

10.4 **Committee proceedings**

Subject to any regulations made by the Board, any committee of Directors may:

- (a) regulate its proceedings as it sees fit; and
- (b) co-opt any person to be a member of that committee, provided that the committee notifies the Board of any such person co-opted.

10.5 **Appointments of officers**

The Directors may appoint any officers or employees that the affairs of the Company may require on such terms and conditions as they think fit. The Directors may also remove and replace any persons so appointed.

11 **INTERESTED DIRECTORS**

11.1 **Interested Directors**

The meaning of "interested" as defined under the Act will apply to the Directors and where the Company is a corporate trustee of a trust, will include transactions to which the Company is a party, either in its own capacity, or in its capacity as the corporate trustee of a trust.

11.2 **Directors must disclose their interests**

As soon as a Director becomes aware of the fact that he or she is interested in a transaction or proposed transaction:

- (a) with the Company; or
- (b) with Tātau Tātau,

then unless the Act provides otherwise or all entitled persons have agreed to or concur in the Company entering into the transaction, that Director must cause to be entered in the interests register, and disclose to the Board:

- (a) the nature and monetary value of his or her interest (if the monetary value of the interest is able to be quantified); or
- (b) the nature and extent of his or her interest (if the monetary value of the interest cannot be quantified).

11.3 **General disclosure in certain cases will suffice**

For the purposes of clause 11.2, a general notice entered in the interests register and disclosed to the Board to the effect that a Director:

- (a) is a shareholder, director, officer, or trustee of another named company or other person; and
- (b) is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that other company or person,

will be a sufficient disclosure of that interest in relation to such transactions.

11.4 **Failure to disclose does not affect validity of transaction**

Any failure by a Director to comply with clause 11.2 does not affect the validity of a transaction entered into by the Company or the Director. However, the transaction may be avoided under clause 11.5.

11.5 **Company may avoid transaction if Director interested**

Where the Company enters into a transaction in which a Director is interested, the Company, if it is permitted to do so by the Act, may avoid that transaction in accordance with the Act. However, if all entitled persons have agreed to or concur in the Company entering into such a transaction then this clause 11.5 will not apply.

11.6 **Interested Director may not vote**

Subject to clause 11.7, a Director of the Company who is interested in a transaction entered into, or to be entered into, by the Company may not take part in any deliberation or vote on a matter relating to the transaction, nor be included among the Directors present at the meeting for the purpose of a quorum, but may:

- (a) attend a meeting of Directors at which a matter relating to the transaction arises (except the interested Director must remove himself or herself from the meeting while the other Directors are discussing a matter relating to the transaction);
 - (b) sign a document relating to the transaction on behalf of the Company; and
 - (c) do anything else as a Director in relation to the transaction,
- as if he or she were not interested in the transaction.

11.7 **Interests in common with Members of the Iwi and Hapū of Te Rohe o Te Wairoa**

For the purposes of clause 11.6, a Director is not interested in a matter where his or her interest is not different in kind from the interests of the other Members of the Iwi and Hapū of Te Rohe o Te Wairoa.

12 **REMUNERATION**

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

- (a) The Board may remunerate or provide other benefits to the Directors, on an individual Director basis or within a limit for all Directors, provided that payment or benefit has been authorised by an ordinary resolution of the Adult Registered Members in accordance with clause 23.2 of the Tātau Tātau Trust Deed.
- (b) The Board must not authorise or allow:
 - (i) the payment by the Company to a Director of compensation for loss of office;
 - (ii) the making of loans by the Company to a Director;
 - (iii) the giving of guarantees by the Company for debts incurred by a Director; and
 - (iv) the entering into of a contract to do any of the things set out in this clause 12.1(b).

12.2 **Expenses**

A Director may be reimbursed for reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising powers as a Director of the Company, without requiring the prior authorisation of the Adult Registered Members.

12.3 **Special Remuneration**

The Board may authorise special remuneration to any Director who is or has been engaged by the Company, Tātau Tātau or any other member of the Tātau Tātau o Te Wairoa Group to carry out any work or perform any service which is not in the capacity of a director of the Company or a subsidiary.

PART E: GENERAL

13 SHAREHOLDER APPOINTMENT OF ATTORNEY

13.1 Shareholder to sign necessary documents

The shareholder will, on request from the Board, sign all documents necessary to effect an issue, transfer, or a purchase of Shares by the Company, in order to give effect to clauses 4.2, 5.2 or 5.3.

13.2 Appointment of Director as attorney

If the shareholder fails to properly comply with clause 13.1, then that shareholder:

- (a) irrevocably appoints any Director to act as its attorney for the purposes of signing any documents or doing any other thing which, in the opinion of the Director (acting as an attorney for the shareholder), is required to give effect to clause 13.1; and
- (b) agrees to sign or do anything on request from the Board to ratify the actions of the attorney under clause 13.2(a).

14 INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES

14.1 Company may indemnify Directors and employees for certain liabilities

The Company is authorised to indemnify a Director or employee of the Company or a related company for any liability or costs for which a Director or employee may be indemnified under the Act. The Board may determine the terms and conditions of any such indemnity.

14.2 Company may effect insurance for Directors and employees

The Company may, with the prior approval of the Board, effect insurance for a Director or employee of the Company or a related company for any liability or costs for which a company may effect insurance for a director or employee under the Act. The Board may determine the amounts and the terms and conditions of any such insurance.

15 EXECUTION OF DEEDS

An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:

- (a) two or more Directors;
- (b) if there is only one Director, by that Director whose signature must be witnessed;
- (c) a Director, or any other person authorised by resolution of the Board, whose signature must be witnessed; or
- (d) one or more attorneys appointed by the Company in accordance with the Act.

16 **ARCHIVING OF RECORDS**

All minutes and other records of the Company must be held by the Company for a minimum period of 7 years.

17 **LIQUIDATION**

If the Company is liquidated the liquidator will, at the direction of the trustee or trustees for the time being of Tātau Tātau, but subject to any other sanction required by the Act:

- (a) distribute to the trustee or trustees for the time being of the Tātau Tātau in kind the whole or any part of the assets of the Company and for that purpose the liquidator may fix such values for assets as the liquidator considers to be appropriate; and
- (b) vest the whole or any part of any such assets in the trustee or trustees upon such trusts for the benefit of the trustee or trustees for the time being of Tātau Tātau,

but so that the trustee or trustees for the time being of Tātau Tātau are not compelled to accept any shares or other securities on which there is any liability.