

I hereby give notice that an ordinary meeting of the Joint Shareholders Committee will be held on:

Date: Tuesday 7 June 2022
Time: 1.00 pm
Meeting Room: Tasman Council Chamber
Venue: 189 Queen Street, Richmond

Joint Shareholders Committee

Komiti Joint Shareholders

ATTACHMENTS

ATTACHMENTS UNDER SEPARATE COVER

| ITEM | PAGE |
|----------------------------------------------------------------------------|------|
| 6.1 Holding Company - Progress Report 3 | |
| 1. Constitution of Infrastructure Holdings Ltd - clean copy..... | 3 |
| 2. Constitution of Infrastructure Holdings Ltd - Marked up copy | 31 |
| 3. Draft Shareholders Agreement - clean copy..... | 59 |
| 4. Draft Shareholders Agreement - marked up copy | 74 |
| 5. DLA Piper signoff of constitution and SHA | 89 |
| 6. Shareholder Consent Forms | 137 |
| 7. Agreement for Sale and Purchase of Shares | 139 |
| 8. Share Transfer Forms | 148 |
| 9. Uncalled Capital Subscription Agreement | 152 |
| 10. Legal Advice on Uncalled Capital..... | 159 |
| 11. Proposed Corporate Structure Diagram | 160 |
| 12. Proposed Financing Structure Diagram..... | 161 |
| 13. Restructuring and Financing of PNL and NAL | 162 |
| 14. Pitt and Moore - Comparison of Corporate Structure/Constitutions | 170 |
| 15. Transition Work Plan..... | 183 |

Draft Constitution (TDC) 17 May 2022

Constitution of Infrastructure Holdings Limited

DRAFT

SER-023544-426-24-V5

76874544v1

Table of Contents

| | | |
|-----|-----------------------------------------------------------|----|
| 1. | Definitions and interpretation | 2 |
| 2. | Relationship to Act and Local Government Acts | 5 |
| 3. | Issuing Shares | 5 |
| 4. | Calls on Shares | 7 |
| 5. | Pre-emptive rights on transfer | 8 |
| 6. | Registration of Share transfers | 13 |
| 7. | Suspension of right to distributions, lien and forfeiture | 13 |
| 8. | Distributions to Shareholders | 15 |
| 9. | Company acquiring its own Shares | 15 |
| 10. | Assistance by Company for Share purchase | 16 |
| 11. | Shareholders' meetings | 16 |
| 12. | Directors | 21 |
| 13. | In specie distribution on liquidation | 25 |
| 14. | Audit | 26 |
| 15. | Amendment | 26 |

SER-023544-426-24-V4

Constitution of Infrastructure Holdings Limited

1. Definitions and interpretation

Definitions

1.1 In this Constitution, unless the context otherwise requires:

- | | |
|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Act | means the Companies Act 1993; |
| Board | means the Directors acting together as the board of directors of the Company; |
| Company | means Infrastructure Holdings Limited; |
| Council-Controlled Organisation | has the meaning given to it in section 6 of the Local Government Act 2002; |
| Council-Controlled Trading Organisation | has the meaning given to it in section 6 of the Local Government Act 2002; |
| Director | means a person appointed as director of the Company in accordance with the terms of the Act and this Constitution; |
| Fair Value | means the price determined by the Valuer in accordance with clause 5.16; |
| Independent | means a person who is free from any association that could materially interfere with the exercise of their independent judgement, including that the person: <ol style="list-style-type: none"> (a) does not hold or control more than 5% of the Shares or have significant influence over the Company, and is not an officer of a Shareholder or other entity that holds or controls more than 5% of the Shares or has significant influence over the Company, during, or at any point during the two years immediately before, their current appointment to the Board; (b) is not employed, and has not previously been employed, in an executive capacity by a Shareholder, the Company or any of its subsidiaries, unless there has been a period of at least two years between ceasing such employment and serving on the Board; |

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (c) does not currently hold (and has not held within the last three years) a senior role in a provider of material professional services to a Shareholder, the Company or any of its subsidiaries, and is not currently (and has not within the last two years been) an employee of such a service provider materially associated with the services provided;
- (d) does not currently have (and has not within the last two years had) a material business or contractual relationship (for example, supplier or customer) with a Shareholder, the Company or any of its subsidiaries;
- (e) is not a relative (as defined in the Act) of anyone in any of the above categories; and
- (f) has not been a Director of the Company for a term or terms that, in aggregate, amount to more than six years.

| | |
|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Independent Chairperson | means an Independent chairperson appointed to the Board in accordance with clause 12.2; |
| Interested Director | has the meaning given in clause 12.16; |
| Joint Shareholders' Committee | means the committee of that name formed by the local authorities of Nelson City Council and Tasman District Council from time to time and, if such committee ceases to exist under that name at any time, includes any replacement committee by whatever name formed by the local authorities of Nelson City Council and Tasman District Council which performs similar functions relating to, amongst other matters, the appointment and remuneration of directors of entities jointly owned by the local authorities of Nelson City Council and Tasman District Council; |
| Local Government Acts | means the Local Government Official Information and Meetings Act 1987, the Local Government Act 1974 and the Local Government Act 2002; |
| Proposal Notice | has the meaning given in clause 11.44; |
| Share | means any share in the Company; |

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

| | |
|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Shareholders | means all persons for the time being registered in the Company's share register as the holder of one or more Shares; |
| Shareholder's Notice | has the meaning given in clause 11.43; |
| Specified Price | has the meaning given in clause 5.2; |
| Statement of Intent | means the statement of intent to be completed by the Board from time to time in accordance with section 64 of the Local Government Act 2002; |
| Transfer Notice | has the meaning given in clause 5.2; |
| Transferee | has the meaning given in clause 5.13; |
| Transferor | means a person who wishes to transfer any legal or beneficial interest in Shares; |
| Unanimous Resolution | means a resolution that is approved by all of the votes of those Shareholders entitled to vote and voting on the relevant matter; |
| Valuer | has the meaning given in clause 5.16; and |
| Working Day | means any day other than a Saturday, Sunday or statutory public holiday in Nelson, New Zealand. A Working Day is deemed to commence at 9.00 am and end at 5.00 pm. |

Interpretation

- 1.2 In this Constitution, unless the context otherwise requires:
- (a) A reference to a person includes any other entity or association recognised by law and vice versa.
 - (b) Words referring to the singular include the plural and vice versa.
 - (c) The word including and other similar words do not imply any limitation.
 - (d) Any reference to a party includes its successors or permitted assigns or both.
 - (e) Where a party is made up of more than one person, the liability of each of those persons is joint and several.
 - (f) Words importing any gender will include all other genders.
 - (g) Clause headings are for reference only.
 - (h) References to clauses and schedules are references to clauses of, and schedules to, this Constitution.
 - (i) Reference to any document includes reference to that document as amended, novated, supplemented, or replaced from time to time.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (j) References to money will be New Zealand currency, unless specified otherwise.
- (k) Expressions referring to **writing** will be construed as including references to words printed, typewritten or otherwise visibly represented, copied or reproduced (including by electronic mail).
- (l) References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.

2. Relationship to Act and Local Government Acts

- 2.1 As at its date of incorporation, the Company is a Council-Controlled Trading Organisation.
- 2.2 The Company must comply with its obligations under the Local Government Acts, including preparing a Statement of Intent.
- 2.3 If there is any conflict:
 - (a) between a provision in this Constitution and a mandatory provision in the Act, then the mandatory provision in the Act prevails;
 - (b) between a provision in this Constitution and a provision in the Local Government Acts, then the provision in the Local Government Acts prevails; and
 - (c) between:
 - (i) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; and
 - (ii) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,then the provision, word or expression in this Constitution prevails.

3. Issuing Shares

Types of Shares

- 3.1 Subject to this Constitution and the approval of the Shareholders by Unanimous Resolution (other than in the case of the initial issue under clause 3.2), the Board may:
 - (a) issue Shares at any time, to any person and in any number;
 - (b) issue Shares in different classes which have different rights; and
 - (c) divide existing Shares into different classes which have different rights.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

Initial Share issue

- 3.2 Once the Company has been registered, it must issue Shares to its Shareholders in accordance with its application for registration.

Redeemable Shares

- 3.3 The Company may redeem a redeemable Share:
- (a) at the option of the Company; or
 - (b) at the option of the holder of the Share; or
 - (c) on a date specified in this Constitution,
- for a consideration that is:
- (d) specified;
 - (e) to be calculated by reference to a formula; or
 - (f) required to be fixed by a suitably qualified person who is not associated with or interested in the Company.

Share issue

- 3.4 The Board may only issue Shares which rank equally with, or in priority to, existing Shares (whether as to voting rights or distributions) if:
- (a) all affected interest groups (if any) have unanimously approved the issue;
 - (b) the issue is made in accordance with the pre-emptive rights (on issue) provisions in clauses 3.6 to 3.9; or
 - (c) all entitled persons have agreed to the proposed Share issue.

Consideration for Share issues

- 3.5 The consideration for which a Share is issued may take any form.

Pre-emptive rights on issue

- 3.6 For the purposes of clause 3.4(b), new Shares issued by the Company must be offered in a manner and on terms that would, if accepted, maintain the existing voting and distribution rights, or both, of existing Shareholders as follows:
- (a) first, to the holders of the same class of Shares;
 - (b) secondly, to the holders of other classes of Shares (if any); and
 - (c) thirdly, to any person or persons whom the Board is prepared to register as a holder or holders of that class of Share with the consent of the existing Shareholders by Unanimous Resolution.
- 3.7 An offer to existing Shareholders under clause 3.6(a) or 3.6(b) must:
- (a) be pro rata according to the number of Shares held by each Shareholder;

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (b) state the period (at least 20 Working Days) at the end of which the offer, if not accepted, will be deemed to be declined;
 - (c) state that any Shareholder who wishes to acquire Shares in excess of his or her entitlement must, when replying to the Board, state the number of excess Shares the Shareholder wishes to acquire; and
 - (d) state the consideration and other terms of issue of the Shares.
- 3.8 Shareholders of the same class of Share may purchase additional Shares to the extent that Shareholders of that class do not accept the offer in full in accordance with clause 3.7(c). Competing applications for additional Shares must be allocated pro rata according to the number of Shares held by the applicants.
- 3.9 Except as provided in this Constitution and the Act, the procedure for the offer, acceptance and issue of Shares will be determined by the Board. No irregularity in the process will affect the allocation and issue of Shares.

4. **Calls on Shares**

- 4.1 The Board may make calls on any Shareholder in respect of any money unpaid on their Shares and not previously made payable at a fixed time. Shareholders must comply with the terms of any call made by the Board. A call may be revoked or postponed by the Board.
- 4.2 Notice and particulars of any call must be given to the person who holds the relevant Share. The Company is not required to give notice and particulars of a call to a subsequent holder of the Share.
- 4.3 Joint holders of a Share are jointly and severally liable to pay all calls in respect of it.
- 4.4 The holder of the Share when the call is due for payment is liable for payment of the call.
- 4.5 Any calls made by the Board in respect of any money unpaid on Shares must be made on all Shareholders that hold unpaid Shares on a pro rata basis according to the number of unpaid Shares held by each Shareholder.
- 4.6 Money payable in accordance with the terms of issue of a Share will be deemed to be a call made and payable in accordance with the terms of issue.
- 4.7 A person who fails to pay a call on the due date must pay:
- (a) interest on that money from the day payment was due to the day of actual payment at a rate fixed by the Board; and
 - (b) all expenses which the Company has incurred or may incur because of non-payment.

The Board may waive payment of all or part of that interest or those expenses.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

5. Pre-emptive rights on transfer

- 5.1 No Shares may be sold or transferred by the Board, or by any Shareholder or liquidator, without Unanimous Resolution or until the following rights of pre-emption have been exhausted.

Transfer notice

- 5.2 Every Transferor must give a transfer notice (**Transfer Notice**) to the Board, specifying:
- (a) the Shares the Transferor proposes to transfer; and
 - (b) the price for which the Transferor wants to transfer the Shares (**Specified Price**). If there is no Specified Price, the price will be Fair Value.
- 5.3 The Transfer Notice can only be withdrawn as provided in this clause.
- 5.4 If the Transferor is offering more than one Share, it will give one Transfer Notice in respect of all offered Shares. The Transferor is not obliged to sell or transfer only some of the Shares specified in the Transfer Notice, except where clause 5.27 applies.

Offer of Shares

- 5.5 The Board will be the Transferor's agent for the sale of the Shares.
- 5.6 The Shares specified in a Transfer Notice must be offered for sale by the Board in the following order:
- (a) to the Company; then
 - (b) to the holders of the same class of Shares (other than the Transferor); then
 - (c) to the holders of other classes of Shares (if any); and finally
 - (d) to any other person whom the Board is prepared to register as a Shareholder with the unanimous approval (not to be unreasonably withheld) of the existing Shareholders (other than the Transferor).
- 5.7 An offer to the other Shareholders must:
- (a) be in writing;
 - (b) be pro rata according to the number of relevant Shares held by them;
 - (c) state the number and class of Share on offer;
 - (d) state the price payable. Where clause 5.27 applies, the Fair Value must be determined before the Board makes an offer to Shareholders;
 - (e) the period for acceptance of the offer, which must be at least 20 Working Days from the date of the offer being sent to holders of Shares (**Acceptance Period**);

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (f) specify that, if the offer is not accepted by notice in writing to the Board within the Acceptance Period, it is deemed to be declined; and
 - (g) notify the Shareholders that if they wish to purchase Shares in addition to their proportional entitlement, the number of additional Shares must be specified in the written acceptance.
- 5.8 Shareholders of the same class of Shares may purchase additional Shares to the extent that the other Shareholders of that class do not accept the offer in full. Competing applications for additional Shares must be allocated pro rata according to the number of relevant Shares held by the Shareholders.

Acceptance of offer

- 5.9 If a Shareholder wishes to accept an offer of Shares, they must give an acceptance notice (**Acceptance Notice**) to the Board that:
- (a) must be in writing;
 - (b) may relate to all or only part of the Shares offered for sale;
 - (c) may state the number of additional Shares to be purchased from declined offers (if any); and
 - (d) may be for purchase of the Shares at the Specified Price or at their Fair Value.
- 5.10 An offer that has not been accepted in the time or in the manner set out in the preceding clauses will be deemed to have been declined.

Allocation of Shares

- 5.11 Following expiry of the Acceptance Period, the Board will allocate the Shares offered for sale according to Acceptance Notices received. This allocation will include the allocation of additional Shares from declined offers.
- 5.12 If the acceptances received are for fewer than the number of Shares specified in the Transfer Notice, the Board will give the Transferor written notice of the provisional allocation. Except where clause 5.27 applies, the Transferor will then have five Working Days from receipt of that notice to give notice in writing to the Board electing to withdraw the Transfer Notice in accordance with clause 5.17.
- 5.13 If:
- (a) Acceptance Notices have been received for all of the Shares specified in the Transfer Notice; or
 - (b) the Transferor does not validly withdraw the Transfer Notice,
- the Board must give notice in writing of the Share allocation to all persons who have been allocated Shares (each, a **Transferee**) within 10 Working Days of the expiry of the Acceptance Period.
- 5.14 If any Acceptance Notices are received at Fair Value, then the Board will give notice of allocation within 20 Working Days of the expiry of the period set out in clause

SER-023544-426-24-V5

SER-023544-426-24-V4

5.17(c), unless the Transferor waives their right to withdraw in respect of any or all acceptances pursuant to clause 5.17.

Other procedure

5.15 Except as provided in this clause, the procedure for the offer, acceptance and allocation of Shares may be decided by the Board. Any irregularity in the process will not affect the validity of the allocation and sale of Shares.

Determination of Fair Value

5.16 If any Shareholder accepts an offer for sale of Shares at their Fair Value:

- (a) The Board and the Transferor will appoint a suitably qualified independent accountant (**Valuer**) to calculate the Fair Value of the Shares.
- (b) If those parties cannot agree on the Valuer within five Working Days of the expiry of the Acceptance Period, the Valuer will be appointed by the President of the New Zealand Law Society or the President's nominee.
- (c) The Valuer must set the procedure and a timetable for calculating the Fair Value and the parties must comply with that procedure and timetable.
- (d) The Valuer must give the parties a written certificate of the Fair Value of the Shares.
- (e) Fair Value means the price, which in the Valuer's opinion, would be paid for the Shares by a willing Transferee from a willing Transferor where the Transferor and the Transferee have comparable knowledge and bargaining power as at the date that the Transfer Notice is given. The Valuer must take into account:
 - (i) all the assets and liabilities (including contingent liabilities) of the Company;
 - (ii) the provisions of the Constitution;
 - (iii) the amount of any bona fide offer for the purchase of the Shares received by the Transferor; and
 - (iv) anything else the Valuer considers relevant.
- (f) The Valuer will be deemed to be acting as an expert and not as an arbitrator.
- (g) The Board must co-operate with the Valuer and give the Valuer all information that it reasonably requires.
- (h) The Valuer must give the Transferor and the Transferees a reasonable opportunity to make submissions in relation to the Fair Value before releasing a decision.
- (i) The Valuer may estimate the Fair Value if, in the Valuer's opinion, the likely value of all Shares for which a Fair Value must be fixed does not justify the expense of a full valuation.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (j) The Valuer's costs must be paid:
 - (i) by the Transferor if the Specified Price is more than 10% in excess of the Fair Value;
 - (ii) by the Company, if sub-clause 5.16(j)(i) does not apply and the Transferee is an existing Shareholder; and
 - (iii) otherwise by the Transferee and if there is more than one Transferee then by each of them in proportion to the value of the Shares they have each agreed to buy.
- (k) The Valuer must not commence the valuation until:
 - (i) all Shares offered for sale have been accepted for purchase; or
 - (ii) the Transferor gives the Company written notice of its intention to proceed with any of the acceptances at Fair Value already received; or
 - (iii) the period for the Transferor to withdraw its Transfer Notice has expired in accordance with clause 5.12.
- (l) The Valuer's decision will be final except in the case of obvious error.

Right to withdraw

- 5.17 Unless clause 5.22 applies, the Transferor may withdraw the Transfer Notice in respect of all or any Shares offered for sale if:
- (a) any Share remains unallocated three months after issue of the Transfer Notice; or
 - (b) any of the Shares offered for sale have been accepted at Fair Value; and
 - (c) the Fair Value is less than the Specified Price and the Transferor gives written notice of withdrawal to the Board within 20 Working Days of the Transferor receiving the certificate of Fair Value. If revocation occurs under this subclause, the Transferor will bear all costs of fixing the Fair Value under this clause.

Settlement

- 5.18 The sale of the Shares in the Transfer Notice must be settled 20 Working Days after:
- (a) notice of allocation (clause 5.13) if all the Shares offered for sale have been accepted at the Specified Price; or
 - (b) the Valuer gives the certificate of Fair Value if any of the Shares offered for sale have been accepted at Fair Value.
- 5.19 Transferees who have accepted the offer for sale at the Specified Price must pay that price.
- 5.20 Transferees who have accepted the offer for sale at Fair Value must pay Fair Value.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- 5.21 The Transferor must transfer the relevant number of Shares to each Transferee on settlement.
- 5.22 If the Transferor accepts payment for any Shares, the Transferor may not withdraw the Transfer Notice in respect of those Shares.

Sale to third parties

- 5.23 Any Shares which remain unallocated three months after the Board has received a Transfer Notice may be sold or offered for sale by the Transferor at any time within the following six months to any person on terms which are not more favourable to that person than those in the Transfer Notice, as determined by the Board. But in any other circumstance, the Transferor must give another Transfer Notice if it wishes to sell.
- 5.24 The Board's decision as to whether or not the terms are more favourable will be final.
- 5.25 Clause 5.23 does not apply to any Shares for which the Transfer Notice has been withdrawn.
- 5.26 The above right to sell will at all times be subject to the ability of the Board to refuse to register a Share transfer pursuant to any power which it might have under the Act or the provisions of any other document.

Deemed transfer

- 5.27 If a Shareholder is bound to do so, but fails to give a Transfer Notice:
- (a) The Board may give a Transfer Notice on behalf of that Shareholder. The Transfer Notice may not be withdrawn without the Board's consent. The Specified Price will be the Fair Value of the Shares.
 - (b) If the Transferor is bound by the previous subclause, but fails to transfer the Shares on the settlement date then the Company may receive the sale price and enter the Transferee's name in the Share register as the Shareholder. The sale price must be held in trust for the Transferor subject to any lien in favour of the Company.
 - (c) The Board's receipt will be a good discharge for the sale price and after the Shares are registered in the names of the Transferees, the validity of the proceedings may not be questioned by any person.

Exceptions

- 5.28 The provisions of this Constitution relating to pre-emptive rights do not apply to a transfer of Shares:
- (a) to any successor of the Tasman District Council or the Nelson City Council that is a local authority under the Local Government Acts; or
 - (b) to any Council-Controlled Organisation wholly owned by one or more local authorities; or

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (c) if all the Shareholders consent by way of Unanimous Resolution.

6. Registration of Share transfers

6.1 The Board must refuse registration of any transfer of any Share if:

- (a) the transfer would result in a breach of the law or this Constitution; or
- (b) the transferee is a person without legal capacity to contract; or
- (c) any applicable pre-emptive rights provisions have not been complied with; or
- (d) the Board has notice of an agreement between Shareholders relating to the transfer of the Share which has not been complied with.

6.2 The Board may refuse or delay the registration of any Share transfer if:

- (a) any money payable on that Share is due for payment and has not been paid; or
- (b) the Company has an unsatisfied lien on that Share or the proceeds of sale of that Share; or
- (c) the transfer has not been properly executed; or
- (d) the transfer is not accompanied by proof (reasonably required by the Directors) of the right of the Transferor to make the transfer; or
- (e) the transferee is, or is directly or indirectly associated with, a competitor of the Company; or
- (f) in the opinion of the Board, the transferee is unlikely to meet the financial or other obligations of the Shareholder; or
- (g) the Directors acting in good faith decide that registration of the transfer would not be in the best interests of the Company; or
- (h) the transfer document is not in any usual or common form or otherwise in a form prescribed by the Board from time to time (if any),

but the Board must comply with section 84 of the Act.

7. Suspension of right to distributions, lien and forfeiture

Suspension of distributions

- 7.1 If a Shareholder has defaulted in paying any money due to the Company, the Board may suspend payment of any distribution to that Shareholder until the default is remedied.
- 7.2 The Company may apply any suspended payment in full or part satisfaction of the money due by the Shareholder to the Company.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- 7.3 A Shareholder's liability for all money owing under a call is not extinguished by a transfer of the Share in respect of which the money is owed.
- 7.4 When the total distributions withheld and applied under clause 7.2 equal the amount due by the Shareholder, any suspension of the rights will end.

Lien

- 7.5 The Company has a first lien on the proceeds of sale and all distributions declared in respect of every Share registered in the name of a Shareholder (whether solely or jointly with others), for:
- (a) all money payable in respect of Shares held by the Shareholder; and
 - (b) all other money payable by the Shareholder to the Company; and
 - (c) any money the Company may be required to pay under any statute or regulation in respect of the Shareholder's Shares,
- whether or not the time for the payment has arrived.
- 7.6 The Company may sell any Share on which the Company has a lien. The Company may not make such a sale:
- (a) unless money in respect of which the lien exists is due for payment; and
 - (b) until it has given notice to the registered Shareholder, or the person entitled to the Share, requiring payment of the money in respect of which the lien exists within 20 Working Days of the notice.
- 7.7 A certificate signed by a Director stating that the power of sale in clause 7.6 has arisen and is exercisable by the Company is conclusive evidence of the facts stated in the certificate.
- 7.8 The Board may authorise any person to complete a transfer of Shares to a purchaser to give effect to any sale exercising a lien.
- 7.9 In respect of a sale exercising a lien under this clause:
- (a) clause 5 will apply with the following modifications:
 - (i) the Board will be deemed to have received a Transfer Notice when it resolves to exercise its lien; and
 - (ii) the Board may fix the Specified Price;
 - (b) the proceeds of sale must be applied first in satisfying any sale costs and second in paying any money owed in respect of the lien. Any balance must be paid to the former Shareholder;
 - (c) a Shareholder whose Shares have been sold will cease to be a Shareholder in respect of those Shares, but will remain liable to pay the Company all money which, at the time of the sale, was payable by the Shareholder to the Company but which was not realised and repaid to the Company as a result of the sale;

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (d) the Company must register the purchaser as holder of the Shares that are transferred;
- (e) the purchaser's title to the Shares is not affected by any irregularity or invalidity in the sale;
- (f) the remedy of any person aggrieved by the sale is in damages only and against the Company exclusively; and
- (g) if the certificate for the Shares is not delivered to the Company, the Board may issue a new certificate distinguishing it as the Board thinks fit from the certificate not delivered.

8. Distributions to Shareholders

- 8.1 The Board may authorise a distribution by the Company to Shareholders in accordance with the Act and this Constitution.
- 8.2 All dividends on Shares not fully paid up must be authorised by the Board and paid in proportion to the amount paid up. This provision is subject to the terms of issue of any Shares with special rights to dividends.
- 8.3 Any money payable in cash in respect of Shares will be paid electronically.
- 8.4 Any one of two or more joint holders may give good receipts for any money payable in respect of their Shares.
- 8.5 No interest is payable by the Company on any dividend.
- 8.6 All dividends unclaimed for one year after being authorised may be used by the Board for the benefit of the Company until claimed.
- 8.7 All dividends unclaimed for five years after being authorised may be forfeited by the Board for the benefit of the Company.
- 8.8 The Board may annul any forfeiture and agree to pay a claimant who produces evidence to the Board's satisfaction of entitlement to forfeited dividends.

9. Company acquiring its own Shares

- 9.1 The Company may purchase or otherwise acquire its own Shares. Subject to clause 9.2, these Shares will be deemed to be cancelled immediately on acquisition.
- 9.2 The Company may hold its own Shares uncanceled but only in accordance with sections 67A, 67B and 67C of the Act.
- 9.3 Any Shares reissued by the Company must be treated as the issue of new Shares.
- 9.4 The Company must comply with the Act when it purchases or acquires Shares issued by it.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

10. Assistance by Company for Share purchase

The Company may directly or indirectly give financial assistance to a person for the purpose of the purchase of a Share issued or to be issued by the Company.

11. Shareholders' meetings**Annual and special meetings**

11.1 The Board must, in accordance with section 120 of the Act, call an annual meeting of Shareholders to be held no later than six months after the balance date of the Company.

11.2 Subsequent annual meetings must be held within 15 months of the previous annual meeting.

11.3 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 Shareholders holding Shares carrying together at least 5% of the voting rights entitled to be exercised on the issue.

11.4 The provisions of Schedule 1 of the Act, as modified by this Constitution will govern proceedings at meetings of Shareholders.

Resolutions in lieu of meeting

11.5 A written resolution, signed by all of the Shareholders who would be entitled to vote on that resolution at a meeting of Shareholders and who together hold all of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those Shareholders.

11.6 A written resolution may consist of several documents (including electronic mail or other similar means of communication) in like form each signed or assented to by one or more Shareholders.

Chairperson

11.7 If the Independent Chairperson is present at the meeting, the Independent Chairperson must chair the meeting.

11.8 If the Independent Chairperson is not present at the meeting within 15 minutes of the start time, the Directors present may elect a chairperson for that meeting.

11.9 If a chairperson is not elected as above the Shareholders present may elect a chairperson for that meeting.

Notice of meetings

11.10 Every Shareholder entitled to receive notice of the meeting and every Director must be sent written notice of the time and place of each annual or special meeting.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- 11.11 The notice must be sent at least 20 Working Days before the meeting.
- 11.12 The notice must state:
- (a) the nature of the business to be discussed at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it;
 - (b) the text of any Unanimous Resolution to be put to the meeting; and
 - (c) whether postal votes are authorised
- 11.13 If a meeting is adjourned for 20 Working Days or more, notice of the adjourned meeting must be given as in the case of an original meeting. It is not otherwise necessary to give any new notice for an adjourned meeting.
- 11.14 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 notice does not invalidate the proceedings at that meeting.
- 11.15 An irregularity in a notice of a meeting is waived if:
- (a) all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity; or
 - (b) if all those Shareholders agree to the waiver.

Methods of holding meetings

- 11.16 A meeting of Shareholders may be held either:
- (a) at the place, date, and time appointed for the meeting; or
 - (b) by means of audio, or audio and visual, communication. The Shareholders participating must all be able to simultaneously hear each other throughout the meeting.

Quorum

- 11.17 No business may be transacted at a meeting of Shareholders unless a quorum is present.
- 11.18 A quorum for a meeting of Shareholders is present if there is, in person, by proxy or by authorised representative, a representative of every Shareholder.
- 11.19 If a quorum is not present within the 30 minutes after the start time for the meeting:
- (a) if the meeting is called under section 121(b) of the Act, the meeting is dissolved;
 - (b) for any other meeting, the meeting is adjourned to:
 - (i) the same day in the following week at the same time and place, or
 - (ii) a date, time and place to be fixed by the Directors.

If a quorum is not present for the adjourned meeting within 30 minutes after the start time the Shareholders (or their proxies) present are a quorum.

SER-023544-426-24-V5

SER-023544-426-24-V4

Adjournments

- 11.20 The chairperson may adjourn the meeting from time to time and from place to place. It must adjourn if directed to do so by the meeting.
- 11.21 No business can be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

Voting

- 11.22 Unless a poll is demanded, voting at meetings will be by:
- (a) voting by voice; or
 - (b) voting by show of hands.
- The chairperson of the meeting will decide which method is used.
- 11.23 A declaration by the chairperson of the meeting that a resolution is carried by the necessary majority is conclusive evidence of that fact unless a poll is demanded.
- 11.24 Subject to any rights or restrictions attached to any class of Shares, every Shareholder present in person or by proxy and voting by voice or on a show of hands has one vote.
- 11.25 At a meeting of Shareholders a poll may be demanded by:
- (a) a Shareholder or Shareholders representing at least 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or
 - (b) by a Shareholder or Shareholders holding Shares in the Company that confer a right to vote at the meeting and on which the aggregate amount paid up is at least 10% of the total amount paid up on all Shares that confer that right; or
 - (c) the chairperson of the meeting,
- either before or after the vote is taken on a resolution.
- 11.26 If a poll is demanded, votes must be counted according to the votes attached to the Shares of each Shareholder present in person or by proxy and voting.
- 11.27 The chairperson of the meeting is not entitled to a second or casting vote.
- 11.28 The chairperson may demand a poll on a resolution, either before or after a vote on the resolution, by voice or on show of hands.
- 11.29 The demand for a poll may be withdrawn.
- 11.30 Except as provided in clause 11.31, if a poll is demanded it must be taken in the manner directed by the chairperson. The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 11.31 A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately. A poll demanded on any other question may be taken at

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

a time and place fixed by the chairperson. Any other business may be proceeded with pending the taking of the poll.

Proxies

- 11.32 A Shareholder may exercise the right to vote either by being present in person or by proxy.
- 11.33 Subject to the following clauses, a proxy for a Shareholder may attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.
- 11.34 A proxy must be appointed by written notice signed by the Shareholder in the form attached as schedule 1. The notice must state whether the appointment is for a particular meeting or a specified period.
- 11.35 A proxy will not be valid at a meeting of Shareholders unless it is produced to the registered office of the Company (or any other address nominated by the Board) at least 48 hours before the start time for the meeting.
- 11.36 The Board or Independent Chairperson may require satisfactory evidence of authority if the proxy is signed on behalf of the Shareholder making the appointment.
- 11.37 The Board must promptly make proxy forms available to any Shareholder who requests them.
- 11.38 The cancellation of the appointment of a proxy or transfer of relevant Shares by a Shareholder will all revoke any previous appointment of a proxy by that Shareholder.

Postal votes

- 11.39 Shareholders may not cast a postal vote at a Shareholders meeting unless the Board has previously authorised postal votes for that meeting.
- 11.40 Postal voting must be carried out in accordance with clause 7 of Schedule 1 of the Act.

Minutes

- 11.41 The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.
- 11.42 Minutes which have been signed correctly by the chairperson of the meeting are prima facie evidence of the proceedings.

Shareholders' proposals

- 11.43 A Shareholder may give written notice (**Shareholder's Notice**) to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote.
- 11.44 If the Shareholder's Notice is received by the Board:
- (a) at least five Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

give notice of the Shareholder's proposal and the text of any proposed resolution (**Proposal Notice**) to all Shareholders entitled to receive notice of the meeting;

- (b) less than five Working Days before that last day, the Board must give the Proposal Notice to Shareholders if it is practicable to do so.

11.45 The Shareholder must pay the costs of the Proposal Notice unless the Shareholder's Notice is received by the Board at least 20 Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board. In that case the Company must pay the cost.

11.46 The Directors must give the proposing Shareholder the right to include a statement in support of the proposal with the Proposal Notice. The name and address of the proposing Shareholder must be included with the statement.

11.47 The board is not required to include with the Proposal Notice:

- (a) any part of a statement prepared by a Shareholder that the Directors consider to be defamatory, frivolous, or vexatious; or
- (b) any part of a proposal or resolution prepared by a Shareholder that the Directors consider to be defamatory.

11.48 If the proposing Shareholder must pay the costs of giving the Proposal Notice, the proposing Shareholder must deposit with the Company or tender to the Company a sum sufficient to meet those costs when giving the Shareholder's Notice.

Corporations may act by representatives

11.49 A body corporate that is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner it could appoint a proxy.

Votes of joint holders

11.50 Where two or more persons are registered as the holder of a Share, the vote of the person named first in the Share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

Loss of voting rights if calls unpaid

11.51 Subject to this Constitution, if a sum due to a Company in respect of a Share has not been paid, that Share may not be voted at a Shareholder's meeting other than a meeting of an interest group.

Local authorities as shareholders

11.52 Each Shareholder that is a local authority may by resolution of its relevant council or other appropriate governing body authorise such person as it thinks fit to act as its representative at any Shareholders' meeting of the Company, or of any class of Shareholders, or at all such meetings until notice of revocation of such authority has been given to the Company. Any such person so authorised is entitled to exercise

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

the same powers on behalf of the relevant Shareholder which he or she represents as that Shareholder could exercise if it were an individual person.

Other proceedings

- 11.53 Except as provided in this Constitution, a meeting of Shareholders may regulate its own procedure.

12. Directors

- 12.1 The Company will have a minimum number of three Directors and a maximum number of six Directors, provided that any Directors appointed in accordance with clause 12.7(b) will not be taken into account when determining whether such minimum or maximum has been exceeded.

Independent Chairperson

- 12.2 The Shareholders (by way of the Joint Shareholders' Committee, if such committee exists) shall by Unanimous Resolution appoint an Independent Chairperson to the Board and may likewise remove and/or replace the Independent Chairperson at any time by notice in writing to the Company.
- 12.3 The Independent Chairperson will be counted when determining whether the minimum or maximum number of Directors has been exceeded.

Appointment and removal

- 12.4 The Shareholders (by way of the Joint Shareholders' Committee, if such committee exists) shall together be entitled to appoint up to six Directors at any time and may likewise remove and/or replace any of those Directors at any time by notice in writing to the Company.
- 12.5 A notice given under clauses 12.4 takes effect upon receipt of it at the registered office of the Company (including receipt by way of letter, electronic mail, or other similar means of communication) unless the notice specifies a later time at which the notice will take effect (in which case it takes effect at such later time so specified).
- 12.6 A Director (including, for the avoidance of doubt, the Independent Chairperson) holds office until his or her resignation, retirement, disqualification or removal in accordance with this Constitution.

Temporary vacancy

- 12.7 In addition to the appointment or removal of directors under clause 12.4, the Board may:
- (a) appoint any person to be a Director to fill a temporary vacancy in (and only in) circumstances where the number of Directors falls below the minimum number set out in clause 12.1 and with written approval of the Shareholders by Unanimous Resolution; and/or

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (b) at any time during the three-month period prior to the Company's next annual general meeting (but not otherwise) appoint up to two persons to be Directors.

12.8 Subject to their earlier resignation, retirement, disqualification or removal in accordance with this Constitution, any Director appointed under clause 12.7 will cease to hold office at the commencement of the next annual meeting of the Company or at the next special meeting of the Company, whichever is earlier.

12.9 Subject to the Act and this Constitution, any Director appointed under clause 12.7 will be eligible for re-appointment as a Director.

Rotation

12.10 Subject to clause 12.12, at the annual meeting of the Company in each year, one third of the Directors for the time being, or if their number is not a multiple of three then the number nearest to one third, must retire from office. A retiring Director will hold office until the dissolution or adjournment of the annual meeting. A retiring Director is eligible for re-appointment unless he or she is disqualified under this Constitution.

12.11 Subject to clause 12.12, the Directors to retire at an annual meeting will be those Directors who have been longest in office since their last appointment. As between persons who became Directors on the same day, those who retire will, unless they otherwise agree among themselves, be determined by lot.

12.12 The Shareholders (by way of the Joint Shareholders' Committee, if such committee exists) may, by way of a notice in writing to the Company, jointly direct that the retirement procedure set out in clauses 12.10 and 12.11 be varied in respect of one or more annual meetings (for example, by directing that a particular Director will not be required to retire by rotation at a particular annual meeting) and such notice is effective and binding upon the Company and its Directors notwithstanding clauses 12.10 and 12.11.

Disqualification of Directors

12.13 A person will be disqualified from holding the office of Director if he or she:

- (a) is or becomes disqualified from being a director under any provision of the Act; or
- (b) dies; or
- (c) becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
- (d) is or becomes an undischarged bankrupt; or
- (e) is or becomes an employee or elected member of any Shareholder which is a local authority.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- 12.14 A person will be disqualified from holding the office of Independent Chairperson if, in the sole opinion of a simple majority of Shareholders who must provide notice in writing to the Company, he or she is not, or ceases to be, Independent.

Proceedings of the Board

- 12.15 Proceedings at meetings of Directors are governed by the Act, as modified by this Constitution.

Self-interested transactions

- 12.16 A Director (**Interested Director**) is interested in a transaction if section 139 of the Act applies. After becoming aware that they may be interested, an Interested Director must disclose the particulars of their interest to the Board and enter the particulars in the Interests Register of the Company as required by the Act.

Best interests

- 12.17 In accordance with section 131(1) of the Act, a Director must act in good faith and in a manner which that Director believes to be in the best interests of the Company.

Authority to bind Company

- 12.18 The Board may authorise any person or class of persons to enter into a contract on behalf of the Company. However, it may not do so where the contract must be signed as a deed if entered by a natural person.

Indemnity and insurance of directors and employees

- 12.19 The Company may indemnify and effect insurance in accordance with any part or all of section 162 of the Act.
- 12.20 The Board must immediately enter in the interests register the particulars of any indemnity given to, or insurance taken out for, any Director, former director, employee, or former employee of the Company or any related company.
- 12.21 The Board may impose any condition in relation to any indemnity or insurance if the condition does not contravene the Act.

Remuneration of Directors

- 12.22 The remuneration payable to the Directors in their capacities as directors will be the sum so determined by the Shareholders (by way of the Joint Shareholders' Committee, if such committee exists) from time to time or such lesser sum as the Directors from time to time determine.

Notice of meeting

- 12.23 A Director or, if requested by a Director to do so, an employee of the Company may convene a meeting of the Board by giving notice in accordance with this clause.
- 12.24 At least two Working Days' notice of a meeting of the Board must be given to every Director who is in New Zealand. The notice must include the date, time, method and place of the meeting and the matters to be discussed.

SER-023544-426-24-V5

SER-023544-426-24-V4

- 12.25 An irregularity in the notice of the meeting is waived if all Directors attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.
- 12.26 Notice of a meeting may be given by any means, including by email or telephone. Notice given by a letter addressed to a Director at his or her last known residential address in New Zealand will be deemed to have been given on the next day after the letter is posted.

Method of holding meetings

- 12.27 A meeting of the Board may be held either:
- (a) by a quorum of Directors gathered together at the place, date and time appointed for the meeting; or
 - (b) by means of audio, or audio and visual communication. The Directors participating must constitute a quorum and must all be able to simultaneously hear each other throughout the meeting.

Chairperson

- 12.28 If the Independent Chairperson is present at a meeting of the Board, the Independent Chairperson must chair the meeting.
- 12.29 If at a meeting of the Board the Independent Chairperson is not present within five minutes after the start time, the Directors present may choose one of their number to chair the meeting.

Quorum

- 12.30 A quorum for a meeting of Directors is a majority of the Directors.
- 12.31 No business may be transacted at a meeting of Directors unless a quorum is present.

Voting

- 12.32 Every Director, including, for the avoidance of doubt, the Independent Chairperson, has one vote.
- 12.33 A Director who abstains from voting is not presumed to have voted in favour of the relevant resolution of the Board.
- 12.34 The chairperson will not have a casting vote.
- 12.35 A resolution of the Board is passed if a majority of the votes cast on it are in favour of it.
- 12.36 Subject to clause 12.16, a Director may vote in respect of any transaction in which they are an Interested Director. If the Director does so, the Director's vote will be counted and the Director will be counted in the quorum present at the meeting.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

Minutes

12.37 The Board must ensure minutes are kept of all proceedings at meetings of the Board.

Resolutions

12.38 A resolution in writing, signed or assented to by all Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

12.39 A resolution may consist of several documents (including electronic mail or other similar means of communication) in like form each signed or assented to by one or more Directors.

12.40 A copy of all resolutions must be entered in the minute book of Board proceedings.

No notice to Directors outside New Zealand

12.41 It is not necessary to give notice of a meeting of the Board to any Director temporarily absent from New Zealand.

Major transactions

12.42 The Board may not procure or permit the Company to enter into a “major transaction” (as defined in the Act) unless the transaction is approved by Unanimous Resolution or made contingent on approval by Unanimous Resolution.

Other proceedings

12.43 Except as provided in this Constitution or any other legislation regulating the Company, the Board may regulate its own procedure.

13. In specie distribution on liquidation

13.1 Subject to the terms of issue of any Shares, if the Company is liquidated any assets remaining after payment of the debts and liabilities of the Company, and the costs of liquidation, must be distributed among each Shareholder in proportion to the total amount paid up on all their Shares.

13.2 If the Shareholders agree by Unanimous Resolution, a liquidator may:

- (a) divide any part of the Company’s assets between the Shareholders in kind;
- (b) fix the value of the assets divided;
- (c) decide how the division will be carried out between Shareholders and/or different classes of Shareholders; and
- (d) vest any part of the assets in trustees to hold on trust for the Shareholders on terms fixed by the liquidator.

13.3 Different Shareholders may receive different assets.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

13.4 No Shareholder is obliged to accept any asset which is subject to any liability including any contingent liability.

14. **Audit**

The Company shall be audited, and the auditor of the Company shall be the Auditor General, in accordance with the Local Government Act 2002.

15. **Amendment**

This Constitution may only be amended by way of a Unanimous Resolution.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

Schedule 1 – Form of appointment of proxy

To: Infrastructure Holdings Limited

Appointment of Proxy

I/We _____

of _____

appoint _____ [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 meeting of the company to be held

at _____

on _____ commencing at _____ am/pm

[or all meetings of the company held within 12 months of the date of this proxy] and at any adjournment of the meeting.

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

Vote with a tick

| Resolutions | For | Against |
|-------------|-----|---------|
|-------------|-----|---------|

| | | |
|----|-------|-------|
| 1. | _____ | _____ |
|----|-------|-------|

| | | |
|----|-------|-------|
| 2. | _____ | _____ |
|----|-------|-------|

« (delete if not required)

Signed on _____ [date]

[Usual signature/s]

SER-023544-426-24-V5

76874544v1

Draft Constitution (TDC) 17 May 2022 marked-up to show changes from the version provided to the Joint shareholders Committee on 5 April 2022

Constitution of Infrastructure Holdings Limited

DRAFT

SER-023544-426-24-V5

76874544v1

Table of Contents

| | | |
|-----|-----------------------------------------------------------|----|
| 1. | Definitions and interpretation | 2 |
| 2. | Relationship to Act and Local Government Acts | 5 |
| 3. | Issuing Shares | 5 |
| 4. | Calls on Shares | 7 |
| 5. | Pre-emptive rights on transfer | 8 |
| 6. | Registration of Share transfers | 13 |
| 7. | Suspension of right to distributions, lien and forfeiture | 13 |
| 8. | Distributions to Shareholders | 15 |
| 9. | Company acquiring its own Shares | 15 |
| 10. | Assistance by Company for Share purchase | 16 |
| 11. | Shareholders' meetings | 16 |
| 12. | Directors | 21 |
| 13. | In specie distribution on liquidation | 25 |
| 14. | Audit | 26 |
| 15. | Amendment | 26 |

SER-023544-426-24-V4

Constitution of Infrastructure Holdings Limited

1. Definitions and interpretation

Definitions

1.1 In this Constitution, unless the context otherwise requires:

- | | |
|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Act | means the Companies Act 1993; |
| Board | means the Directors acting together as the board of directors of the Company; |
| Company | means Infrastructure Holdings Limited; |
| Council-Controlled Organisation | has the meaning given to it in section 6 of the Local Government Act 2002; |
| Council-Controlled Trading Organisation | has the meaning given to it in section 6 of the Local Government Act 2002; |
| Director | means a person appointed as director of the Company in accordance with the terms of the Act and this Constitution; |
| Fair Value | means the price determined by the Valuer in accordance with clause 5.16; |
| Independent | means a person who is free from any association that could materially interfere with the exercise of their independent judgement, including that the person: <ul style="list-style-type: none"> (a) does not hold or control more than 5% of the Shares or have significant influence over the Company, and is not an officer of a Shareholder or other entity that holds or controls more than 5% of the Shares or has significant influence over the Company, during, or at any point during the two years immediately before, their current appointment to the Board; (b) is not employed, and has not previously been employed, in an executive capacity by a Shareholder, the Company or any of its subsidiaries, unless there has been a period of at least two years between ceasing such employment and serving on the Board; |

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (c) does not currently hold (and has not held within the last three years) a senior role in a provider of material professional services to a Shareholder, the Company or any of its subsidiaries, and is not currently (and has not within the last two years been) an employee of such a service provider materially associated with the services provided;
- (d) does not currently have (and has not within the last two years had) a material business or contractual relationship (for example, supplier or customer) with a Shareholder, the Company or any of its subsidiaries;
- (e) is not a relative (as defined in the Act) of anyone in any of the above categories; and
- (f) has not been a Director of the Company for a term or terms that, in aggregate, amount to more than six years.

| | |
|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Independent Chairperson | means an Independent chairperson appointed to the Board in accordance with clause 12.2; |
| Interested Director | has the meaning given in clause 12.16; |
| Joint Shareholders' Committee | means the committee of that name formed by the local authorities of Nelson City Council and Tasman District Council from time to time and, if such committee ceases to exist under that name at any time, includes any replacement committee by whatever name formed by the local authorities of Nelson City Council and Tasman District Council which performs similar functions relating to, amongst other matters, the appointment and remuneration of directors of entities jointly owned by the local authorities of Nelson City Council and Tasman District Council; |
| Local Government Acts | means the Local Government Official Information and Meetings Act 1987, the Local Government Act 1974 and the Local Government Act 2002; |
| Proposal Notice | has the meaning given in clause 11.44; |
| Share | means any share in the Company; |

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

| | |
|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Shareholders | means all persons for the time being registered in the Company's share register as the holder of one or more Shares; |
| Shareholder's Notice | has the meaning given in clause 11.43; |
| Specified Price | has the meaning given in clause 5.2; |
| Statement of Intent | means the statement of intent to be completed by the Board from time to time in accordance with section 64 of the Local Government Act 2002; |
| Transfer Notice | has the meaning given in clause 5.2; |
| Transferee | has the meaning given in clause 5.13; |
| Transferor | means a person who wishes to transfer any legal or beneficial interest in Shares; |
| Unanimous Resolution | means a resolution that is approved by all of the votes of those Shareholders entitled to vote and voting on the relevant matter; |
| Valuer | has the meaning given in clause 5.16; and |
| Working Day | means any day other than a Saturday, Sunday or statutory public holiday in Nelson, New Zealand. A Working Day is deemed to commence at 9.00 am and end at 5.00 pm. |

Interpretation

- 1.2 In this Constitution, unless the context otherwise requires:
- (a) A reference to a person includes any other entity or association recognised by law and vice versa.
 - (b) Words referring to the singular include the plural and vice versa.
 - (c) The word including and other similar words do not imply any limitation.
 - (d) Any reference to a party includes its successors or permitted assigns or both.
 - (e) Where a party is made up of more than one person, the liability of each of those persons is joint and several.
 - (f) Words importing any gender will include all other genders.
 - (g) Clause headings are for reference only.
 - (h) References to clauses and schedules are references to clauses of, and schedules to, this Constitution.
 - (i) Reference to any document includes reference to that document as amended, novated, supplemented, or replaced from time to time.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (j) References to money will be New Zealand currency, unless specified otherwise.
- (k) Expressions referring to **writing** will be construed as including references to words printed, typewritten or otherwise visibly represented, copied or reproduced (including by electronic mail).
- (l) References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.

2. Relationship to Act and Local Government Acts

- 2.1 As at its date of incorporation, the Company is a Council-Controlled Trading Organisation.
- 2.2 The Company must comply with its obligations under the Local Government Acts, including preparing a Statement of Intent.
- 2.3 If there is any conflict:
 - (a) between a provision in this Constitution and a mandatory provision in the Act, then the mandatory provision in the Act prevails;
 - (b) between a provision in this Constitution and a provision in the Local Government Acts, then the provision in the Local Government Acts prevails; and
 - (c) between:
 - (i) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; and
 - (ii) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,then the provision, word or expression in this Constitution prevails.

3. Issuing Shares

Types of Shares

- 3.1 Subject to this Constitution and the approval of the Shareholders by Unanimous Resolution (other than in the case of the initial issue under clause 3.2), the Board may:
 - (a) issue Shares at any time, to any person and in any number;
 - (b) issue Shares in different classes which have different rights; and
 - (c) divide existing Shares into different classes which have different rights.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

Initial Share issue

- 3.2 Once the Company has been registered, it must issue Shares to its Shareholders in accordance with its application for registration.

Redeemable Shares

- 3.3 The Company may redeem a redeemable Share:
- (a) at the option of the Company; or
 - (b) at the option of the holder of the Share; or
 - (c) on a date specified in this Constitution,
- for a consideration that is:
- (d) specified;
 - (e) to be calculated by reference to a formula; or
 - (f) required to be fixed by a suitably qualified person who is not associated with or interested in the Company.

Share issue

- 3.4 The Board may only issue Shares which rank equally with, or in priority to, existing Shares (whether as to voting rights or distributions) if:
- (a) all affected interest groups (if any) have unanimously approved the issue;
 - (b) the issue is made in accordance with the pre-emptive rights (on issue) provisions in clauses 3.6 to 3.9; or
 - (c) all entitled persons have agreed to the proposed Share issue.

Consideration for Share issues

- 3.5 The consideration for which a Share is issued may take any form.

Pre-emptive rights on issue

- 3.6 For the purposes of clause 3.4(b), new Shares issued by the Company must be offered in a manner and on terms that would, if accepted, maintain the existing voting and distribution rights, or both, of existing Shareholders as follows:
- (a) first, to the holders of the same class of Shares;
 - (b) secondly, to the holders of other classes of Shares (if any); and
 - (c) thirdly, to any person or persons whom the Board is prepared to register as a holder or holders of that class of Share with the consent of the existing Shareholders by Unanimous Resolution.
- 3.7 An offer to existing Shareholders under clause 3.6(a) or 3.6(b) must:
- (a) be pro rata according to the number of Shares held by each Shareholder;

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (b) state the period (at least 20 Working Days) at the end of which the offer, if not accepted, will be deemed to be declined;
 - (c) state that any Shareholder who wishes to acquire Shares in excess of his or her entitlement must, when replying to the Board, state the number of excess Shares the Shareholder wishes to acquire; and
 - (d) state the consideration and other terms of issue of the Shares.
- 3.8 Shareholders of the same class of Share may purchase additional Shares to the extent that Shareholders of that class do not accept the offer in full in accordance with clause 3.7(c). Competing applications for additional Shares must be allocated pro rata according to the number of Shares held by the applicants.
- 3.9 Except as provided in this Constitution and the Act, the procedure for the offer, acceptance and issue of Shares will be determined by the Board. No irregularity in the process will affect the allocation and issue of Shares.

4. **Calls on Shares**

- 4.1 The Board may make calls on any Shareholder in respect of any money unpaid on their Shares and not previously made payable at a fixed time. Shareholders must comply with the terms of any call made by the Board. A call may be revoked or postponed by the Board.
- 4.2 Notice and particulars of any call must be given to the person who holds the relevant Share. The Company is not required to give notice and particulars of a call to a subsequent holder of the Share.
- 4.3 Joint holders of a Share are jointly and severally liable to pay all calls in respect of it.
- 4.4 The holder of the Share when the call is due for payment is liable for payment of the call.
- 4.5 Any calls made by the Board in respect of any money unpaid on Shares must be made on all Shareholders that hold unpaid Shares on a pro rata basis according to the number of unpaid Shares held by each Shareholder.
- 4.6 Money payable in accordance with the terms of issue of a Share will be deemed to be a call made and payable in accordance with the terms of issue.
- 4.7 A person who fails to pay a call on the due date must pay:
- (a) interest on that money from the day payment was due to the day of actual payment at a rate fixed by the Board; and
 - (b) all expenses which the Company has incurred or may incur because of non-payment.

The Board may waive payment of all or part of that interest or those expenses.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

5. Pre-emptive rights on transfer

- 5.1 No Shares may be sold or transferred by the Board, or by any Shareholder or liquidator, without Unanimous Resolution or until the following rights of pre-emption have been exhausted.

Transfer notice

- 5.2 Every Transferor must give a transfer notice (**Transfer Notice**) to the Board, specifying:
- (a) the Shares the Transferor proposes to transfer; and
 - (b) the price for which the Transferor wants to transfer the Shares (**Specified Price**). If there is no Specified Price, the price will be Fair Value.
- 5.3 The Transfer Notice can only be withdrawn as provided in this clause.
- 5.4 If the Transferor is offering more than one Share, it will give one Transfer Notice in respect of all offered Shares. The Transferor is not obliged to sell or transfer only some of the Shares specified in the Transfer Notice, except where clause 5.27 applies.

Offer of Shares

- 5.5 The Board will be the Transferor's agent for the sale of the Shares.
- 5.6 The Shares specified in a Transfer Notice must be offered for sale by the Board in the following order:
- (a) to the Company; then
 - (b) to the holders of the same class of Shares (other than the Transferor); then
 - (c) to the holders of other classes of Shares (if any); and finally
 - (d) to any other person whom the Board is prepared to register as a Shareholder with the unanimous approval (not to be unreasonably withheld) of the existing Shareholders (other than the Transferor).
- 5.7 An offer to the other Shareholders must:
- (a) be in writing;
 - (b) be pro rata according to the number of relevant Shares held by them;
 - (c) state the number and class of Share on offer;
 - (d) state the price payable. Where clause 5.27 applies, the Fair Value must be determined before the Board makes an offer to Shareholders;
 - (e) the period for acceptance of the offer, which must be at least 20 Working Days from the date of the offer being sent to holders of Shares (**Acceptance Period**);

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (f) specify that, if the offer is not accepted by notice in writing to the Board within the Acceptance Period, it is deemed to be declined; and
 - (g) notify the Shareholders that if they wish to purchase Shares in addition to their proportional entitlement, the number of additional Shares must be specified in the written acceptance.
- 5.8 Shareholders of the same class of Shares may purchase additional Shares to the extent that the other Shareholders of that class do not accept the offer in full. Competing applications for additional Shares must be allocated pro rata according to the number of relevant Shares held by the Shareholders.

Acceptance of offer

- 5.9 If a Shareholder wishes to accept an offer of Shares, they must give an acceptance notice (**Acceptance Notice**) to the Board that:
- (a) must be in writing;
 - (b) may relate to all or only part of the Shares offered for sale;
 - (c) may state the number of additional Shares to be purchased from declined offers (if any); and
 - (d) may be for purchase of the Shares at the Specified Price or at their Fair Value.
- 5.10 An offer that has not been accepted in the time or in the manner set out in the preceding clauses will be deemed to have been declined.

Allocation of Shares

- 5.11 Following expiry of the Acceptance Period, the Board will allocate the Shares offered for sale according to Acceptance Notices received. This allocation will include the allocation of additional Shares from declined offers.
- 5.12 If the acceptances received are for fewer than the number of Shares specified in the Transfer Notice, the Board will give the Transferor written notice of the provisional allocation. Except where clause 5.27 applies, the Transferor will then have five Working Days from receipt of that notice to give notice in writing to the Board electing to withdraw the Transfer Notice in accordance with clause 5.17.
- 5.13 If:
- (a) Acceptance Notices have been received for all of the Shares specified in the Transfer Notice; or
 - (b) the Transferor does not validly withdraw the Transfer Notice,
- the Board must give notice in writing of the Share allocation to all persons who have been allocated Shares (each, a **Transferee**) within 10 Working Days of the expiry of the Acceptance Period.
- 5.14 If any Acceptance Notices are received at Fair Value, then the Board will give notice of allocation within 20 Working Days of the expiry of the period set out in clause

SER-023544-426-24-V5

SER-023544-426-24-V4

5.17(c), unless the Transferor waives their right to withdraw in respect of any or all acceptances pursuant to clause 5.17.

Other procedure

5.15 Except as provided in this clause, the procedure for the offer, acceptance and allocation of Shares may be decided by the Board. Any irregularity in the process will not affect the validity of the allocation and sale of Shares.

Determination of Fair Value

5.16 If any Shareholder accepts an offer for sale of Shares at their Fair Value:

- (a) The Board and the Transferor will appoint a suitably qualified independent accountant (**Valuer**) to calculate the Fair Value of the Shares.
- (b) If those parties cannot agree on the Valuer within five Working Days of the expiry of the Acceptance Period, the Valuer will be appointed by the President of the New Zealand Law Society or the President's nominee.
- (c) The Valuer must set the procedure and a timetable for calculating the Fair Value and the parties must comply with that procedure and timetable.
- (d) The Valuer must give the parties a written certificate of the Fair Value of the Shares.
- (e) Fair Value means the price, which in the Valuer's opinion, would be paid for the Shares by a willing Transferee from a willing Transferor where the Transferor and the Transferee have comparable knowledge and bargaining power as at the date that the Transfer Notice is given. The Valuer must take into account:
 - (i) all the assets and liabilities (including contingent liabilities) of the Company;
 - (ii) the provisions of the Constitution;
 - (iii) the amount of any bona fide offer for the purchase of the Shares received by the Transferor; and
 - (iv) anything else the Valuer considers relevant.
- (f) The Valuer will be deemed to be acting as an expert and not as an arbitrator.
- (g) The Board must co-operate with the Valuer and give the Valuer all information that it reasonably requires.
- (h) The Valuer must give the Transferor and the Transferees a reasonable opportunity to make submissions in relation to the Fair Value before releasing a decision.
- (i) The Valuer may estimate the Fair Value if, in the Valuer's opinion, the likely value of all Shares for which a Fair Value must be fixed does not justify the expense of a full valuation.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (j) The Valuer's costs must be paid:
 - (i) by the Transferor if the Specified Price is more than 10% in excess of the Fair Value;
 - (ii) by the Company, if sub-clause 5.16(j)(i) does not apply and the Transferee is an existing Shareholder; and
 - (iii) otherwise by the Transferee and if there is more than one Transferee then by each of them in proportion to the value of the Shares they have each agreed to buy.
- (k) The Valuer must not commence the valuation until:
 - (i) all Shares offered for sale have been accepted for purchase; or
 - (ii) the Transferor gives the Company written notice of its intention to proceed with any of the acceptances at Fair Value already received; or
 - (iii) the period for the Transferor to withdraw its Transfer Notice has expired in accordance with clause 5.12.
- (l) The Valuer's decision will be final except in the case of obvious error.

Right to withdraw

- 5.17 Unless clause 5.22 applies, the Transferor may withdraw the Transfer Notice in respect of all or any Shares offered for sale if:
- (a) any Share remains unallocated three months after issue of the Transfer Notice; or
 - (b) any of the Shares offered for sale have been accepted at Fair Value; and
 - (c) the Fair Value is less than the Specified Price and the Transferor gives written notice of withdrawal to the Board within 20 Working Days of the Transferor receiving the certificate of Fair Value. If revocation occurs under this subclause, the Transferor will bear all costs of fixing the Fair Value under this clause.

Settlement

- 5.18 The sale of the Shares in the Transfer Notice must be settled 20 Working Days after:
- (a) notice of allocation (clause 5.13) if all the Shares offered for sale have been accepted at the Specified Price; or
 - (b) the Valuer gives the certificate of Fair Value if any of the Shares offered for sale have been accepted at Fair Value.
- 5.19 Transferees who have accepted the offer for sale at the Specified Price must pay that price.
- 5.20 Transferees who have accepted the offer for sale at Fair Value must pay Fair Value.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- 5.21 The Transferor must transfer the relevant number of Shares to each Transferee on settlement.
- 5.22 If the Transferor accepts payment for any Shares, the Transferor may not withdraw the Transfer Notice in respect of those Shares.

Sale to third parties

- 5.23 Any Shares which remain unallocated three months after the Board has received a Transfer Notice may be sold or offered for sale by the Transferor at any time within the following six months to any person on terms which are not more favourable to that person than those in the Transfer Notice, as determined by the Board. But in any other circumstance, the Transferor must give another Transfer Notice if it wishes to sell.
- 5.24 The Board's decision as to whether or not the terms are more favourable will be final.
- 5.25 Clause 5.23 does not apply to any Shares for which the Transfer Notice has been withdrawn.
- 5.26 The above right to sell will at all times be subject to the ability of the Board to refuse to register a Share transfer pursuant to any power which it might have under the Act or the provisions of any other document.

Deemed transfer

- 5.27 If a Shareholder is bound to do so, but fails to give a Transfer Notice:
- (a) The Board may give a Transfer Notice on behalf of that Shareholder. The Transfer Notice may not be withdrawn without the Board's consent. The Specified Price will be the Fair Value of the Shares.
 - (b) If the Transferor is bound by the previous subclause, but fails to transfer the Shares on the settlement date then the Company may receive the sale price and enter the Transferee's name in the Share register as the Shareholder. The sale price must be held in trust for the Transferor subject to any lien in favour of the Company.
 - (c) The Board's receipt will be a good discharge for the sale price and after the Shares are registered in the names of the Transferees, the validity of the proceedings may not be questioned by any person.

Exceptions

- 5.28 The provisions of this Constitution relating to pre-emptive rights do not apply to a transfer of Shares:
- (a) to any successor of the Tasman District Council or the Nelson City Council that is a local authority under the Local Government Acts; or
 - (b) to any Council-Controlled Organisation wholly owned by one or more local authorities; or

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (c) if all the Shareholders consent by way of Unanimous Resolution.

6. Registration of Share transfers

6.1 The Board must refuse registration of any transfer of any Share if:

- (a) the transfer would result in a breach of the law or this Constitution; or
- (b) the transferee is a person without legal capacity to contract; or
- (c) any applicable pre-emptive rights provisions have not been complied with; or
- (d) the Board has notice of an agreement between Shareholders relating to the transfer of the Share which has not been complied with.

6.2 The Board may refuse or delay the registration of any Share transfer if:

- (a) any money payable on that Share is due for payment and has not been paid; or
- (b) the Company has an unsatisfied lien on that Share or the proceeds of sale of that Share; or
- (c) the transfer has not been properly executed; or
- (d) the transfer is not accompanied by proof (reasonably required by the Directors) of the right of the Transferor to make the transfer; or
- (e) the transferee is, or is directly or indirectly associated with, a competitor of the Company; or
- (f) in the opinion of the Board, the transferee is unlikely to meet the financial or other obligations of the Shareholder; or
- (g) the Directors acting in good faith decide that registration of the transfer would not be in the best interests of the Company; or
- (h) the transfer document is not in any usual or common form or otherwise in a form prescribed by the Board from time to time (if any),

but the Board must comply with section 84 of the Act.

7. Suspension of right to distributions, lien and forfeiture

Suspension of distributions

- 7.1 If a Shareholder has defaulted in paying any money due to the Company, the Board may suspend payment of any distribution to that Shareholder until the default is remedied.
- 7.2 The Company may apply any suspended payment in full or part satisfaction of the money due by the Shareholder to the Company.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- 7.3 A Shareholder's liability for all money owing under a call is not extinguished by a transfer of the Share in respect of which the money is owed.
- 7.4 When the total distributions withheld and applied under clause 7.2 equal the amount due by the Shareholder, any suspension of the rights will end.

Lien

- 7.5 The Company has a first lien on the proceeds of sale and all distributions declared in respect of every Share registered in the name of a Shareholder (whether solely or jointly with others), for:
- (a) all money payable in respect of Shares held by the Shareholder; and
 - (b) all other money payable by the Shareholder to the Company; and
 - (c) any money the Company may be required to pay under any statute or regulation in respect of the Shareholder's Shares,
- whether or not the time for the payment has arrived.
- 7.6 The Company may sell any Share on which the Company has a lien. The Company may not make such a sale:
- (a) unless money in respect of which the lien exists is due for payment; and
 - (b) until it has given notice to the registered Shareholder, or the person entitled to the Share, requiring payment of the money in respect of which the lien exists within 20 Working Days of the notice.
- 7.7 A certificate signed by a Director stating that the power of sale in clause 7.6 has arisen and is exercisable by the Company is conclusive evidence of the facts stated in the certificate.
- 7.8 The Board may authorise any person to complete a transfer of Shares to a purchaser to give effect to any sale exercising a lien.
- 7.9 In respect of a sale exercising a lien under this clause:
- (a) clause 5 will apply with the following modifications:
 - (i) the Board will be deemed to have received a Transfer Notice when it resolves to exercise its lien; and
 - (ii) the Board may fix the Specified Price;
 - (b) the proceeds of sale must be applied first in satisfying any sale costs and second in paying any money owed in respect of the lien. Any balance must be paid to the former Shareholder;
 - (c) a Shareholder whose Shares have been sold will cease to be a Shareholder in respect of those Shares, but will remain liable to pay the Company all money which, at the time of the sale, was payable by the Shareholder to the Company but which was not realised and repaid to the Company as a result of the sale;

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (d) the Company must register the purchaser as holder of the Shares that are transferred;
- (e) the purchaser's title to the Shares is not affected by any irregularity or invalidity in the sale;
- (f) the remedy of any person aggrieved by the sale is in damages only and against the Company exclusively; and
- (g) if the certificate for the Shares is not delivered to the Company, the Board may issue a new certificate distinguishing it as the Board thinks fit from the certificate not delivered.

8. Distributions to Shareholders

- 8.1 The Board may authorise a distribution by the Company to Shareholders in accordance with the Act and this Constitution.
- 8.2 All dividends on Shares not fully paid up must be authorised by the Board and paid in proportion to the amount paid up. This provision is subject to the terms of issue of any Shares with special rights to dividends.
- 8.3 Any money payable in cash in respect of Shares will be paid electronically.
- 8.4 Any one of two or more joint holders may give good receipts for any money payable in respect of their Shares.
- 8.5 No interest is payable by the Company on any dividend.
- 8.6 All dividends unclaimed for one year after being authorised may be used by the Board for the benefit of the Company until claimed.
- 8.7 All dividends unclaimed for five years after being authorised may be forfeited by the Board for the benefit of the Company.
- 8.8 The Board may annul any forfeiture and agree to pay a claimant who produces evidence to the Board's satisfaction of entitlement to forfeited dividends.

9. Company acquiring its own Shares

- 9.1 The Company may purchase or otherwise acquire its own Shares. Subject to clause 9.2, these Shares will be deemed to be cancelled immediately on acquisition.
- 9.2 The Company may hold its own Shares uncanceled but only in accordance with sections 67A, 67B and 67C of the Act.
- 9.3 Any Shares reissued by the Company must be treated as the issue of new Shares.
- 9.4 The Company must comply with the Act when it purchases or acquires Shares issued by it.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

10. Assistance by Company for Share purchase

The Company may directly or indirectly give financial assistance to a person for the purpose of the purchase of a Share issued or to be issued by the Company.

11. Shareholders' meetings**Annual and special meetings**

11.1 The Board must, in accordance with section 120 of the Act, call an annual meeting of Shareholders to be held no later than six months after the balance date of the Company.

11.2 Subsequent annual meetings must be held within 15 months of the previous annual meeting.

11.3 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 Shareholders holding Shares carrying together at least 5% of the voting rights entitled to be exercised on the issue.

11.4 The provisions of Schedule 1 of the Act, as modified by this Constitution will govern proceedings at meetings of Shareholders.

Resolutions in lieu of meeting

11.5 A written resolution, signed by all of the Shareholders who would be entitled to vote on that resolution at a meeting of Shareholders and who together hold all of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those Shareholders.

11.6 A written resolution may consist of several documents (including electronic mail or other similar means of communication) in like form each signed or assented to by one or more Shareholders.

Chairperson

11.7 If the Independent Chairperson is present at the meeting, the Independent Chairperson must chair the meeting.

11.8 If the Independent Chairperson is not present at the meeting within 15 minutes of the start time, the Directors present may elect a chairperson for that meeting.

11.9 If a chairperson is not elected as above the Shareholders present may elect a chairperson for that meeting.

Notice of meetings

11.10 Every Shareholder entitled to receive notice of the meeting and every Director must be sent written notice of the time and place of each annual or special meeting.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- 11.11 The notice must be sent at least 20 Working Days before the meeting.
- 11.12 The notice must state:
- (a) the nature of the business to be discussed at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it;
 - (b) the text of any Unanimous Resolution to be put to the meeting; and
 - (c) whether postal votes are authorised
- 11.13 If a meeting is adjourned for 20 Working Days or more, notice of the adjourned meeting must be given as in the case of an original meeting. It is not otherwise necessary to give any new notice for an adjourned meeting.
- 11.14 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 notice does not invalidate the proceedings at that meeting.
- 11.15 An irregularity in a notice of a meeting is waived if:
- (a) all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity; or
 - (b) if all those Shareholders agree to the waiver.

Methods of holding meetings

- 11.16 A meeting of Shareholders may be held either:
- (a) at the place, date, and time appointed for the meeting; or
 - (b) by means of audio, or audio and visual, communication. The Shareholders participating must all be able to simultaneously hear each other throughout the meeting.

Quorum

- 11.17 No business may be transacted at a meeting of Shareholders unless a quorum is present.
- 11.18 A quorum for a meeting of Shareholders is present if there is, in person, by proxy or by authorised representative, a representative of every Shareholder.
- 11.19 If a quorum is not present within the 30 minutes after the start time for the meeting:
- (a) if the meeting is called under section 121(b) of the Act, the meeting is dissolved;
 - (b) for any other meeting, the meeting is adjourned to:
 - (i) the same day in the following week at the same time and place, or
 - (ii) a date, time and place to be fixed by the Directors.

If a quorum is not present for the adjourned meeting within 30 minutes after the start time the Shareholders (or their proxies) present are a quorum.

SER-023544-426-24-V5

SER-023544-426-24-V4

Adjournments

- 11.20 The chairperson may adjourn the meeting from time to time and from place to place. It must adjourn if directed to do so by the meeting.
- 11.21 No business can be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

Voting

- 11.22 Unless a poll is demanded, voting at meetings will be by:
- (a) voting by voice; or
 - (b) voting by show of hands.
- The chairperson of the meeting will decide which method is used.
- 11.23 A declaration by the chairperson of the meeting that a resolution is carried by the necessary majority is conclusive evidence of that fact unless a poll is demanded.
- 11.24 Subject to any rights or restrictions attached to any class of Shares, every Shareholder present in person or by proxy and voting by voice or on a show of hands has one vote.
- 11.25 At a meeting of Shareholders a poll may be demanded by:
- (a) a Shareholder or Shareholders representing at least 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or
 - (b) by a Shareholder or Shareholders holding Shares in the Company that confer a right to vote at the meeting and on which the aggregate amount paid up is at least 10% of the total amount paid up on all Shares that confer that right; or
 - (c) the chairperson of the meeting,
- either before or after the vote is taken on a resolution.
- 11.26 If a poll is demanded, votes must be counted according to the votes attached to the Shares of each Shareholder present in person or by proxy and voting.
- 11.27 The chairperson of the meeting is not entitled to a second or casting vote.
- 11.28 The chairperson may demand a poll on a resolution, either before or after a vote on the resolution, by voice or on show of hands.
- 11.29 The demand for a poll may be withdrawn.
- 11.30 Except as provided in clause 11.31, if a poll is demanded it must be taken in the manner directed by the chairperson. The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 11.31 A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately. A poll demanded on any other question may be taken at

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

a time and place fixed by the chairperson. Any other business may be proceeded with pending the taking of the poll.

Proxies

- 11.32 A Shareholder may exercise the right to vote either by being present in person or by proxy.
- 11.33 Subject to the following clauses, a proxy for a Shareholder may attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.
- 11.34 A proxy must be appointed by written notice signed by the Shareholder in the form attached as schedule 1. The notice must state whether the appointment is for a particular meeting or a specified period.
- 11.35 A proxy will not be valid at a meeting of Shareholders unless it is produced to the registered office of the Company (or any other address nominated by the Board) at least 48 hours before the start time for the meeting.
- 11.36 The Board or Independent Chairperson may require satisfactory evidence of authority if the proxy is signed on behalf of the Shareholder making the appointment.
- 11.37 The Board must promptly make proxy forms available to any Shareholder who requests them.
- 11.38 The cancellation of the appointment of a proxy or transfer of relevant Shares by a Shareholder will all revoke any previous appointment of a proxy by that Shareholder.

Postal votes

- 11.39 Shareholders may not cast a postal vote at a Shareholders meeting unless the Board has previously authorised postal votes for that meeting.
- 11.40 Postal voting must be carried out in accordance with clause 7 of Schedule 1 of the Act.

Minutes

- 11.41 The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.
- 11.42 Minutes which have been signed correctly by the chairperson of the meeting are prima facie evidence of the proceedings.

Shareholders' proposals

- 11.43 A Shareholder may give written notice (**Shareholder's Notice**) to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote.
- 11.44 If the Shareholder's Notice is received by the Board:
- (a) at least five Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must

SER-023544-426-24-V5

SER-023544-426-24-V4

give notice of the Shareholder's proposal and the text of any proposed resolution (**Proposal Notice**) to all Shareholders entitled to receive notice of the meeting;

- (b) less than five Working Days before that last day, the Board must give the Proposal Notice to Shareholders if it is practicable to do so.

11.45 The Shareholder must pay the costs of the Proposal Notice unless the Shareholder's Notice is received by the Board at least 20 Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board. In that case the Company must pay the cost.

11.46 The Directors must give the proposing Shareholder the right to include a statement in support of the proposal with the Proposal Notice. The name and address of the proposing Shareholder must be included with the statement.

11.47 The board is not required to include with the Proposal Notice:

- (a) any part of a statement prepared by a Shareholder that the Directors consider to be defamatory, frivolous, or vexatious; or
- (b) any part of a proposal or resolution prepared by a Shareholder that the Directors consider to be defamatory.

11.48 If the proposing Shareholder must pay the costs of giving the Proposal Notice, the proposing Shareholder must deposit with the Company or tender to the Company a sum sufficient to meet those costs when giving the Shareholder's Notice.

Corporations may act by representatives

11.49 A body corporate that is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner it could appoint a proxy.

Votes of joint holders

11.50 Where two or more persons are registered as the holder of a Share, the vote of the person named first in the Share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

Loss of voting rights if calls unpaid

11.51 Subject to this Constitution, if a sum due to a Company in respect of a Share has not been paid, that Share may not be voted at a Shareholder's meeting other than a meeting of an interest group.

Local authorities as shareholders

11.52 Each Shareholder that is a local authority may by resolution of its relevant council or other appropriate governing body authorise such person as it thinks fit to act as its representative at any Shareholders' meeting of the Company, or of any class of Shareholders, or at all such meetings until notice of revocation of such authority has been given to the Company. Any such person so authorised is entitled to exercise

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

the same powers on behalf of the relevant Shareholder which he or she represents as that Shareholder could exercise if it were an individual person.

Other proceedings

- 11.53 Except as provided in this Constitution, a meeting of Shareholders may regulate its own procedure.

12. Directors

- 12.1 The Company will have a minimum number of three Directors and a maximum number of six Directors, provided that any Directors appointed in accordance with clause 12.7(b) will not be taken into account when determining whether such minimum or maximum has been exceeded.

Independent Chairperson

- 12.2 The Shareholders (by way of the Joint Shareholders' Committee, if such committee exists) shall by Unanimous Resolution appoint an Independent Chairperson to the Board and may likewise remove and/or replace the Independent Chairperson at any time by notice in writing to the Company.
- 12.3 The Independent Chairperson will be counted when determining whether the minimum or maximum number of Directors has been exceeded.

Appointment and removal

- 12.4 The Shareholders (by way of the Joint Shareholders' Committee, if such committee exists) shall together be entitled to appoint up to six Directors at any time and may likewise remove and/or replace any of those Directors at any time by notice in writing to the Company.
- 12.5 A notice given under clauses 12.4 takes effect upon receipt of it at the registered office of the Company (including receipt by way of letter, electronic mail, or other similar means of communication) unless the notice specifies a later time at which the notice will take effect (in which case it takes effect at such later time so specified).
- 12.6 A Director (including, for the avoidance of doubt, the Independent Chairperson) holds office until his or her resignation, retirement, disqualification or removal in accordance with this Constitution.

Temporary vacancy

- 12.7 In addition to the appointment or removal of directors under clause 12.4, the Board may:
- (a) appoint any person to be a Director to fill a temporary vacancy in (and only in) circumstances where the number of Directors falls below the minimum number set out in clause 12.1 and with written approval of the Shareholders by Unanimous Resolution; and/or

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (b) at any time during the three-month period prior to the Company's next annual general meeting (but not otherwise) appoint up to two persons to be Directors.

12.8 Subject to their earlier resignation, retirement, disqualification or removal in accordance with this Constitution, any Director appointed under clause 12.7 will cease to hold office at the commencement of the next annual meeting of the Company or at the next special meeting of the Company, whichever is earlier.

12.9 Subject to the Act and this Constitution, any Director appointed under clause 12.7 will be eligible for re-appointment as a Director.

Rotation

12.10 Subject to clause 12.12, at the annual meeting of the Company in each year, one third of the Directors for the time being, or if their number is not a multiple of three then the number nearest to one third, must retire from office. A retiring Director will hold office until the dissolution or adjournment of the annual meeting. A retiring Director is eligible for re-appointment unless he or she is disqualified under this Constitution.

12.11 Subject to clause 12.12, the Directors to retire at an annual meeting will be those Directors who have been longest in office since their last appointment. As between persons who became Directors on the same day, those who retire will, unless they otherwise agree among themselves, be determined by lot.

12.12 The Shareholders (by way of the Joint Shareholders' Committee, if such committee exists) may, by way of a notice in writing to the Company, jointly direct that the retirement procedure set out in clauses 12.10 and 12.11 be varied in respect of one or more annual meetings (for example, by directing that a particular Director will not be required to retire by rotation at a particular annual meeting) and such notice is effective and binding upon the Company and its Directors notwithstanding clauses 12.10 and 12.11.

Disqualification of Directors

12.13 A person will be disqualified from holding the office of Director if he or she:

- (a) is or becomes disqualified from being a director under any provision of the Act; or
- (b) dies; or
- (c) becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
- (d) is or becomes an undischarged bankrupt; or
- (e) is or becomes an employee or elected member of any Shareholder which is a local authority.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- 12.14 A person will be disqualified from holding the office of Independent Chairperson if, in the sole opinion of a simple majority of Shareholders who must provide notice in writing to the Company, he or she is not, or ceases to be, Independent.

Proceedings of the Board

- 12.15 Proceedings at meetings of Directors are governed by the Act, as modified by this Constitution.

Self-interested transactions

- 12.16 A Director (**Interested Director**) is interested in a transaction if section 139 of the Act applies. After becoming aware that they may be interested, an Interested Director must disclose the particulars of their interest to the Board and enter the particulars in the Interests Register of the Company as required by the Act.

Best interests

- 12.17 In accordance with section 131(1) of the Act, a Director must act in good faith and in a manner which that Director believes to be in the best interests of the Company.

Authority to bind Company

- 12.18 The Board may authorise any person or class of persons to enter into a contract on behalf of the Company. However, it may not do so where the contract must be signed as a deed if entered by a natural person.

Indemnity and insurance of directors and employees

- 12.19 The Company may indemnify and effect insurance in accordance with any part or all of section 162 of the Act.
- 12.20 The Board must immediately enter in the interests register the particulars of any indemnity given to, or insurance taken out for, any Director, former director, employee, or former employee of the Company or any related company.
- 12.21 The Board may impose any condition in relation to any indemnity or insurance if the condition does not contravene the Act.

Remuneration of Directors

- 12.22 The remuneration payable to the Directors in their capacities as directors will be the sum so determined by the Shareholders (by way of the Joint Shareholders' Committee, if such committee exists) from time to time or such lesser sum as the Directors from time to time determine.

Notice of meeting

- 12.23 A Director or, if requested by a Director to do so, an employee of the Company may convene a meeting of the Board by giving notice in accordance with this clause.
- 12.24 At least two Working Days' notice of a meeting of the Board must be given to every Director who is in New Zealand. The notice must include the date, time, method and place of the meeting and the matters to be discussed.

SER-023544-426-24-V5

SER-023544-426-24-V4

- 12.25 An irregularity in the notice of the meeting is waived if all Directors attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.
- 12.26 Notice of a meeting may be given by any means, including by email or telephone. Notice given by a letter addressed to a Director at his or her last known residential address in New Zealand will be deemed to have been given on the next day after the letter is posted.

Method of holding meetings

- 12.27 A meeting of the Board may be held either:
- (a) by a quorum of Directors gathered together at the place, date and time appointed for the meeting; or
 - (b) by means of audio, or audio and visual communication. The Directors participating must constitute a quorum and must all be able to simultaneously hear each other throughout the meeting.

Chairperson

- 12.28 If the Independent Chairperson is present at a meeting of the Board, the Independent Chairperson must chair the meeting.
- 12.29 If at a meeting of the Board the Independent Chairperson is not present within five minutes after the start time, the Directors present may choose one of their number to chair the meeting.

Quorum

- 12.30 A quorum for a meeting of Directors is a majority of the Directors.
- 12.31 No business may be transacted at a meeting of Directors unless a quorum is present.

Voting

- 12.32 Every Director, including, for the avoidance of doubt, the Independent Chairperson, has one vote.
- 12.33 A Director who abstains from voting is not presumed to have voted in favour of the relevant resolution of the Board.
- 12.34 The chairperson will not have a casting vote.
- 12.35 A resolution of the Board is passed if a majority of the votes cast on it are in favour of it.
- 12.36 Subject to clause 12.16, a Director may vote in respect of any transaction in which they are an Interested Director. If the Director does so, the Director's vote will be counted and the Director will be counted in the quorum present at the meeting.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

Minutes

12.37 The Board must ensure minutes are kept of all proceedings at meetings of the Board.

Resolutions

12.38 A resolution in writing, signed or assented to by all Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

12.39 A resolution may consist of several documents (including electronic mail or other similar means of communication) in like form each signed or assented to by one or more Directors.

12.40 A copy of all resolutions must be entered in the minute book of Board proceedings.

No notice to Directors outside New Zealand

12.41 It is not necessary to give notice of a meeting of the Board to any Director temporarily absent from New Zealand.

Major transactions

12.42 The Board may not procure or permit the Company to enter into a “major transaction” (as defined in the Act) unless the transaction is approved by Unanimous Resolution or made contingent on approval by Unanimous Resolution.

Other proceedings

12.43 Except as provided in this Constitution or any other legislation regulating the Company, the Board may regulate its own procedure.

13. In specie distribution on liquidation

13.1 Subject to the terms of issue of any Shares, if the Company is liquidated any assets remaining after payment of the debts and liabilities of the Company, and the costs of liquidation, must be distributed among each Shareholder in proportion to the total amount paid up on all their Shares.

13.2 If the Shareholders agree by Unanimous Resolution, a liquidator may:

- (a) divide any part of the Company’s assets between the Shareholders in kind;
- (b) fix the value of the assets divided;
- (c) decide how the division will be carried out between Shareholders and/or different classes of Shareholders; and
- (d) vest any part of the assets in trustees to hold on trust for the Shareholders on terms fixed by the liquidator.

13.3 Different Shareholders may receive different assets.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

13.4 No Shareholder is obliged to accept any asset which is subject to any liability including any contingent liability.

14. **Audit**

The Company shall be audited, and the auditor of the Company shall be the Auditor General, in accordance with the Local Government Act 2002.

15. **Amendment**

This Constitution may only be amended by way of a Unanimous Resolution.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

Schedule 1 – Form of appointment of proxy

To: Infrastructure Holdings Limited

Appointment of Proxy

I/We _____

of _____

appoint _____ [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 meeting of the company to be held

at _____

on _____ commencing at _____ am/pm

[or all meetings of the company held within 12 months of the date of this proxy] and at any adjournment of the meeting.

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

Vote with a tick

| Resolutions | For | Against |
|-------------|-----|---------|
|-------------|-----|---------|

| | | |
|----|-------|-------|
| 1. | _____ | _____ |
|----|-------|-------|

| | | |
|----|-------|-------|
| 2. | _____ | _____ |
|----|-------|-------|

« (delete if not required)

Signed on _____ [date]

[Usual signature/s]

SER-023544-426-24-V5

76874544v1

Draft Shareholders Agreement [TDC 17 May 2022]

**Shareholders' Agreement for
Infrastructure Holdings Limited**

between
Tasman District Council
and
Nelson City Council
and
Infrastructure Holdings Limited

SER-023544-426-101-V3

Shareholders' Agreement for Infrastructure Holdings Limited

Date:

2022

Parties

Tasman District Council (TDC)

Nelson City Council (NCC)

Infrastructure Holdings Limited (the Company)

1. Interpretation and definitions

Definitions

1.1 In this agreement, unless the context otherwise requires:

Accession Deed

means an accession deed entered into by any Additional Shareholder in a form satisfactory to all of the Parties pursuant to which the Additional Shareholder agrees to observe, perform and be bound by this agreement;

Act

means the Companies Act 1993;

Additional Shareholder

means any person who becomes a Shareholder after the date of this agreement, as permitted by this agreement and the Constitution;

Agreement for Sale and Purchase

means the agreement for sale and purchase of all the ordinary shares in Nelson Airport Limited and Port Nelson Limited between TDC, NCC (as vendors) and the Company (as purchaser) dated on or about the date of this agreement;

Board

means the Directors acting together as the board of directors of the Company;

Business

means holding and administering investments in entities in which the Shareholders have a substantial interest for the benefit of the Nelson and Tasman regions and securing funding for and providing funding to the same;

Constitution

means the constitution of the Company as adopted or amended from time to time;

Council-Controlled Trading

| | |
|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Organisation | has the meaning given to it in the Constitution; |
| Director | means a person appointed as director of the Company in accordance with the terms of the Constitution, this agreement and the Act; |
| Effective Date | means the date of this agreement; |
| Equity | means shares in the case of a company, and partnership interest (as defined in the Limited Partnerships Act 2008) in the case of a limited partnership; |
| Financial Year | means: <ul style="list-style-type: none"> (a) the period from the Effective Date to 30 June immediately following the Effective Date; (b) each subsequent period commencing on 1 July and ending on the next 30 June during the Term; and (c) the period from 1 July immediately preceding the end of the Term, to the end of the Term, <p>however, if there is a change of balance date, all references in this definition to 30 June will be deemed to be varied to the new balance date and all references to 1 July will be deemed to be varied to the day after that new balance date.</p> |
| Governance and Appointments | |
| Committee | means the Governance and Appointments Committee described in clause 13; |
| Independent | has the meaning given in the Constitution; |
| Joint Shareholders' Committee | has the meaning given to it in the Constitution; |
| Local Government Acts | has the meaning given to it in the Constitution; |
| Nelson Airport Shares | has the meaning given to that term in the Agreement for Sale and Purchase; |
| Party | means, as the context requires, any one or all of the Parties to this agreement and (on |

| | |
|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | execution of an Accession Deed) any Additional Shareholder; |
| Port Nelson Shares | has the meaning given to that term in the Agreement for Sale and Purchase; |
| Purchase Price | has the meaning given to that term in the Agreement for Sale and Purchase; |
| Settlement | has the meaning given to that term in the Agreement for Sale and Purchase; |
| Share | means any share in the Company; |
| Shareholder | means a person for the time being registered in the Company's Share register as the holder of one or more Shares; |
| Statement of Intent | has the meaning given to it in the Constitution, and where the context requires, means the most recent Statement of Intent; |
| Subsidiary | means any company or limited partnership in which the Company holds a majority of the Equity; |
| Term | has the meaning given in clause 14.1; |
| Unanimous Resolution | means a resolution that is approved by all of the votes of those Shareholders entitled to vote and voting on the relevant matter; and |
| Working Day | means any day other than a Saturday, Sunday, or statutory public holiday in Nelson, New Zealand. A Working Day is deemed to commence at 9.00 am and end at 5.00 pm. |

Interpretation

1.2 In this agreement, unless the context otherwise requires:

- (a) A reference to a person includes any other entity or association recognised by law and vice versa.
- (b) Words referring to the singular include the plural and vice versa.
- (c) The word including and other similar words do not imply any limitation.
- (d) Any reference to a Party includes its successors or permitted assigns or both.
- (e) Where a Party is made up of more than one person, the liability of each of those persons is joint and several.
- (f) Words importing any gender will include all other genders.
- (g) Clause headings are for reference only.

- (h) References to clauses and schedules are references to clauses of, and schedules to, this agreement.
- (i) Reference to any document includes reference to that document as amended, novated, supplemented, or replaced from time to time.
- (j) References to money will be New Zealand currency, unless specified otherwise.
- (k) Expressions referring to **writing** will be construed as including references to words printed, typewritten, or otherwise visibly represented, copied, or reproduced (including by electronic mail).
- (l) References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.

2. Objectives of the Company

- 2.1 The Shareholders intend to carry on the Business in the name of the Company and must at all times during the Term:
- (a) as the Company is a Council-Controlled Trading Organisation, comply with the Local Government Acts;
 - (b) use their reasonable endeavours to co-operate with each other to ensure the efficient operation of the Business; and
 - (c) carry on the Business and procure that any Director appointed by that Shareholder carries on the Business, in compliance with all laws.
- 2.2 Unless this agreement is varied by Unanimous Resolution, the Company may not engage in any business or activity which is not the Business or reasonably incidental to the Business.

3. Share subscriptions

Initial Issue

- 3.1 Immediately following the Effective Date, the Company will on incorporation issue and the Shareholders will subscribe and pay for 84,460 fully-paid, ordinary Shares, for the consideration and to the Shareholders in the proportions set out below, and to be paid in accordance with the terms set out in clause 3.4:

| Shareholder | Number of Shares | Issue Price | Subscription Amount |
|-------------------------|------------------|-------------|---------------------|
| Tasman District Council | 42,230 | \$100 | \$4,223,000 |
| Nelson City Council | 42,230 | \$100 | \$4,223,000 |

General

- 3.2 The Shares issued pursuant to clause 3.1 of this agreement will, on fulfilment by each Shareholder of their respective obligations to pay the Subscription Amounts recorded

opposite their respective names in the table contained in clause 3.1 of this agreement, be credited as fully paid up.

- 3.3 In consideration of the Shareholders subscribing for the Shares in the Company in accordance with this agreement, the Company makes the following warranties, representations and undertakings to the Shareholders:
- (a) the Shares will be issued to each Shareholder free and clear of any encumbrance, charge or other claim by a third party; and
 - (b) all requirements of the Act and the Company's constitution have been, or will be, complied with on a timely basis in relation to the issue of the Shares and the execution of this agreement and the allotment and issue of the Shares have been authorised by all necessary corporate and other acts and do not violate any trust deed, instrument, agreement or other arrangement to which the Company is party.
- 3.4 On the date of Settlement:
- (a) each Shareholder must pay the Subscription Amounts recorded opposite their respective names in the tables contained in clause 3.1 in full to the Company; and
 - (b) the Company must pay the Purchase Price in full to the Shareholders in accordance with the Agreement for Sale and Purchase.
4. The parties agree that the amount payable by each Shareholder pursuant to clause 3.4(a) will be set off against the amount payable by the Company pursuant to clause 3.4(b), with the intent that on the date of Settlement, the consideration paid for the Shares will be applied in full payment of the Purchase Price (on a cashless basis). **Inconsistency with other documents**
- 4.1 If there is a conflict or inconsistency between this agreement and the Constitution or any other document between the Parties or any of them, this agreement will prevail to the extent of that inconsistency.
- 4.2 To give effect to clause 4.1, if any Shareholder gives notice to the other Shareholders, the Shareholders will:
- (a) do all such things and sign all such documents necessary to alter the Constitution or any other document between the Shareholders or any of them to remove any inconsistency or conflict; and
 - (b) pass a Unanimous Resolution (as the case may require) to approve and ratify any and all past acts of the Board, the Company or the Shareholders done in accordance with this agreement, which might otherwise be invalid as a result of any conflict or inconsistency with the Constitution.
5. **Directors**
- 5.1 Directors (including an Independent chairperson) are to be appointed in accordance with clauses 12.2 to 12.6 of the Constitution.
- 5.2 Directors are to be remunerated in accordance with clause 12.22 of the Constitution.

5.3 Any appointment of a director of a Subsidiary, and any remuneration of any such director, is to be made by the Board.

5.4 The Company will:

- (a) indemnify each Director; and
- (b) effect insurance,

in accordance with any part or all of section 162 of the Act. The Shareholders will take all reasonable steps to cause the Board to do this.

6. Key Decisions

The Board must not, and must not cause the Company to do any of the following, unless first approved in writing by Unanimous Resolution:

- (a) enter into any "major transaction" as defined in the Act;
- (b) make any material disposal of assets which are not budgeted for and/or provided for in the Statement of Intent in the relevant Financial Year (or any series of related disposals which, if considered together, would be material); or
- (c) engage in any business or activity which is not the Business or reasonably incidental to the Business; or
- (d) undertake any capital raising or external debt financing or refinancing that is not in accordance with the Company's corporate treasury structure policies or existing lending and/or borrowing agreements; or
- (e) enter into, terminate or grant a waiver of rights under, or material amendment to, any contract in relation to a transaction with a Shareholder or a Subsidiary which has not been included in an approved budget, Statement of Intent or otherwise previously approved; or
- (f) grant any security interest over the assets of the Company, other than in the ordinary course of business or as permitted by the Company's policies regarding the granting of security interests and/or the Company's existing lending and/or borrowing agreements; or
- (g) appoint an administrator or take a step to liquidate, dissolve or wind up the Company; or
- (h) make any decision to undertake an initial public offering; or
- (i) make any alteration to, or revocation of, the Constitution or the adoption of a new constitution for the Company; or
- (j) issue, cancel, buy-back or make any reduction of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares; or
- (k) transfer any Shares held by the Company or purchase or otherwise acquire its own Shares; or
- (l) approve any transfer of Shares by any Shareholder; or

- (m) give financial assistance for the purposes of, or in connection with, the purchase of Shares; or
- (n) consolidate, divide or subdivide any Shares or create, alter or cancel any rights attaching to Shares; or
- (o) apply any amounts available for distribution in paying up Shares or other securities; or
- (p) exercise the right to issue shares in lieu of dividends conferred by section 54 of the Act; or
- (q) make any amendment to this agreement not expressly contemplated by the provisions of this agreement; or
- (r) create, acquire or sell any Subsidiary.

7. **Loans and guarantees**

No Shareholder will be required to:

- (a) make any loans to the Company; or
- (b) guarantee the obligations of the Company to a creditor,

except with the express agreement of that Shareholder and then only in accordance with all applicable laws.

8. **Dividends**

The dividend policy of the Company must be included in each annual Statement of Intent and accordingly approved by Unanimous Resolution.

9. **Additional Shareholders**

- 9.1 Shares may only be transferred in accordance with the Constitution.
- 9.2 Before a person becomes an Additional Shareholder, they must execute an Accession Deed.
- 9.3 The Board will refuse to approve a transfer of Shares if this clause is not complied with.

10. **Grant of security over Shares**

A Shareholder may not mortgage or pledge as security its Shares to any person without obtaining the prior written consent of all other Shareholders.

11. **Provision of information**

- 11.1 The Company must comply with the reporting obligations of Council-Controlled Trading Organisations in accordance with the Local Government Act 2002, including producing an annual Statement of Intent and the publication of required reports.

11.2 The Parties agree that they will ensure that:

- (a) each Subsidiary complies with any applicable reporting obligations under the Local Government Act 2002, the Port Companies Act 1988 and any other relevant legislation; and
- (b) prior to incorporation of any Subsidiary, the Parties will agree the timing and content of regular reporting to be provided by the Subsidiary to the Company.

12. Confidentiality

12.1 Subject to clause 12.2, each Shareholder will keep confidential, and make no disclosure of:

- (a) the contents of this agreement;
 - (b) all information obtained from the other Shareholder under this agreement or in the course of negotiations in respect of this agreement; and
 - (c) all information obtained from the Company, or developed or held for the purposes of the Company,
- (together, **Confidential Information**).

12.2 Confidential Information may be disclosed if:

- (a) disclosure is required by law, or is necessary to comply with the listing rules of any recognised stock exchange; or
- (b) that Confidential Information already is, or becomes, public knowledge other than as a result of a breach of this clause by that Shareholder; or
- (c) disclosure is made to an officer, employee, agent, contractor, financier, lawyer, accountant, or other professional adviser for that Shareholder on a need-to-know basis and such person is advised of the confidentiality obligations under this clause and reasonable security measures are put in place to safeguard the Confidential Information; or
- (d) disclosure is authorised in writing by the other Shareholders and then only on the terms, if any, specified in such written authority.

12.3 If any Shareholder is permitted by this agreement and by law to make a disclosure or announcement under the preceding clause, before doing so they must:

- (a) give to the other Shareholder the maximum notice reasonably practicable in the circumstances, specifying the requirement under which it is required to disclose Confidential Information, and the precise Confidential Information which it is required to disclose;
- (b) comply with all reasonable directions by the other Shareholders to contest or resist the requirement to disclose Confidential Information; and
- (c) consult in good faith with the other Shareholders with a view to agreeing on the form and timing of the disclosure.

12.4 The provisions of this clause will survive the termination or expiration of this agreement.

13. Governance and Appointments Committee

13.1 The Company will have a Governance and Appointments Committee to recommend to the Board the appointments for which the Company is responsible, including the appointment of directors to any Subsidiary.

13.2 The Governance and Appointments Committee will have a maximum of six members and not less than three.

13.3 Nelson City Council is entitled to appoint one member to the Governance and Appointments Committee at any time and may likewise remove and/or replace that member at any time, in each case by notice in writing to the Company signed by a duly authorised officer of Nelson City Council.

13.4 Tasman District Council is entitled to appoint one member to the Governance and Appointments Committee at any time and may likewise remove and/or replace that member at any time, in each case by notice in writing to the Company signed by a duly authorised officer of Tasman District Council.

13.5 The Board shall be entitled to appoint, remove and replace up to four members to the Governance and Appointments Committee at any time.

13.6 Each member of the Governance and Appointments Committee holds office until his or her resignation, retirement, disqualification or removal in accordance with this agreement.

13.7 The Governance and Appointments Committee will elect one of their number to be chairperson.

13.8 The Company will remunerate each member of the Governance and Appointments Committee in a manner determined by the Board.

13.9 A quorum for a meeting of the Governance and Appointments will be three members (including the member appointed in accordance with each of clauses 13.3 and 13.4) present in person or by means of audio, or audio and visual, communication. The members must all be able to simultaneously hear each other throughout the meeting.

13.10 To avoid doubt, no decision or recommendation to the Board may be made by the Governance and Appointments Committee at any meeting where a quorum is not present.

13.11 Except as otherwise provided in this agreement, the Governance and Appointments Committee may regulate its procedure and meetings as it considers fit.

14. Term

14.1 The term of this agreement (**Term**) will commence on the Effective Date and continue until it is terminated on the earlier of the date on which:

- (a) the Shareholders unanimously agree in writing to terminate this agreement;

- (b) the Company is liquidated in accordance with this agreement or the Act; or
- (c) one Shareholder owns all of the Shares.

In the case of any Shareholder, it will also cease to apply in respect of that Shareholder when that Shareholder ceases to hold (whether beneficially or legally) any Shares. However, that Shareholder will remain liable to fulfil its obligations under this agreement or under any legislation prior to its ceasing to hold any Shares.

- 14.2 Termination of this agreement will not affect the rights and obligations of the Parties which are intended to survive the termination of this agreement. Such termination will be without prejudice to, and will not be deemed a waiver of any claims which any Party may have against any other Party in respect of any breach or other failure to comply with any provision of this agreement prior to the date of termination.

15. **Dispute resolution**

- 15.1 If any Party has any dispute (**Dispute**) with any other Party in connection with this agreement:
- (a) that Party will promptly give full written particulars of the Dispute to the others; and
 - (b) the Parties will promptly meet together and in good faith try to resolve the Dispute.
- 15.2 If the Dispute is not resolved within 20 Working Days of written particulars being given (or any longer period agreed to by the Parties), the Dispute will be referred to mediation by either Party giving written notice of such referral to mediation to the other.
- 15.3 Until mediation ceases, neither Party may commence arbitration or legal proceedings.
- 15.4 The mediation procedure is:
- (a) the Party who wishes to resolve a Dispute must give a notice of Dispute to the other Party;
 - (b) the notice must state that the Dispute has arisen, and state the matters in dispute;
 - (c) when the notice has been given the Parties will appoint a mediator. If they fail to appoint a mediator within 10 Working Days, on request by either Party, the mediator will be appointed by the President of the New Zealand Law Society or the President's nominee;
 - (d) the Parties must co-operate with the mediator in an effort to resolve the Dispute;
 - (e) if the Dispute is settled, the Parties must sign a copy of the terms of the settlement;
 - (f) if the Dispute is not settled within 20 Working Days after the mediator has been appointed, or within any extended time that the Parties agree to in writing, the mediation must cease; and

- (g) the Company will pay the mediator's fee and costs including travel, room hire, refreshments.
- 15.5 The terms of settlement bind the Parties and override the terms of this agreement if there is any conflict.
- 15.6 The terms of settlement may not be used as evidence in any mediation, arbitration or legal proceedings except with the prior written approval of all Parties.
- 15.7 Written statements given to the mediator or to one another, and any discussions between them or between them and the mediator during the mediation are not admissible by the recipient in any arbitration or legal proceedings.
- 15.8 This clause will not apply to an application by either Party seeking urgent interlocutory relief from any court.
- 15.9 Pending resolution of any Dispute the Parties will perform this agreement in all respects including performance of the matter which is the subject of dispute.
- 15.10 Either Party may commence arbitration when the mediation procedure ceases by giving written notice to the other Party.
- 15.11 The arbitration will be conducted by one arbitrator appointed by the Parties. If they cannot agree on an arbitrator within 10 Working Days, on request by either Party, the appointment will be made by the President of the New Zealand Law Society or the President's nominee.
- 15.12 The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- 15.13 Neither Party will unreasonably delay the dispute resolution procedures in this clause.
- 15.14 This clause does not apply to:
- (a) any dispute arising in connection with any attempted renegotiation of this agreement; or
 - (b) an application by either Party for urgent interlocutory relief.

16. General provisions

Exclusion of implied relationships

- 16.1 Nothing contained in this agreement will be deemed or construed to constitute any Party a partner, agent, or representative of any other Party, or to create any trust, and this agreement must not be construed as giving to any Party any of the rights or subjecting any Party to any of the liabilities incidental to a partnership, agency, representative or trust relationship. No Party may make any warranties or representations or incur any obligation on behalf of any other Party.

Costs

- 16.2 The Parties will ensure that the Company pays the legal costs of the Parties associated with the preparation and negotiation of this agreement and all related ancillary documents.

Assignment

- 16.3 Except as provided elsewhere in this agreement, no Party may assign, transfer or novate any of that Party's rights or obligations under this agreement.

Entire agreement

- 16.4 This agreement constitutes the entire agreement between the Parties as to its subject. It supersedes and cancels any previous agreement, understanding, or arrangement whether written or oral. The Parties agree that it is fair and reasonable that this clause is conclusive between them, as required by section 50 of the Contract and Commercial Law Act 2017.

Further assurance

- 16.5 Each Party will execute all documents and do all other acts and things which are both reasonable and necessary to carry out its obligations under, and the intention of, this agreement.

Severance

- 16.6 If any provision of this agreement is held to be unenforceable, illegal or invalid by any court or tribunal:
- (a) the rest of this agreement will remain in full force and effect;
 - (b) the Parties will co-operate to ensure that the spirit and intention of this agreement is carried out as far as is reasonably possible; and
 - (c) the Parties will, if necessary, amend this agreement accordingly.

Waiver

- 16.7 None of the provisions of this agreement will be considered to have been waived by a Party except when such waiver is given in writing.
- 16.8 No delay or omission of any Party in exercising any right, power, privilege or remedy (each, a **Right**) under this agreement will operate to impair such Right or be construed as a waiver of such Right. Any single or partial exercise of any such Right will not preclude any other future exercise of such Right or the exercise of any other Right.
- 16.9 No waiver by a Party of any breach will be deemed a waiver of any continuing or recurring breach unless it is expressly agreed in writing to be so by that Party.

Notices

- 16.10 Any notice or other communication (**Notice**) given under this agreement must be in writing.
- 16.11 A notice may be served personally or sent to the relevant Party's following communication points:

Tasman District Council Address: 189 Queen Street, Richmond
Representative: Mike Drummond, Group Manager-
Finance

Email: Mike.Drummond@tasman.govt.nz

Nelson City Council

Address: 110 Trafalgar Street, Nelson
Representative: Nikki Harrison, Group
Manager Corporate Services
Email: nikki.harrison@ncc.govt.nz

Company

Address: 8 Vickerman Street, Port Nelson, Nelson
Representative: Daryl Wehner, Chief Financial
Officer, Port Nelson Limited
Email: daryl.wehner@portnelson.co.nz

16.12 Each Party will notify the other in writing of any changes to the communication points.

16.13 Notices are deemed served at these times when:

- (a) given personally, on delivery; or
- (b) sent by email, as evidenced by the sender's sent email history, unless another party can prove it was not received.

16.14 Any notice served on a Saturday, Sunday or public holiday is deemed served on the first Working Day after that day.

16.15 If the Party is a company or limited partnership, the notice may be given to a director of that Party or a director of the general partner of that Party or the Representative named above, if any.

16.16 Time is of the essence.

Governing law and jurisdiction

16.17 This agreement is governed by and construed according to the laws of New Zealand and the Parties submit to the exclusive jurisdiction of the courts of that jurisdiction in respect of any dispute or proceeding arising out of this agreement.

Counterparts

16.18 This agreement may be executed by each signatory in separate counterpart copies, whether originals, photocopies, or electronic copies. When each signatory has executed at least one copy, the separately signed documents when brought together will form a binding legal document.

Signed by

Signed by **Tasman District Council** by its duly authorised officer in the presence of:

[name and title of authorised officer]

Signature of witness

Name of witness

Occupation

Address

Signed by **Nelson City Council** by its duly authorised officer in the presence of:

[name and title of authorised officer]

Signature of witness

Name of witness

Occupation

Address

Signed by **Infrastructure Holdings Limited** as the Company:

Director's signature

Director's signature

Director's full name

Director's full name

Draft Shareholders Agreement [TDC 17 May 2022 marked-up to show changes from the version provided to the Joint shareholders Committee on 5 April 2022]

Shareholders' Agreement for Infrastructure Holdings Limited

between
Tasman District Council
and
Nelson City Council
and
Infrastructure Holdings Limited

Shareholders' Agreement for Infrastructure Holdings Limited

Date:

2022

Parties

Tasman District Council (TDC)

Nelson City Council (NCC)

Infrastructure Holdings Limited (the Company)

1. Interpretation and definitions

Definitions

1.1 In this agreement, unless the context otherwise requires:

Accession Deed

means an accession deed entered into by any Additional Shareholder in a form satisfactory to all of the Parties pursuant to which the Additional Shareholder agrees to observe, perform and be bound by this agreement;

Act

means the Companies Act 1993;

Additional Shareholder

means any person who becomes a Shareholder after the date of this agreement, as permitted by this agreement and the Constitution;

Agreement for Sale and Purchase

means the agreement for sale and purchase of all the ordinary shares in Nelson Airport Limited and Port Nelson Limited between TDC, NCC (as vendors) and the Company (as purchaser) dated on or about the date of this agreement;

Board

means the Directors acting together as the board of directors of the Company;

Business

means holding and administering investments in entities in which the Shareholders have a substantial interest for the benefit of the Nelson and Tasman regions and securing funding for and providing funding to the same;

Constitution

means the constitution of the Company as adopted or amended from time to time;

SER-023544-426-101-V3

Council-Controlled Trading

| | |
|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Organisation | has the meaning given to it in the Constitution; |
| Director | means a person appointed as director of the Company in accordance with the terms of the Constitution, this agreement and the Act; |
| Effective Date | means the date of this agreement; |
| Equity | means shares in the case of a company, and partnership interest (as defined in the Limited Partnerships Act 2008) in the case of a limited partnership; |
| Financial Year | means: <ul style="list-style-type: none"> (a) the period from the Effective Date to 30 June immediately following the Effective Date; (b) each subsequent period commencing on 1 July and ending on the next 30 June during the Term; and (c) the period from 1 July immediately preceding the end of the Term, to the end of the Term, <p>however, if there is a change of balance date, all references in this definition to 30 June will be deemed to be varied to the new balance date and all references to 1 July will be deemed to be varied to the day after that new balance date.</p> |
| Governance and Appointments | |
| Committee | means the Governance and Appointments Committee described in clause 13; |
| Independent | has the meaning given in the Constitution; |
| Joint Shareholders' Committee | has the meaning given to it in the Constitution; |
| Local Government Acts | has the meaning given to it in the Constitution; |
| Nelson Airport Shares | has the meaning given to that term in the Agreement for Sale and Purchase; |
| Party | means, as the context requires, any one or all of the Parties to this agreement and (on |

| | |
|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | execution of an Accession Deed) any Additional Shareholder; |
| Port Nelson Shares | has the meaning given to that term in the Agreement for Sale and Purchase; |
| Purchase Price | has the meaning given to that term in the Agreement for Sale and Purchase; |
| Settlement | has the meaning given to that term in the Agreement for Sale and Purchase; |
| Share | means any share in the Company; |
| Shareholder | means a person for the time being registered in the Company's Share register as the holder of one or more Shares; |
| Statement of Intent | has the meaning given to it in the Constitution, and where the context requires, means the most recent Statement of Intent; |
| Subsidiary | means any company or limited partnership in which the Company holds a majority of the Equity; |
| Term | has the meaning given in clause 14.1; |
| Unanimous Resolution | means a resolution that is approved by all of the votes of those Shareholders entitled to vote and voting on the relevant matter; and |
| Working Day | means any day other than a Saturday, Sunday, or statutory public holiday in Nelson, New Zealand. A Working Day is deemed to commence at 9.00 am and end at 5.00 pm. |

Interpretation

1.2 In this agreement, unless the context otherwise requires:

- (a) A reference to a person includes any other entity or association recognised by law and vice versa.
- (b) Words referring to the singular include the plural and vice versa.
- (c) The word including and other similar words do not imply any limitation.
- (d) Any reference to a Party includes its successors or permitted assigns or both.
- (e) Where a Party is made up of more than one person, the liability of each of those persons is joint and several.
- (f) Words importing any gender will include all other genders.
- (g) Clause headings are for reference only.

- (h) References to clauses and schedules are references to clauses of, and schedules to, this agreement.
- (i) Reference to any document includes reference to that document as amended, novated, supplemented, or replaced from time to time.
- (j) References to money will be New Zealand currency, unless specified otherwise.
- (k) Expressions referring to **writing** will be construed as including references to words printed, typewritten, or otherwise visibly represented, copied, or reproduced (including by electronic mail).
- (l) References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.

2. Objectives of the Company

- 2.1 The Shareholders intend to carry on the Business in the name of the Company and must at all times during the Term:
- (a) as the Company is a Council-Controlled Trading Organisation, comply with the Local Government Acts;
 - (b) use their reasonable endeavours to co-operate with each other to ensure the efficient operation of the Business; and
 - (c) carry on the Business and procure that any Director appointed by that Shareholder carries on the Business, in compliance with all laws.
- 2.2 Unless this agreement is varied by Unanimous Resolution, the Company may not engage in any business or activity which is not the Business or reasonably incidental to the Business.

3. Share subscriptions

Initial Issue

- 3.1 Immediately following the Effective Date, the Company will on incorporation issue and the Shareholders will subscribe and pay for 84,460 fully-paid, ordinary Shares, for the consideration and to the Shareholders in the proportions set out below, and to be paid in accordance with the terms set out in clause 3.4:

| Shareholder | Number of Shares | Issue Price | Subscription Amount |
|-------------------------|------------------|-------------|---------------------|
| Tasman District Council | 42,230 | \$100 | \$4,223,000 |
| Nelson City Council | 42,230 | \$100 | \$4,223,000 |

General

- 3.2 The Shares issued pursuant to clause 3.1 of this agreement will, on fulfilment by each Shareholder of their respective obligations to pay the Subscription Amounts recorded

opposite their respective names in the table contained in clause 3.1 of this agreement, be credited as fully paid up.

- 3.3 In consideration of the Shareholders subscribing for the Shares in the Company in accordance with this agreement, the Company makes the following warranties, representations and undertakings to the Shareholders:
- (a) the Shares will be issued to each Shareholder free and clear of any encumbrance, charge or other claim by a third party; and
 - (b) all requirements of the Act and the Company's constitution have been, or will be, complied with on a timely basis in relation to the issue of the Shares and the execution of this agreement and the allotment and issue of the Shares have been authorised by all necessary corporate and other acts and do not violate any trust deed, instrument, agreement or other arrangement to which the Company is party.
- 3.4 On the date of Settlement:
- (a) each Shareholder must pay the Subscription Amounts recorded opposite their respective names in the tables contained in clause 3.1 in full to the Company; and
 - (b) the Company must pay the Purchase Price in full to the Shareholders in accordance with the Agreement for Sale and Purchase.
4. The parties agree that the amount payable by each Shareholder pursuant to clause 3.4(a) will be set off against the amount payable by the Company pursuant to clause 3.4(b), with the intent that on the date of Settlement, the consideration paid for the Shares will be applied in full payment of the Purchase Price (on a cashless basis). **Inconsistency with other documents**
- 4.1 If there is a conflict or inconsistency between this agreement and the Constitution or any other document between the Parties or any of them, this agreement will prevail to the extent of that inconsistency.
- 4.2 To give effect to clause 4.1, if any Shareholder gives notice to the other Shareholders, the Shareholders will:
- (a) do all such things and sign all such documents necessary to alter the Constitution or any other document between the Shareholders or any of them to remove any inconsistency or conflict; and
 - (b) pass a Unanimous Resolution (as the case may require) to approve and ratify any and all past acts of the Board, the Company or the Shareholders done in accordance with this agreement, which might otherwise be invalid as a result of any conflict or inconsistency with the Constitution.
5. **Directors**
- 5.1 Directors (including an Independent chairperson) are to be appointed in accordance with clauses 12.2 to 12.6 of the Constitution.
- 5.2 Directors are to be remunerated in accordance with clause 12.22 of the Constitution.

5.3 Any appointment of a director of a Subsidiary, and any remuneration of any such director, is to be made by the Board.

5.4 The Company will:

- (a) indemnify each Director; and
- (b) effect insurance,

in accordance with any part or all of section 162 of the Act. The Shareholders will take all reasonable steps to cause the Board to do this.

6. Key Decisions

The Board must not, and must not cause the Company to do any of the following, unless first approved in writing by Unanimous Resolution:

- (a) enter into any "major transaction" as defined in the Act;
- (b) make any material disposal of assets which are not budgeted for and/or provided for in the Statement of Intent in the relevant Financial Year (or any series of related disposals which, if considered together, would be material); or
- (c) engage in any business or activity which is not the Business or reasonably incidental to the Business; or
- (d) undertake any capital raising or external debt financing or refinancing that is not in accordance with the Company's corporate treasury structure policies or existing lending and/or borrowing agreements; or
- (e) enter into, terminate or grant a waiver of rights under, or material amendment to, any contract in relation to a transaction with a Shareholder or a Subsidiary which has not been included in an approved budget, Statement of Intent or otherwise previously approved; or
- (f) grant any security interest over the assets of the Company, other than in the ordinary course of business or as permitted by the Company's policies regarding the granting of security interests and/or the Company's existing lending and/or borrowing agreements; or
- (g) appoint an administrator or take a step to liquidate, dissolve or wind up the Company; or
- (h) make any decision to undertake an initial public offering; or
- (i) make any alteration to, or revocation of, the Constitution or the adoption of a new constitution for the Company; or
- (j) issue, cancel, buy-back or make any reduction of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares; or
- (k) transfer any Shares held by the Company or purchase or otherwise acquire its own Shares; or
- (l) approve any transfer of Shares by any Shareholder; or

- (m) give financial assistance for the purposes of, or in connection with, the purchase of Shares; or
- (n) consolidate, divide or subdivide any Shares or create, alter or cancel any rights attaching to Shares; or
- (o) apply any amounts available for distribution in paying up Shares or other securities; or
- (p) exercise the right to issue shares in lieu of dividends conferred by section 54 of the Act; or
- (q) make any amendment to this agreement not expressly contemplated by the provisions of this agreement; or
- (r) create, acquire or sell any Subsidiary.

7. **Loans and guarantees**

No Shareholder will be required to:

- (a) make any loans to the Company; or
- (b) guarantee the obligations of the Company to a creditor,

except with the express agreement of that Shareholder and then only in accordance with all applicable laws.

8. **Dividends**

The dividend policy of the Company must be included in each annual Statement of Intent and accordingly approved by Unanimous Resolution.

9. **Additional Shareholders**

- 9.1 Shares may only be transferred in accordance with the Constitution.
- 9.2 Before a person becomes an Additional Shareholder, they must execute an Accession Deed.
- 9.3 The Board will refuse to approve a transfer of Shares if this clause is not complied with.

10. **Grant of security over Shares**

A Shareholder may not mortgage or pledge as security its Shares to any person without obtaining the prior written consent of all other Shareholders.

11. **Provision of information**

- 11.1 The Company must comply with the reporting obligations of Council-Controlled Trading Organisations in accordance with the Local Government Act 2002, including producing an annual Statement of Intent and the publication of required reports.

11.2 The Parties agree that they will ensure that:

- (a) each Subsidiary complies with any applicable reporting obligations under the Local Government Act 2002, the Port Companies Act 1988 and any other relevant legislation; and
- (b) prior to incorporation of any Subsidiary, the Parties will agree the timing and content of regular reporting to be provided by the Subsidiary to the Company.

12. Confidentiality

12.1 Subject to clause 12.2, each Shareholder will keep confidential, and make no disclosure of:

- (a) the contents of this agreement;
 - (b) all information obtained from the other Shareholder under this agreement or in the course of negotiations in respect of this agreement; and
 - (c) all information obtained from the Company, or developed or held for the purposes of the Company,
- (together, **Confidential Information**).

12.2 Confidential Information may be disclosed if:

- (a) disclosure is required by law, or is necessary to comply with the listing rules of any recognised stock exchange; or
- (b) that Confidential Information already is, or becomes, public knowledge other than as a result of a breach of this clause by that Shareholder; or
- (c) disclosure is made to an officer, employee, agent, contractor, financier, lawyer, accountant, or other professional adviser for that Shareholder on a need-to-know basis and such person is advised of the confidentiality obligations under this clause and reasonable security measures are put in place to safeguard the Confidential Information; or
- (d) disclosure is authorised in writing by the other Shareholders and then only on the terms, if any, specified in such written authority.

12.3 If any Shareholder is permitted by this agreement and by law to make a disclosure or announcement under the preceding clause, before doing so they must:

- (a) give to the other Shareholder the maximum notice reasonably practicable in the circumstances, specifying the requirement under which it is required to disclose Confidential Information, and the precise Confidential Information which it is required to disclose;
- (b) comply with all reasonable directions by the other Shareholders to contest or resist the requirement to disclose Confidential Information; and
- (c) consult in good faith with the other Shareholders with a view to agreeing on the form and timing of the disclosure.

12.4 The provisions of this clause will survive the termination or expiration of this agreement.

13. Governance and Appointments Committee

- 13.1 The Company will have a Governance and Appointments Committee to recommend to the Board the appointments for which the Company is responsible, including the appointment of directors to any Subsidiary.
- 13.2 The Governance and Appointments Committee will have a maximum of six members and not less than three.
- 13.3 Nelson City Council is entitled to appoint one member to the Governance and Appointments Committee at any time and may likewise remove and/or replace that member at any time, in each case by notice in writing to the Company signed by a duly authorised officer of Nelson City Council.
- 13.4 Tasman District Council is entitled to appoint one member to the Governance and Appointments Committee at any time and may likewise remove and/or replace that member at any time, in each case by notice in writing to the Company signed by a duly authorised officer of Tasman District Council.
- 13.5 The Board shall be entitled to appoint, remove and replace up to four members to the Governance and Appointments Committee at any time.
- 13.6 Each member of the Governance and Appointments Committee holds office until his or her resignation, retirement, disqualification or removal in accordance with this agreement.
- 13.7 The Governance and Appointments Committee will elect one of their number to be chairperson.
- 13.8 The Company will remunerate each member of the Governance and Appointments Committee in a manner determined by the Board.
- 13.9 A quorum for a meeting of the Governance and Appointments will be three members (including the member appointed in accordance with each of clauses 13.3 and 13.4) present in person or by means of audio, or audio and visual, communication. The members must all be able to simultaneously hear each other throughout the meeting.
- 13.10 To avoid doubt, no decision or recommendation to the Board may be made by the Governance and Appointments Committee at any meeting where a quorum is not present.
- 13.11 Except as otherwise provided in this agreement, the Governance and Appointments Committee may regulate its procedure and meetings as it considers fit.

14. Term

- 14.1 The term of this agreement (**Term**) will commence on the Effective Date and continue until it is terminated on the earlier of the date on which:
- (a) the Shareholders unanimously agree in writing to terminate this agreement;

- (b) the Company is liquidated in accordance with this agreement or the Act; or
- (c) one Shareholder owns all of the Shares.

In the case of any Shareholder, it will also cease to apply in respect of that Shareholder when that Shareholder ceases to hold (whether beneficially or legally) any Shares. However, that Shareholder will remain liable to fulfil its obligations under this agreement or under any legislation prior to its ceasing to hold any Shares.

- 14.2 Termination of this agreement will not affect the rights and obligations of the Parties which are intended to survive the termination of this agreement. Such termination will be without prejudice to, and will not be deemed a waiver of any claims which any Party may have against any other Party in respect of any breach or other failure to comply with any provision of this agreement prior to the date of termination.

15. **Dispute resolution**

- 15.1 If any Party has any dispute (**Dispute**) with any other Party in connection with this agreement:
- (a) that Party will promptly give full written particulars of the Dispute to the others; and
 - (b) the Parties will promptly meet together and in good faith try to resolve the Dispute.
- 15.2 If the Dispute is not resolved within 20 Working Days of written particulars being given (or any longer period agreed to by the Parties), the Dispute will be referred to mediation by either Party giving written notice of such referral to mediation to the other.
- 15.3 Until mediation ceases, neither Party may commence arbitration or legal proceedings.
- 15.4 The mediation procedure is:
- (a) the Party who wishes to resolve a Dispute must give a notice of Dispute to the other Party;
 - (b) the notice must state that the Dispute has arisen, and state the matters in dispute;
 - (c) when the notice has been given the Parties will appoint a mediator. If they fail to appoint a mediator within 10 Working Days, on request by either Party, the mediator will be appointed by the President of the New Zealand Law Society or the President's nominee;
 - (d) the Parties must co-operate with the mediator in an effort to resolve the Dispute;
 - (e) if the Dispute is settled, the Parties must sign a copy of the terms of the settlement;
 - (f) if the Dispute is not settled within 20 Working Days after the mediator has been appointed, or within any extended time that the Parties agree to in writing, the mediation must cease; and

- (g) the Company will pay the mediator's fee and costs including travel, room hire, refreshments.
- 15.5 The terms of settlement bind the Parties and override the terms of this agreement if there is any conflict.
- 15.6 The terms of settlement may not be used as evidence in any mediation, arbitration or legal proceedings except with the prior written approval of all Parties.
- 15.7 Written statements given to the mediator or to one another, and any discussions between them or between them and the mediator during the mediation are not admissible by the recipient in any arbitration or legal proceedings.
- 15.8 This clause will not apply to an application by either Party seeking urgent interlocutory relief from any court.
- 15.9 Pending resolution of any Dispute the Parties will perform this agreement in all respects including performance of the matter which is the subject of dispute.
- 15.10 Either Party may commence arbitration when the mediation procedure ceases by giving written notice to the other Party.
- 15.11 The arbitration will be conducted by one arbitrator appointed by the Parties. If they cannot agree on an arbitrator within 10 Working Days, on request by either Party, the appointment will be made by the President of the New Zealand Law Society or the President's nominee.
- 15.12 The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- 15.13 Neither Party will unreasonably delay the dispute resolution procedures in this clause.
- 15.14 This clause does not apply to:
- (a) any dispute arising in connection with any attempted renegotiation of this agreement; or
 - (b) an application by either Party for urgent interlocutory relief.

16. General provisions

Exclusion of implied relationships

- 16.1 Nothing contained in this agreement will be deemed or construed to constitute any Party a partner, agent, or representative of any other Party, or to create any trust, and this agreement must not be construed as giving to any Party any of the rights or subjecting any Party to any of the liabilities incidental to a partnership, agency, representative or trust relationship. No Party may make any warranties or representations or incur any obligation on behalf of any other Party.

Costs

- 16.2 The Parties will ensure that the Company pays the legal costs of the Parties associated with the preparation and negotiation of this agreement and all related ancillary documents.

Assignment

- 16.3 Except as provided elsewhere in this agreement, no Party may assign, transfer or novate any of that Party's rights or obligations under this agreement.

Entire agreement

- 16.4 This agreement constitutes the entire agreement between the Parties as to its subject. It supersedes and cancels any previous agreement, understanding, or arrangement whether written or oral. The Parties agree that it is fair and reasonable that this clause is conclusive between them, as required by section 50 of the Contract and Commercial Law Act 2017.

Further assurance

- 16.5 Each Party will execute all documents and do all other acts and things which are both reasonable and necessary to carry out its obligations under, and the intention of, this agreement.

Severance

- 16.6 If any provision of this agreement is held to be unenforceable, illegal or invalid by any court or tribunal:
- (a) the rest of this agreement will remain in full force and effect;
 - (b) the Parties will co-operate to ensure that the spirit and intention of this agreement is carried out as far as is reasonably possible; and
 - (c) the Parties will, if necessary, amend this agreement accordingly.

Waiver

- 16.7 None of the provisions of this agreement will be considered to have been waived by a Party except when such waiver is given in writing.
- 16.8 No delay or omission of any Party in exercising any right, power, privilege or remedy (each, a **Right**) under this agreement will operate to impair such Right or be construed as a waiver of such Right. Any single or partial exercise of any such Right will not preclude any other future exercise of such Right or the exercise of any other Right.
- 16.9 No waiver by a Party of any breach will be deemed a waiver of any continuing or recurring breach unless it is expressly agreed in writing to be so by that Party.

Notices

- 16.10 Any notice or other communication (**Notice**) given under this agreement must be in writing.
- 16.11 A notice may be served personally or sent to the relevant Party's following communication points:

Tasman District Council Address: 189 Queen Street, Richmond
Representative: Mike Drummond, Group Manager-
Finance

Email: Mike.Drummond@tasman.govt.nz

Nelson City Council

Address: 110 Trafalgar Street, Nelson
 Representative: Nikki Harrison, Group
 Manager Corporate Services
 Email: nikki.harrison@ncc.govt.nz

Company

Address: 8 Vickerman Street, Port Nelson, Nelson
 Representative: Daryl Wehner, Chief Financial
 Officer, Port Nelson Limited
 Email: daryl.wehner@portnelson.co.nz

16.12 Each Party will notify the other in writing of any changes to the communication points.

16.13 Notices are deemed served at these times when:

- (a) given personally, on delivery; or
- (b) sent by email, as evidenced by the sender's sent email history, unless another party can prove it was not received.

16.14 Any notice served on a Saturday, Sunday or public holiday is deemed served on the first Working Day after that day.

16.15 If the Party is a company or limited partnership, the notice may be given to a director of that Party or a director of the general partner of that Party or the Representative named above, if any.

16.16 Time is of the essence.

Governing law and jurisdiction

16.17 This agreement is governed by and construed according to the laws of New Zealand and the Parties submit to the exclusive jurisdiction of the courts of that jurisdiction in respect of any dispute or proceeding arising out of this agreement.

Counterparts

16.18 This agreement may be executed by each signatory in separate counterpart copies, whether originals, photocopies, or electronic copies. When each signatory has executed at least one copy, the separately signed documents when brought together will form a binding legal document.

Signed by

Signed by **Tasman District Council** by its
duly authorised officer in the presence of:

[name and title of authorised officer]

Signature of witness

Name of witness

Occupation

Address

Signed by **Nelson City Council** by its duly
authorised officer in the presence of:

[name and title of authorised officer]

Signature of witness

Name of witness

Occupation

Address

Signed by **Infrastructure Holdings
Limited** as the Company:

Director's signature

Director's signature

Director's full name

Director's full name



DLA Piper New Zealand
Level 4
20 Customhouse Quay
Wellington 6011
PO Box 2791
Wellington 6140
New Zealand
T +64 4 472 6289
dlapiper.com

Confidential

Our ref: 1034469

30 May 2022

Pat Dougherty
Chief Executive
Nelson City Council

Leonie Rae
Chief Executive
Tasman District Council

Dear Pat and Leonie

FURTHER REVIEW OF CONSTITUTION AND SHAREHOLDERS' AGREEMENT

- 1 We refer to our letter of 5 May 2022 regarding the draft constitution and shareholders' agreement for Infrastructure Holdings Limited (**Company**).
- 2 Subsequent changes have been made to both documents, which are attached in markup at Appendices A and B to this letter.
- 3 In our opinion the constitution and shareholders' agreement in their amended form are appropriate documents for Nelson City Council and Tasman District Council to approve for the Company, in the context of the Company being a council-controlled trading organisation within the meaning of section 6 of the Local Government Act 2002.
- 4 Please do not hesitate to contact us if you wish to discuss any of the matters set out in this letter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Rachel Taylor', written over a light blue circular scribble.

Rachel Taylor
Partner
Direct +64 4 474 3256
rachel.taylor@dlapiper.com

76916864v1

DLA Piper New Zealand is a partnership governed by New Zealand law, which is part of DLA Piper, a global law firm operating through various separate and distinct legal entities. A list of offices and regulatory information can be found at www.dlapiper.com.



APPENDIX A

Constitution

Draft Constitution (TDC) 17 May 2022 marked-up to show changes from the version provided to the Joint shareholders Committee on 5 April 2022

Constitution of Infrastructure Holdings Limited

DRAFT

SER-023544-426-24-V5

76874544v1

Table of Contents

| | | |
|-----|-----------------------------------------------------------|----|
| 1. | Definitions and interpretation | 3 |
| 2. | Relationship to Act and Local Government Acts | 6 |
| 3. | Issuing Shares | 6 |
| 4. | Calls on Shares | 8 |
| 5. | Pre-emptive rights on transfer | 9 |
| 6. | Registration of Share transfers | 14 |
| 7. | Suspension of right to distributions, lien and forfeiture | 14 |
| 8. | Distributions to Shareholders | 16 |
| 9. | Company acquiring its own Shares | 16 |
| 10. | Assistance by Company for Share purchase | 17 |
| 11. | Shareholders' meetings | 17 |
| 12. | Directors | 22 |
| 13. | In specie distribution on liquidation | 27 |
| 14. | Audit | 27 |
| 15. | Amendment | 27 |
| 1. | Definitions and interpretation | 3 |
| 2. | Relationship to Act and Local Government Acts | 6 |
| 3. | Issuing Shares | 6 |
| 4. | Calls on Shares | 8 |
| 5. | Pre-emptive rights on transfer | 9 |
| 6. | Registration of Share transfers | 14 |
| 7. | Suspension of right to distributions, lien and forfeiture | 14 |
| 8. | Distributions to Shareholders | 16 |
| 9. | Company acquiring its own Shares | 16 |
| 10. | Assistance by Company for Share purchase | 17 |
| 11. | Shareholders' meetings | 17 |
| 12. | Directors | 22 |
| 13. | In specie distribution on liquidation | 27 |
| 14. | Audit | 27 |

SER-023544-426-24-V4

76874544v1

Constitution of Infrastructure Holdings Limited

2

SER-023544-426-24-V4

15. Amendment

27

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

Constitution of Infrastructure Holdings Limited

1. Definitions and interpretation

Definitions

1.1 In this Constitution, unless the context otherwise requires:

| | |
|-----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Act | means the Companies Act 1993; |
| Board | means the Directors acting together as the board of directors of the Company; |
| Company | means Infrastructure Holdings Limited; |
| Council-Controlled | |
| <u>Organisation</u> | <u> has the meaning given to it in section 6 of the Local Government Act 2002;</u> |
| Council-Controlled Trading | |
| <u>Organisation</u> | <u> has the meaning given to it in section 6 of the Local Government Act 2002;</u> |
| Director | means a person appointed as director of the Company in accordance with the terms of the Act and this Constitution; |
| Fair Value | means the price determined by the Valuer in accordance with clause 5.16; |
| <u>Independent</u> | <u> means a person who is free from any association that could materially interfere with the exercise of their independent judgement, including that the person:</u> |

(a) does not hold or control more than 5% of the Shares or have significant influence over the Company, and is not an officer of a Shareholder or other entity that holds or controls more than 5% of the Shares or has significant influence over the Company, during, or at any point during the two years immediately before, their current appointment to the Board;

(b) is not employed, and has not previously been employed, in an executive capacity by a Shareholder, the Company or any of its subsidiaries, unless there has been a period

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

of at least two years between ceasing such employment and serving on the Board;

(c) does not currently hold (and has not held within the last three years) a senior role in a provider of material professional services to a Shareholder, the Company or any of its subsidiaries, and is not currently (and has not within the last two years been) an employee of such a service provider materially associated with the services provided;

(d) does not currently have (and has not within the last two years had) a material business or contractual relationship (for example, supplier or customer) with a Shareholder, the Company or any of its subsidiaries;

(e) is not a relative (as defined in the Act) of anyone in any of the above categories; and

(f) has not been a Director of the Company for a term or terms that, in aggregate, amount to more than six years.

Independent Chairperson means an Independent chairperson appointed to the Board in accordance with clause 12.2;

Interested Director has the meaning given in clause 12.16;

Joint Shareholders' Committee means the committee of that name formed by the local authorities of Nelson City Council and Tasman District Council from time to time and, if such committee ceases to exist under that name at any time, includes any replacement committee by whatever name formed by the local authorities of Nelson City Council and Tasman District Council which performs similar functions relating to, amongst other matters, the appointment and remuneration of directors of entities jointly owned by the local authorities of Nelson City Council and Tasman District Council;

Local Government Acts means the Local Government Official Information and Meetings Act 1987, the Local Government Act 1974 and the Local Government Act 2002;

Proposal Notice has the meaning given in clause 11.44;

Share means any share in the Company;

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

| | |
|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Shareholders | means all persons for the time being registered in the Company's share register as the holder of one or more Shares; |
| Shareholder's Notice | has the meaning given in clause 11.43; |
| Specified Price | has the meaning given in clause 5.2; |
| Statement of Intent | means the statement of intent to be completed by the Board from time to time in accordance with clause <u>section</u> 64 of the Local Government Act 2002; |
| Transfer Notice | has the meaning given in clause 5.2; |
| Transferee | has the meaning given in clause 5.13; |
| Transferor | means a person who wishes to transfer any legal or beneficial interest in Shares; |
| Unanimous Resolution | means a resolution that is approved by all of the votes of those Shareholders entitled to vote and voting on the relevant matter; |
| Valuer | has the meaning given in clause 5.16; and |
| Working Day | means any day other than a Saturday, Sunday or statutory public holiday on which trading banks in Nelson, New Zealand are open for business. A Working Day is deemed to commence at 9.00 am and terminate <u>end</u> at 5.00 pm. |

Interpretation

- 1.2 In this Constitution, unless the context otherwise requires:
- (a) A reference to a person includes any other entity or association recognised by law and vice versa.
 - (b) Words referring to the singular include the plural and vice versa.
 - ~~(c)~~ (c) ~~The word including and other similar words do not imply any limitation.~~
 - ~~(e)~~(d) Any reference to a party includes its successors or permitted assigns or both.
 - ~~(d)~~(e) Where a party is made up of more than one person, the liability of each of those persons is joint and several.
 - ~~(e)~~(f) Words importing any gender will include all other genders.
 - ~~(f)~~(g) Clause headings are for reference only.
 - ~~(g)~~(h) References to clauses and schedules are references to clauses of, and schedules to, this Constitution.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- ~~(h)~~(i) Reference to any document includes reference to that document as amended, novated, supplemented, or replaced from time to time.
- ~~(i)~~(j) References to money will be New Zealand currency, unless specified otherwise.
- ~~(j)~~(k) Expressions referring to **writing** will be construed as including references to words printed, typewritten or otherwise visibly represented, copied or reproduced (including by electronic mail).
- ~~(k)~~(l) References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.

2. Relationship to Act and Local Government Acts

- 2.1 As at its date of incorporation, the Company is a Council-Controlled Trading Organisation.
- 2.2 The Company must comply with its obligations under the Local Government Acts, including preparing a Statement of Intent.
- 2.3 If there is any conflict:
- (a) between a provision in this Constitution and a mandatory provision in the Act, then the mandatory provision in the Act prevails;
 - (b) between a provision in this Constitution and a provision in the Local Government Acts, then the provision in the Local Government Acts prevails; and
 - (c) between:
 - (i) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; and
 - (ii) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,
 then the provision, word or expression in this Constitution prevails.

3. Issuing Shares

Types of Shares

- 3.1 Subject to this Constitution and the approval of the Shareholders by Unanimous Resolution (other than in the case of the initial issue under clause ~~3.2~~,3.2), the Board may:
- (a) issue Shares at any time, to any person and in any number;
 - (b) issue Shares in different classes which have different rights; and

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (c) divide existing Shares into different classes which have different rights.

Initial Share issue

- 3.2 Once the Company has been registered, it must issue Shares to its Shareholders in accordance with its application for registration.

Redeemable Shares

- 3.3 The Company may redeem a redeemable Share:

- (a) at the option of the Company; or
- (b) at the option of the holder of the Share; or
- (c) on a date specified in this Constitution,

for a consideration that is:

- (d) specified;
- (e) to be calculated by reference to a formula; or
- (f) required to be fixed by a suitably qualified person who is not associated with or interested in the Company.

Share issue

- 3.4 The Board may only issue Shares which rank equally with, or in priority to, existing Shares (whether as to voting rights or distributions) if:

- (a) all affected interest groups (if any) have unanimously approved the issue;
- (b) the issue is made in accordance with the pre-emptive rights (on issue) provisions in clauses 3.6 to 3.9; or
- (c) all entitled persons have agreed to the proposed Share issue.

Consideration for Share issues

- 3.5 The consideration for which a Share is issued may take any form.

Pre-emptive rights on issue

- 3.6 For the purposes of clause 3.4(b), new Shares issued by the Company must be offered in a manner and on terms that would, if accepted, maintain the existing voting and distribution rights, or both, of existing Shareholders as follows:

- (a) first, to the holders of the same class of Shares;
- (b) secondly, to the holders of other classes of Shares (if any); and
- (c) thirdly, to any person or persons whom the Board is prepared to register as a holder or holders of that class of Share with the consent of the existing Shareholders by Unanimous Resolution.

- 3.7 An offer to existing Shareholders under clause 3.6(a) or 3.6(b) must:

SER-023544-426-24-V5

SER-023544-426-24-V4

- (a) be pro rata according to the number of Shares held by each Shareholder;
 - (b) state the period (at least 20 Working Days) at the end of which the offer, if not accepted, will be deemed to be declined;
 - (c) state that any Shareholder who wishes to acquire Shares in excess of his or her entitlement must, when replying to the Board, state the number of excess Shares the Shareholder wishes to acquire; and
 - (d) state the consideration and other terms of issue of the Shares.
- 3.8 Shareholders of the same class of Share may purchase additional Shares to the extent that Shareholders of that class do not accept the offer in full in accordance with clause 3.7(c). Competing applications for additional Shares must be allocated pro rata according to the number of Shares held by the applicants.
- 3.9 Except as provided in this Constitution and the Act, the procedure for the offer, acceptance and issue of Shares will be determined by the Board. No irregularity in the process will affect the allocation and issue of Shares.

4. Calls on Shares

- 4.1 The Board may make calls on any Shareholder in respect of any money unpaid on their Shares and not previously made payable at a fixed time. Shareholders must comply with the terms of any call made by the Board. A call may be revoked or postponed by the Board.
- 4.2 Notice and particulars of any call must be given to the person who holds the relevant Share. The Company is not required to give notice and particulars of a call to a subsequent holder of the Share.
- 4.3 Joint holders of a Share are jointly and severally liable to pay all calls in respect of it.
- 4.4 The holder of the Share when the call is due for payment is liable for payment of the call.

4.5 Any calls made by the Board in respect of any money unpaid on Shares must be made on all Shareholders that hold unpaid Shares on a pro rata basis according to the number of unpaid Shares held by each Shareholder.

4.5.6 Money payable in accordance with the terms of issue of a Share will be deemed to be a call made and payable in accordance with the terms of issue.

4.6.7 A person who fails to pay a call on the due date must pay:

- (a) interest on that money from the day payment was due to the day of actual payment at a rate fixed by the Board; and
- (b) all expenses which the Company has incurred or may incur because of non-payment.

The Board may waive payment of all or part of that interest or those expenses.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

5. Pre-emptive rights on transfer

5.1 No Shares may be sold or transferred by the Board, or by any Shareholder or liquidator, without Unanimous Resolution ~~and/or~~ until the following rights of pre-emption have been exhausted.

Transfer notice

5.2 Every Transferor must give a transfer notice (**Transfer Notice**) to the Board, specifying:

- (a) the Shares the Transferor proposes to transfer; and
- (b) the price for which the Transferor wants to transfer the Shares (**Specified Price**). If there is no Specified Price, the price will be Fair Value.

5.3 The Transfer Notice can only be withdrawn as provided in this clause.

5.4 If the Transferor is offering more than one Share, it will give one Transfer Notice in respect of all offered Shares. The Transferor is not obliged to sell or transfer only some of the Shares specified in the Transfer Notice, except where clause 5.27 applies.

Offer of Shares

5.5 The Board will be the Transferor's agent for the sale of the Shares.

5.6 The Shares specified in a Transfer Notice must be offered for sale by the Board in the following order:

- (a) to the Company; then
- (b) to the holders of the same class of Shares (other than the Transferor); then
- (c) to the holders of other classes of Shares (if any); and finally
- (d) to any other person whom the Board is prepared to register as a Shareholder with the unanimous approval (not to be unreasonably withheld) of the existing Shareholders (other than the Transferor).

5.7 An offer to the other Shareholders must:

- (a) be in writing;
- (b) be pro rata according to the number of relevant Shares held by them;
- (c) state the number and class of Share on offer;
- (d) state the price payable. Where clause 5.27 applies, the Fair Value must be determined before the Board makes an offer to Shareholders;
- (e) the period for acceptance of the offer, which must be at least 20 Working Days from the date of the offer being sent to holders of Shares (**Acceptance Period**);

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (f) specify that, if the offer is not accepted by notice in writing to the Board within the Acceptance Period, it is deemed to be declined; and
 - (g) notify the Shareholders that if they wish to purchase Shares in addition to their proportional entitlement, the number of additional Shares must be specified in the written acceptance.
- 5.8 Shareholders of the same class of Shares may purchase additional Shares to the extent that the other Shareholders of that class do not accept the offer in full. Competing applications for additional Shares must be allocated pro rata according to the number of relevant Shares held by the Shareholders.

Acceptance of offer

- 5.9 If a Shareholder wishes to accept an offer of Shares, they must give an acceptance notice (**Acceptance Notice**) to the Board that:
- (a) must be in writing;
 - (b) may relate to all or only part of the Shares offered for sale;
 - (c) may state the number of additional Shares to be purchased from declined offers (if any); and
 - (d) may be for purchase of the Shares at the Specified Price or at their Fair Value.
- 5.10 An offer that has not been accepted in the time or in the manner set out in the preceding clauses will be deemed to have been declined.

Allocation of Shares

- 5.11 Following expiry of the Acceptance Period, the Board will allocate the Shares offered for sale according to Acceptance Notices received. This allocation will include the allocation of additional Shares from declined offers.
- 5.12 If the acceptances received are for fewer than the number of Shares specified in the Transfer Notice, the Board will give the Transferor written notice of the provisional allocation. Except where clause 5.27 applies, the Transferor will then have five Working Days from receipt of that notice to give notice in writing to the Board electing to withdraw the Transfer Notice in accordance with clause 5.17.
- 5.13 If:
- (a) Acceptance Notices have been received for all of the Shares specified in the Transfer Notice; or
 - (b) the Transferor does not validly withdraw the Transfer Notice,
- the Board must give notice in writing of the Share allocation to all persons who have been allocated Shares (each, a **Transferee**) within 10 Working Days of the expiry of the Acceptance Period.
- 5.14 If any Acceptance Notices are received at Fair Value, then the Board will give notice of allocation within 20 Working Days of the expiry of the period set out in clause

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

5.17(c), unless the Transferor waives their right to withdraw in respect of any or all acceptances pursuant to clause 5.17.

Other procedure

5.15 Except as provided in this clause, the procedure for the offer, acceptance and allocation of Shares may be decided by the Board. Any irregularity in the process will not affect the validity of the allocation and sale of Shares.

Determination of Fair Value

5.16 If any Shareholder accepts an offer for sale of Shares at their Fair Value:

- (a) The Board and the Transferor will appoint a suitably qualified independent accountant (**Valuer**) to calculate the Fair Value of the Shares.
- (b) If those parties cannot agree on the Valuer within five Working Days of the expiry of the Acceptance Period, the Valuer will be appointed by the President of the New Zealand Law Society or the President's nominee.
- (c) The Valuer must set the procedure and a timetable for calculating the Fair Value and the parties must comply with that procedure and timetable.
- (d) The Valuer must give the parties a written certificate of the Fair Value of the Shares.
- (e) Fair Value means the price, which in the Valuer's opinion, would be paid for the Shares by a willing Transferee from a willing Transferor where the Transferor and the Transferee have comparable knowledge and bargaining power as at the date that the Transfer Notice is given. The Valuer must take into account:
 - (i) all the assets and liabilities (including contingent liabilities) of the Company;
 - (ii) the provisions of the Constitution;
 - (iii) the amount of any bona fide offer for the purchase of the Shares received by the Transferor; and
 - (iv) anything else the Valuer considers relevant.
- (f) The Valuer will be deemed to be acting as an expert and not as an arbitrator.
- (g) The Board must co-operate with the Valuer and give the Valuer all information that it reasonably requires.
- (h) The Valuer must give the Transferor and the Transferees a reasonable opportunity to make submissions in relation to the Fair Value before releasing a decision.
- (i) The Valuer may estimate the Fair Value if, in the Valuer's opinion, the likely value of all Shares for which a Fair Value must be fixed does not justify the expense of a full valuation.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (j) The Valuer's costs must be paid:
 - (i) by the Transferor if the Specified Price is more than 10% in excess of the Fair Value;
 - (ii) by the Company, if ~~subclausesub-clause~~ 5.16~~(i)(j)~~(j)(i) does not apply and the Transferee is an existing Shareholder; and
 - (iii) otherwise by the Transferee and if there is more than one Transferee then by each of them in proportion to the value of the Shares they have each agreed to buy.
- (k) The Valuer must not commence the valuation until:
 - (i) all Shares offered for sale have been accepted for purchase; or
 - (ii) the Transferor gives the Company written notice of its intention to proceed with any of the acceptances at Fair Value already received; or
 - (iii) the period for the Transferor to withdraw its Transfer Notice has expired in accordance with clause 5.12.
- (l) The Valuer's decision will be final except in the case of obvious error.

Right to withdraw

- 5.17 Unless clause 5.22 applies, the Transferor may withdraw the Transfer Notice in respect of all or any Shares offered for sale if:
- (a) any Share remains unallocated three months after issue of the Transfer Notice; or
 - (b) any of the Shares offered for sale have been accepted at Fair Value; and
 - (c) the Fair Value is less than the Specified Price and the Transferor gives written notice of withdrawal to the Board within 20 Working Days of the Transferor receiving the certificate of Fair Value. If revocation occurs under this subclause, the Transferor will bear all costs of fixing the Fair Value under this clause.

Settlement

- 5.18 The sale of the Shares in the Transfer Notice must be settled 20 Working Days after:
- (a) notice of allocation (clause 5.13) if all the Shares offered for sale have been accepted at the Specified Price; or
 - (b) the Valuer gives the certificate of Fair Value if any of the Shares offered for sale have been accepted at Fair Value.
- 5.19 Transferees who have accepted the offer for sale at the Specified Price must pay that price.
- 5.20 Transferees who have accepted the offer for sale at Fair Value must pay Fair Value.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- 5.21 The Transferor must transfer the relevant number of Shares to each Transferee on settlement.
- 5.22 If the Transferor accepts payment for any Shares, the Transferor may not withdraw the Transfer Notice in respect of those Shares.

Sale to third parties

- 5.23 Any Shares which remain unallocated three months after the Board has received a Transfer Notice may be sold or offered for sale by the Transferor at any time within the following six months to any person ~~approved (acting reasonably) by the existing Shareholders (other than the Transferor)~~ on terms which are not more favourable to that person than those in the Transfer Notice, as determined by the Board. But in any other circumstance, the Transferor must give another Transfer Notice if it wishes to sell.
- 5.24 The ~~Board will determine Board's decision as to~~ whether or not the terms ~~referred to in clause 5.23~~ are more favourable ~~and the Board's decision~~ will be final.
- 5.25 Clause 5.23 does not apply to any Shares for which the Transfer Notice has been withdrawn.
- 5.26 The above right to sell will at all times be subject to the ability of the Board to refuse to register a Share transfer pursuant to any power which it might have under the Act or the provisions of any other document.

Deemed transfer

- 5.27 If a Shareholder is bound to do so, but fails to give a Transfer Notice:
- (a) The Board may give a Transfer Notice on behalf of that Shareholder. The Transfer Notice may not be withdrawn without the Board's consent. The Specified Price will be the Fair Value of the Shares.
 - (b) If the Transferor is bound by the previous subclause, but fails to transfer the Shares on the settlement date then the Company may receive the sale price and enter the Transferee's name in the Share register as the Shareholder. The sale price must be held in trust for the Transferor subject to any lien in favour of the Company.
 - (c) The Board's receipt will be a good discharge for the sale price and after the Shares are registered in the names of the Transferees, the validity of the proceedings may not be questioned by any person.

Exceptions

- 5.28 The provisions of this Constitution relating to pre-emptive rights do not apply to a transfer of Shares:
- (a) to any successor of the Tasman District Council or the Nelson City Council that is a local authority under the Local Government Acts; or

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (b) to any Council-Controlled Organisation wholly-owned by one or more local authorities; or
- (c) if all the Shareholders consent by way of Unanimous Resolution.

6. Registration of Share transfers

6.1 The Board must refuse registration of any transfer of any Share if:

- (a) the transfer would result in a breach of the law or this Constitution; or
- (b) the transferee is a person without legal capacity to contract; or
- (c) any applicable pre-emptive rights provisions have not been complied with; or
- (d) the Board has notice of an agreement between Shareholders relating to the transfer of the Share which has not been complied with.

6.2 The Board may refuse or delay the registration of any Share transfer if:

- (a) any money payable on that Share is due for payment and has not been paid; or
- (b) the Company has an unsatisfied lien on that Share or the proceeds of sale of that Share; or
- (c) the transfer has not been properly executed; or
- (d) the transfer is not accompanied by proof (reasonably required by the Directors) of the right of the Transferor to make the transfer; or
- (e) the transferee is, or is directly or indirectly associated with, a competitor of the Company; or
- (f) in the opinion of the Board, the transferee is unlikely to meet the financial or other obligations of the Shareholder; or
- (g) the Directors acting in good faith decide that registration of the transfer would not be in the best interests of the Company; or
- (h) the transfer document is not in any usual or common form or otherwise in a form prescribed by the Board from time to time (if any),

but the Board must comply with section 84 of the Act.

7. Suspension of right to distributions, lien and forfeiture

Suspension of distributions

7.1 If a Shareholder has defaulted in paying any money due to the Company, the Board may suspend payment of any distribution to that Shareholder until the default is remedied.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- 7.2 The Company may apply any suspended payment in full or part satisfaction of the money due by the Shareholder to the Company.
- 7.3 A Shareholder's liability for all money owing under a call is not extinguished by a transfer of the Share in respect of which the money is owed.
- 7.4 When the total distributions withheld and applied under clause 7.2 equal the amount due by the Shareholder, any suspension of the rights will end.

Lien

- 7.5 The Company has a first lien on the proceeds of sale and all distributions declared in respect of every Share registered in the name of a Shareholder (whether solely or jointly with others), -for:
- (a) all money payable in respect of Shares held by the Shareholder; and
 - (b) all other money payable by the Shareholder to the Company; and
 - (c) any money the Company may be required to pay under any statute or regulation in respect of the Shareholder's Shares,
- whether or not the time for the payment has arrived.
- 7.6 The Company may sell any Share on which the Company has a lien. The Company may not make such a sale:
- (a) unless money in respect of which the lien exists is due for payment; and
 - (b) until it has given notice to the registered Shareholder, or the person entitled to the Share, requiring payment of the money in respect of which the lien exists within 20 Working Days of the notice.
- 7.7 A certificate signed by a Director stating that the power of sale in clause 7.6 has arisen and is exercisable by the Company is conclusive evidence of the facts stated in the certificate.
- 7.8 The Board may authorise any person to complete a transfer of Shares to a purchaser to give effect to any sale exercising a lien.
- 7.9 In respect of a sale exercising a lien under this clause:
- (a) clause 5 will apply with the following modifications:
 - (i) the Board will be deemed to have received a Transfer Notice when it resolves to exercise its lien; and
 - (ii) the Board may fix the Specified Price;
 - (b) the proceeds of sale must be applied first in satisfying any sale costs and second in paying any money owed in respect of the lien. Any balance must be paid to the former Shareholder;

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (c) a Shareholder whose Shares have been sold will cease to be a Shareholder in respect of those Shares, but will remain liable to pay the Company all money which, at the time of the sale, was payable by the Shareholder to the Company but which was not realised and repaid to the Company as a result of the sale;
- (d) the Company must register the purchaser as holder of the Shares that are transferred;
- (e) the purchaser's title to the Shares is not affected by any irregularity or invalidity in the sale;
- (f) the remedy of any person aggrieved by the sale is in damages only and against the Company exclusively; and
- (g) if the certificate for the Shares is not delivered to the Company, the Board may issue a new certificate distinguishing it as the Board thinks fit from the certificate not delivered.

8. Distributions to Shareholders

- 8.1 The Board may authorise a distribution by the Company to Shareholders in accordance with the Act and this Constitution.
- 8.2 All dividends on Shares not fully paid up must be authorised by the Board and paid in proportion to the amount paid up. This provision is subject to the terms of issue of any Shares with special rights to dividends.
- 8.3 Any money payable in cash in respect of Shares will be paid electronically.
- 8.4 Any one of two or more joint holders may give good receipts for any money payable in respect of their Shares.
- 8.5 No interest is payable by the Company on any dividend.
- 8.6 All dividends unclaimed for one year after being authorised may be used by the Board for the benefit of the Company until claimed.
- 8.7 All dividends unclaimed for five years after being authorised may be forfeited by the Board for the benefit of the Company.
- 8.8 The Board may annul any forfeiture and agree to pay a claimant who produces evidence to the Board's satisfaction of entitlement to forfeited dividends.

9. Company acquiring its own Shares

- 9.1 The Company may purchase or otherwise acquire its own Shares. Subject to clause 9.2, these Shares will be deemed to be cancelled immediately on acquisition.
- 9.2 The Company may hold its own Shares uncanceled but only in accordance with sections 67A, 67B and 67C of the Act.
- 9.3 Any Shares reissued by the Company must be treated as the issue of new Shares.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- 9.4 The Company must comply with the Act when it purchases or acquires Shares issued by it.

10. Assistance by Company for Share purchase

The Company may directly or indirectly give financial assistance to a person for the purpose of the purchase of a Share issued or to be issued by the Company.

11. Shareholders' meetings

Annual and special meetings

- 11.1 The Board must, in accordance with section 120 of the Act, call an annual meeting of Shareholders to be held no later than six months after the balance date of the Company.
- 11.2 Subsequent annual meetings must be held within 15 months of the previous annual meeting.
- 11.3 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 Shareholders holding Shares carrying together at least 5% of the voting rights entitled to be exercised on the issue.
- 11.4 The provisions of Schedule 1 of the Act, as modified by this Constitution will govern proceedings at meetings of Shareholders.

Resolutions in lieu of meeting

- 11.5 A written resolution, signed by all of the Shareholders who would be entitled to vote on that resolution at a meeting of Shareholders and who together hold all of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those Shareholders.
- 11.6 A written resolution may consist of several documents (including electronic mail or other similar means of communication) in like form each signed or assented to by one or more Shareholders.

Chairperson

- 11.7 If the ~~Directors have elected a chairperson of the Board, who~~Independent Chairperson is present at the meeting, ~~that person~~the Independent Chairperson must chair the meeting.
- 11.8 ~~If there is no chairperson of the Board, or if the chairperson~~If the Independent Chairperson is not present at the meeting within 15 minutes of the start time, the Directors present may elect a chairperson for that meeting.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- 11.9 If a chairperson is not elected as above the Shareholders present may elect a chairperson for that meeting.

Notice of meetings

- 11.10 Every Shareholder entitled to receive notice of the meeting and every Director must be sent written notice of the time and place of each annual or special meeting.
- 11.11 The notice must be sent at least 20 Working Days before the meeting.
- 11.12 The notice must state:
- (a) the nature of the business to be discussed at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it;
 - (b) the text of any Unanimous Resolution to be put to the meeting; and
 - (c) whether postal votes are authorised
- 11.13 If a meeting is adjourned for 20 Working Days or more, notice of the adjourned meeting must be given as in the case of an original meeting. It is not otherwise necessary to give any new notice for an adjourned meeting.
- 11.14 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 notice does not invalidate the proceedings at that meeting.
- 11.15 An irregularity in a notice of a meeting is waived if:
- (a) all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity; or
 - (b) if all those Shareholders agree to the waiver.

Methods of holding meetings

- 11.16 A meeting of Shareholders may be held either:
- (a) at the place, date, and time appointed for the meeting; or
 - (b) by means of audio, or audio and visual, communication. The Shareholders participating must all be able to simultaneously hear each other throughout the meeting.

Quorum

- 11.17 No business may be transacted at a meeting of Shareholders unless a quorum is present.
- 11.18 A quorum for a meeting of Shareholders is present if there is, in person, by proxy or by authorised representative, a representative of every Shareholder.
- 11.19 If a quorum is not present within the 30 minutes after the start time for the meeting:
- (a) if the meeting is called under section 121(b) of the Act, the meeting is dissolved;

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (b) for any other meeting, the meeting is adjourned to:
 - (i) the same day in the following week at the same time and place, or
 - (ii) a date, time and place to be fixed by the Directors.

If a quorum is not present for the adjourned meeting within 30 minutes after the start time the Shareholders (or their proxies) present are a quorum.

Adjournments

- 11.20 The chairperson may adjourn the meeting from time to time and from place to place. It must adjourn if directed to do so by the meeting.
- 11.21 No business can be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

Voting

- 11.22 Unless a poll is demanded, voting at meetings will be by:
 - (a) voting by voice; or
 - (b) voting by show of hands.

The chairperson of the meeting will decide which method is used.
- 11.23 A declaration by the chairperson of the meeting that a resolution is carried by the necessary majority is conclusive evidence of that fact unless a poll is demanded.
- 11.24 Subject to any rights or restrictions attached to any class of Shares, every Shareholder present in person or by proxy and voting by voice or on a show of hands has one vote.
- 11.25 At a meeting of Shareholders a poll may be demanded by:
 - (a) a Shareholder or Shareholders representing at least 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or
 - (b) by a Shareholder or Shareholders holding Shares in the Company that confer a right to vote at the meeting and on which the aggregate amount paid up is at least 10% of the total amount paid up on all Shares that confer that right; or
 - (c) the chairperson of the meeting,

either before or after the vote is taken on a resolution.
- 11.26 If a poll is demanded, votes must be counted according to the votes attached to the Shares of each Shareholder present in person or by proxy and voting.
- 11.27 The chairperson of the meeting is not entitled to a second or casting vote.
- 11.28 The chairperson may demand a poll on a resolution, either before or after a vote on the resolution, by voice or on show of hands.
- 11.29 The demand for a poll may be withdrawn.

SER-023544-426-24-V5

SER-023544-426-24-V4

- 11.30 Except as provided in clause 11.31, if a poll is demanded it must be taken in the manner directed by the chairperson. The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 11.31 A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately. A poll demanded on any other question may be taken at a time and place fixed by the chairperson. Any other business may be proceeded with pending the taking of the poll.

Proxies

- 11.32 A Shareholder may exercise the right to vote either by being present in person or by proxy.
- 11.33 Subject to the following clauses, a proxy for a Shareholder may attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.
- 11.34 A proxy must be appointed by written notice signed by the Shareholder in the form attached as schedule 1. The notice must state whether the appointment is for a particular meeting or a specified period.
- 11.35 A proxy will not be valid at a meeting of Shareholders unless it is produced to the registered office of the Company (or any other address nominated by the Board) at least 48 hours before the start time for the meeting.
- 11.36 The Board or ~~chairperson of the Board~~ Independent Chairperson may require satisfactory evidence of authority if the proxy is signed on behalf of the Shareholder making the appointment.
- 11.37 The Board must promptly make proxy forms available to any Shareholder who requests them.
- 11.38 The cancellation of the appointment of a proxy or transfer of relevant Shares by a Shareholder will all revoke any previous appointment of a proxy by that Shareholder.

Postal votes

- 11.39 Shareholders may not cast a postal vote at a Shareholders meeting unless the Board has previously authorised postal votes for that meeting.
- 11.40 Postal voting must be carried out in accordance with clause 7 of Schedule 1 of the Act.

Minutes

- 11.41 The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.
- 11.42 Minutes which have been signed correctly by the chairperson of the meeting are prima facie evidence of the proceedings.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

Shareholders' proposals

- 11.43 A Shareholder may give written notice (**Shareholder's Notice**) to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote.
- 11.44 If the Shareholder's Notice is received by the Board:
- (a) at least five Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must give notice of the Shareholder's proposal and the text of any proposed resolution (**Proposal Notice**) to all Shareholders entitled to receive notice of the meeting;
 - (b) less than five Working Days before that last day, the Board must give the Proposal Notice to Shareholders if it is practicable to do so.
- 11.45 The Shareholder must pay the costs of the Proposal Notice unless the Shareholder's Notice is received by the Board at least 20 Working Days before the ~~notice date~~ last day on which notice of the relevant meeting of Shareholders is required to be given by the Board. In that case the Company must pay the cost.
- 11.46 The Directors must give the proposing Shareholder the right to include a statement in support of the proposal with the Proposal Notice. The name and address of the proposing Shareholder must be included with the statement.
- 11.47 The board is not required to include with the Proposal Notice:
- (a) any part of a statement prepared by a Shareholder that the Directors consider to be defamatory, frivolous, or vexatious; or
 - (b) any part of a proposal or resolution prepared by a Shareholder that the Directors consider to be defamatory.
- 11.48 If the proposing Shareholder must pay the costs of giving the Proposal Notice, the proposing Shareholder must deposit with the Company or tender to the Company a sum sufficient to meet those costs when giving the Shareholder's Notice.

Corporations may act by representatives

- 11.49 A body corporate that is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner it could appoint a proxy.

Votes of joint holders

- 11.50 Where two or more persons are registered as the holder of a Share, the vote of the person named first in the Share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

Loss of voting rights if calls unpaid

- 11.51 Subject to this Constitution, if a sum due to a Company in respect of a Share has not been paid, that Share may not be voted at a Shareholder's meeting other than a meeting of an interest group.

Local authorities as shareholders

- 11.52 Each Shareholder that is a local authority may by resolution of its relevant council or other appropriate governing body authorise such person as it thinks fit to act as its representative at any Shareholders' meeting of the Company, or of any class of Shareholders, or at all such meetings until notice of revocation of such authority has been given to the Company. Any such person so authorised is entitled to exercise the same powers on behalf of the relevant Shareholder which he or she represents as that Shareholder could exercise if it were an individual person.

Other proceedings

- 11.53 Except as provided in this Constitution, a meeting of Shareholders may regulate its own procedure.

12. Directors

- 12.1 The Company will have a minimum number of three Directors and a maximum number of six Directors, provided that any Directors appointed in accordance with clause ~~12.5~~12.7(b) will not be taken into account when determining whether such minimum or maximum has been exceeded.

Independent Chairperson

12.2 The Shareholders (by way of the Joint Shareholders' Committee, if such committee exists) shall by Unanimous Resolution appoint an Independent Chairperson to the Board and may likewise remove and/or replace the Independent Chairperson at any time by notice in writing to the Company.

12.3 The Independent Chairperson will be counted when determining whether the minimum or maximum number of Directors has been exceeded.

Appointment and removal

~~12.2~~12.4 The Shareholders (by way of the Joint Shareholders' Committee, if such committee exists) shall together be entitled to appoint up to six Directors at any time and may likewise remove and/or replace any of those Directors at any time by notice in writing to the Company.

~~12.3~~12.5 A notice given under clauses 12.4 takes effect upon receipt of it at the registered office of the Company (including receipt by way of letter, electronic mail, or other similar means of communication) unless the notice specifies a later time at which the notice will take effect (in which case it takes effect at such later time so specified).

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

~~12.4~~12.6 ~~A Director~~ A Director (including, for the avoidance of doubt, the Independent Chairperson) holds office until his or her resignation, retirement, disqualification or removal in accordance with this Constitution.

Temporary vacancy

~~12.5~~12.7 In addition to the appointment or removal of directors under clause 12.4, the Board may:

- (a) appoint any person to be a Director to fill a temporary vacancy in (and only in) circumstances where the number of Directors falls below the minimum number set out in clause 12.1 and with written approval of the Shareholders by Unanimous Resolution; and/or
- (b) at any time during the three-month period prior to the Company's next annual general meeting (but not otherwise) appoint up to two persons to be Directors.

~~12.6~~12.8 Subject to their earlier resignation, retirement, disqualification or removal in accordance with this Constitution, any Director appointed under clause 12.7 will cease to hold office at the commencement of the next annual meeting of the Company or at the next special meeting of the Company, whichever is earlier.

~~12.7~~12.9 Subject to the Act and this Constitution, any Director appointed under clause 12.7 will be eligible for re-appointment as a Director.

Rotation

~~12.8~~12.10 Subject to clause 12.12, at the annual meeting of the Company in each year, one third of the Directors for the time being, or if their number is not a multiple of three then the number nearest to one third, must retire from office. A retiring Director will hold office until the dissolution or adjournment of the annual meeting. A retiring Director is eligible for re-appointment unless he or she is disqualified under this Constitution.

~~12.9~~12.11 Subject to clause 12.12, the Directors to retire at an annual meeting will be those Directors who have been longest in office since their last appointment. As between persons who became Directors on the same day, those who retire will, unless they otherwise agree among themselves, be determined by lot.

~~12.10~~12.12 The Shareholders (by way of the Joint Shareholders' Committee, if such committee exists) may, by way of a notice in writing to the Company, jointly direct that the retirement procedure set out in clauses 12.10 and 12.11 be varied in respect of one or more annual meetings (for example, by directing that a particular Director will not be required to retire by rotation at a particular annual meeting) and such notice is effective and binding upon the Company and its Directors notwithstanding clauses 12.10 and 12.11.

Disqualification of Directors

~~12.11~~12.13 A person will be disqualified from holding the office of Director if he or she:

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

- (a) is or becomes disqualified from being a director under any provision of the Act; or
- (b) dies; or
- (c) becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
- (d) is or becomes an undischarged bankrupt; or
- (e) is or becomes an employee or elected member of any Shareholder which is a local authority.

12.14 A person will be disqualified from holding the office of Independent Chairperson if, in the sole opinion of a simple majority of Shareholders who must provide notice in writing to the Company, he or she is not, or ceases to be, Independent.

Proceedings of the Board

~~12.12~~12.15 Proceedings at meetings of Directors are governed by the Act, as modified by this Constitution.

Self-interested transactions

~~12.13~~12.16 A Director (**Interested Director**) is interested in a transaction if section 139 of the Act applies. After becoming aware that they may be interested, an Interested Director must disclose the particulars of their interest to the Board and enter the particulars in the Interests Register of the Company as required by the Act.

Best interests

~~12.14~~12.17 In accordance with section 131(1) of the Act, a Director must act in good faith and in a manner which that Director believes to be in the best interests of the Company.

Authority to bind Company

~~12.15~~12.18 The Board may authorise any person or class of persons to enter into a contract on behalf of the Company. However, it may not do so where the contract must be signed as a deed if entered by a natural person.

Indemnity and insurance of directors and employees

~~12.16~~12.19 The Company may indemnify and effect insurance in accordance with any part or all of section 162 of the Act.

~~12.17~~12.20 The Board must immediately enter in the interests register the particulars of any indemnity given to, or insurance taken out for, any Director, former director, employee, or former employee of the Company or any related company.

~~12.18~~12.21 The Board may impose any condition in relation to any indemnity or insurance if the condition does not contravene the Act.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

Remuneration of Directors

~~12.19~~12.22 The remuneration payable to the Directors in their capacities as directors will be the sum so determined by the Shareholders (by way of the Joint Shareholders' Committee, if such committee exists) from time to time or such lesser sum as the Directors from time to time determine.

Chairperson

~~12.20~~ The Directors shall elect one of their number as chairperson of the Board.

~~12.211.1~~ A Director who abstains from voting is not presumed to have voted in favour of the relevant resolution of the Board.

~~12.22~~ The person elected as chairperson holds that office until they die or resign or the Directors elect a chairperson in their place.

~~12.23~~ If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within five minutes after the start time, the Directors present may choose one of their number to be chairperson of the meeting.

Notice of meeting

~~12.24~~12.23 A Director or, if requested by a Director to do so, an employee of the Company may convene a meeting of the Board by giving notice in accordance with this clause.

~~12.25~~12.24 At least two Working Days' notice of a meeting of the Board must be given to every Director who is in New Zealand. The notice must include the date, time, method and place of the meeting and the matters to be discussed.

~~12.26~~12.25 An irregularity in the notice of the meeting is waived if all Directors attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

~~12.27~~12.26 Notice of a meeting may be given by any means, including by email or telephone. Notice given by a letter addressed to a Director at his or her last known residential address in New Zealand will be deemed to have been given on the next day after the letter is posted.

Method of holding meetings

~~12.28~~12.27 A meeting of the Board may be held either:

- (a) by a quorum of Directors gathered together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual communication. The Directors participating must constitute a quorum and must all be able to simultaneously hear each other throughout the meeting.

Chairperson

12.28 If the Independent Chairperson is present at a meeting of the Board, the Independent Chairperson must chair the meeting.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

12.29 If at a meeting of the Board the Independent Chairperson is not present within five minutes after the start time, the Directors present may choose one of their number to chair the meeting.

Quorum

12.2912.30 A quorum for a meeting of Directors is a majority of the Directors.

12.3012.31 No business may be transacted at a meeting of Directors unless a quorum is present.

Voting

12.3112.32 Every Director, including, for the avoidance of doubt, the Independent Chairperson, has one vote.

12.33 A Director who abstains from voting is not presumed to have voted in favour of the relevant resolution of the Board.

12.3212.34 The chairperson will not have a casting vote.

12.3312.35 A resolution of the Board is passed if a majority of the votes cast on it are in favour of it.

12.3412.36 Subject to clause 12.16, a Director may vote in respect of any transaction in which they are an Interested Director. If the Director does so, the Director's vote will be counted and the Director will be counted in the quorum present at the meeting.

Minutes

12.3512.37 The Board must ensure minutes are kept of all proceedings at meetings of the Board.

Resolutions

12.3612.38 A resolution in writing, signed or assented to by all Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

12.3712.39 A resolution may consist of several documents (including electronic mail or other similar means of communication) in like form each signed or assented to by one or more Directors.

12.3812.40 A copy of all resolutions must be entered in the minute book of Board proceedings.

No notice to Directors outside New Zealand

12.3912.41 It is not necessary to give notice of a meeting of the Board to any Director temporarily absent from New Zealand.

Major transactions

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

~~12.40~~12.42 The Board may not procure or permit the Company to enter into a “major transaction” (as defined in the Act) unless the transaction is approved by Unanimous Resolution or made contingent on approval by Unanimous Resolution.

Other proceedings

~~12.41~~12.43 Except as provided in this Constitution or any other legislation regulating the Company, the Board may regulate its own procedure.

13. In specie distribution on liquidation

13.1 Subject to the terms of issue of any Shares, if the Company is liquidated any assets remaining after payment of the debts and liabilities of the Company, and the costs of liquidation, must be distributed among each Shareholder in proportion to the total amount paid up on all their Shares.

13.2 If the Shareholders agree by Unanimous Resolution, a liquidator may:

- (a) divide any part of the Company’s assets between the Shareholders in kind;
- (b) fix the value of the assets divided;
- (c) decide how the division will be carried out between Shareholders and/or different classes of Shareholders; ~~and~~
- (d) vest any part of the assets in trustees to hold on trust for the Shareholders on terms fixed by the liquidator.

13.3 Different Shareholders may receive different assets.

13.4 No Shareholder is obliged to accept any asset which is subject to any liability including any contingent liability.

14. Audit

The Company shall be audited, and the auditor of the Company shall be the Auditor General, in accordance with the Local Government Act 2002.

15. Amendment

This ~~constitution~~Constitution may only be amended by way of a Unanimous Resolution.

SER-023544-426-24-V5

76874544v1

SER-023544-426-24-V4

Schedule 1 – Form of appointment of proxy

To: Infrastructure Holdings Limited

Appointment of Proxy

I/We _____

of _____

appoint _____ [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 meeting of the company to be held

at _____

on _____ commencing at _____ am/pm

[or all meetings of the company held within 12 months of the date of this proxy] and at any adjournment of the meeting.

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

Vote with a tick

| Resolutions | For | Against |
|-------------|-----|---------|
|-------------|-----|---------|

1. _____

2. _____

« (delete if not required)

Signed on _____ [date]

[Usual signature/s]

SER-023544-426-24-V5

76874544v1



APPENDIX B

Shareholders' Agreement

|
|
Draft Shareholders Agreement [TDC 17 May 2022 marked-up to show changes from the version provided to the Joint shareholders Committee on 5 April 2022]

Shareholders' Agreement for Infrastructure Holdings Limited

between
Tasman District Council
and
Nelson City Council
and
Infrastructure Holdings Limited

SER-023544-426-101-V3

Shareholders' Agreement for Infrastructure Holdings Limited

Date: 2022

Parties

Tasman District Council (**TDC**)

Nelson City Council (**NCC**)

Infrastructure Holdings Limited (the Company)

1. Interpretation and definitions

Definitions

1.1 In this agreement, unless the context otherwise requires:

Accession Deed

means an accession deed entered into by any Additional Shareholder in a form satisfactory to all of the Parties pursuant to which the Additional Shareholder agrees to observe, perform and be bound by this agreement;

Act

means the Companies Act 1993;

Additional Shareholder

means any person who becomes a Shareholder after the date of this agreement, as permitted by this agreement and the Constitution;

Agreement for Sale and Purchase

means the agreement for sale and purchase of all the ordinary shares in Nelson Airport Limited and Port Nelson Limited between TDC, NCC (as vendors) and the Company (as purchaser) dated on or about the date of this agreement;

Board

means the Directors acting together as the board of directors of the Company;

Business

means holding and administering investments in entities in which the Shareholders have a substantial interest for the benefit of the Nelson and Tasman regions and securing funding for and providing funding to the same;

Constitution

means the constitution of the Company as adopted or amended from time to time;

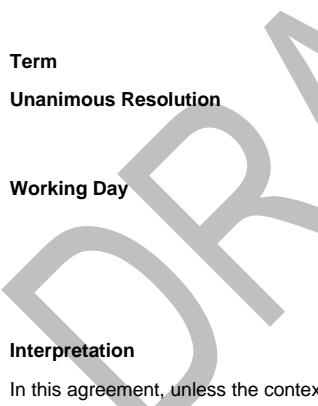
Council-Controlled Trading

| | |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Organisation | has the meaning given to it in the Constitution; |
| Director | means a person appointed as director of the Company in accordance with the terms of the Constitution, this agreement and the Act; |
| Effective Date | means the date of this agreement; |
| Equity | means shares in the case of a company, and partnership interest (as defined in the Limited Partnerships Act 2008) in the case of a limited partnership; |
| Financial Year | means: <ul style="list-style-type: none"> (a) the period from the Effective Date to 30 June immediately following the Effective Date; (b) each subsequent period commencing on 1 July and ending on the next 30 June during the Term; and (c) the period from 1 July immediately preceding the end of the Term, to the end of the Term, <p>however, if there is a change of balance date, all references in this definition to 30 June will be deemed to be varied to the new balance date and all references to 1 July will be deemed to be varied to the day after that new balance date.</p> |

Governance and Appointments

| | |
|--------------------------------------|-----------------------------------------------------------------------------------------|
| <u>Committee</u> | <u>means the Governance and Appointments Committee described in clause 13;</u> |
| <u>Independent</u> | <u>has the meaning given in the Constitution;</u> |
| Joint Shareholders' Committee | has the meaning given to it in the Constitution; |
| Local Government Acts | has the meaning given to it in the Constitution; |
| <u>Nelson Airport Shares</u> | <u>has the meaning given to that term in the Agreement for Sale and Purchase;</u> |
| Party | means, as the context requires, any one or all of the Parties to this agreement and (on |

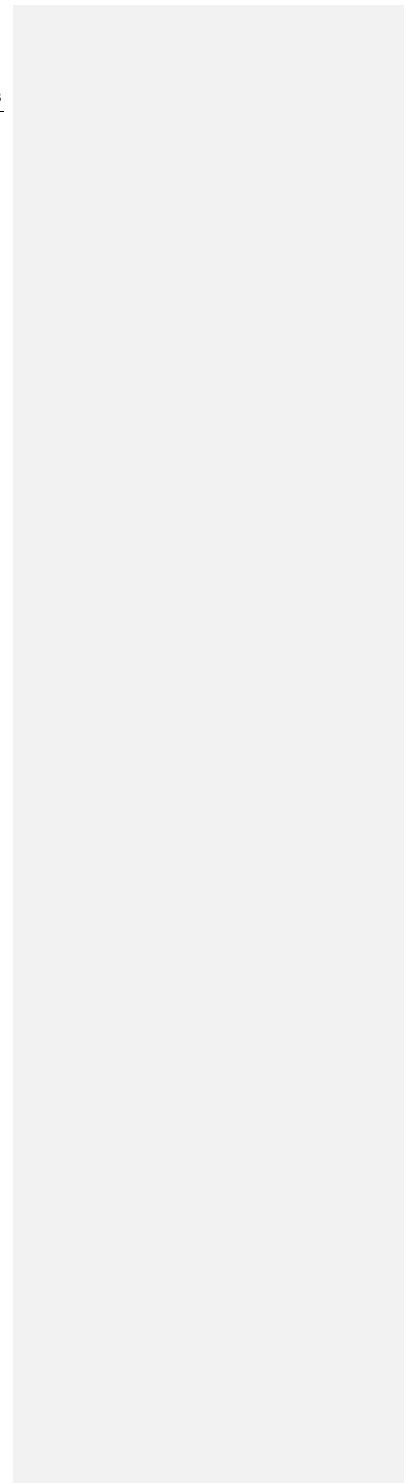
| | |
|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | execution of an Accession Deed) any Additional Shareholder; |
| Port Nelson Shares | has the meaning given to that term in the <u>Agreement for Sale and Purchase</u> ; |
| Purchase Price | has the meaning given to that term in the <u>Agreement for Sale and Purchase</u> ; |
| Settlement | has the meaning given to that term in the <u>Agreement for Sale and Purchase</u> ; |
| Share | means any share in the Company; |
| Shareholder | means a person for the time being registered in the Company's Share register as the holder of one or more Shares; |
| Statement of Intent | has the meaning given to it in the Constitution, and where the context requires, means the most recent Statement of Intent; |
| Subsidiary | means any company or limited partnership in which the Company holds a majority of the Equity; |
| Term | has the meaning given in clause 14.1; |
| Unanimous Resolution | means a resolution that is approved by all of the votes of those Shareholders entitled to vote and voting on the relevant matter; and |
| Working Day | means any day other than a Saturday, Sunday, or statutory public holiday on which trading banks in Nelson, New Zealand are open for business. A Working Day is deemed to commence at 9.00 am and terminate <u>end</u> at 5.00 pm. |



Interpretation

1.2 In this agreement, unless the context otherwise requires:

- (a) A reference to a person includes any other entity or association recognised by law and vice versa.
- (b) Words referring to the singular include the plural and vice versa.
- ~~(c)~~ The word including and other similar words do not imply any limitation.
- ~~(e)~~(d) Any reference to a Party includes its successors or permitted assigns or both.
- ~~(d)~~(e) Where a Party is made up of more than one person, the liability of each of those persons is joint and several.
- ~~(e)~~(f) Words importing any gender will include all other genders.
- ~~(f)~~(g) Clause headings are for reference only.



~~(g)~~(h) References to clauses and schedules are references to clauses of, and schedules to, this agreement.

~~(h)~~(i) Reference to any document includes reference to that document as amended, novated, supplemented, or replaced from time to time.

~~(i)~~(j) References to money will be New Zealand currency, unless specified otherwise.

~~(j)~~(k) Expressions referring to **writing** will be construed as including references to words printed, typewritten, or otherwise visibly represented, copied, or reproduced (including by ~~fax or email~~ **electronic mail**).

~~(k)~~(l) References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.

2. Objectives of the Company

2.1 The Shareholders intend to carry on the Business in the name of the Company and must at all times during the Term:

- (a) as the Company is a Council-Controlled Trading Organisation, comply with the Local Government Acts;
- (b) use their reasonable endeavours to co-operate with each other to ensure the efficient operation of the Business; and
- (c) carry on the Business, and procure that any Director appointed by that Shareholder carries on the Business, in compliance with all laws.

2.2 Unless this agreement is varied by Unanimous Resolution, the Company may not engage in any business or activity which is not the Business or reasonably incidental to the Business.

~~3. Preliminary steps~~

~~3. Share subscriptions~~

~~Initial Issue~~

~~3.1~~ Immediately following the Effective Date, the Company will on incorporation issue and the Shareholders will subscribe and ~~(where applicable)~~ pay for ~~both~~:

~~3.2.1~~ 20084,460 fully-paid, ordinary Shares, for the consideration and to the Shareholders in the proportions set out below: ~~and to be paid in accordance with the terms set out in clause 3.4:~~

| Shareholder | Number of Shares | Issue Price | Subscription Amount |
|-------------------------|------------------|-------------|---------------------|
| Tasman District Council | <u>42,230</u> | \$100 | <u>\$44,223,000</u> |
| Nelson City Council | <u>42,230</u> | \$100 | <u>\$44,223,000</u> |

Inserted Cells

Inserted Cells

— AND

~~[/] partly paid, ordinary~~ **General**

3.2 ~~The Shares, for the~~ issued pursuant to clause **Error! Reference source not found.** of this agreement will, on fulfilment by each Shareholder of their respective obligations to pay the Subscription Amounts recorded opposite their respective names in the table contained in clause **Error! Reference source not found.** of this agreement, be credited as fully paid up.

3.3 In consideration ~~and to~~ of the Shareholders ~~in the proportions~~ subscribing for the Shares in the Company in accordance with this agreement, the Company makes the following warranties, representations and undertakings to the Shareholders:

- (a) ~~the Shares will be issued to each Shareholder free and with the amounts paid up~~ clear of any encumbrance, charge or other claim by a third party; and outstanding
- (b) ~~all requirements of the Act and the Company's constitution have been, or will be, complied with on a timely basis in relation to the issue of the Shares and the execution of this agreement and the allotment and issue of the Shares have been authorised by all necessary corporate and other acts and do not violate any trust deed, instrument, agreement or other arrangement to which the Company is party.~~

3.4 On the date of Settlement:

- (a) ~~each Shareholder must pay the Subscription Amounts recorded opposite their respective names in the tables contained in clause~~ **Error! Reference source not found.** in full to the Company; and
- (b) ~~the Company must pay the Purchase Price in full to the Shareholders in accordance with the Agreement for Sale and Purchase.~~

4. ~~The parties agree that the amount payable by each Shareholder pursuant to clause 3.4(a) will be set out below~~ off against the amount payable by the Company pursuant to clause 3.4(b), with the intent that on the date of Settlement, the consideration paid for the Shares will be applied in full payment of the Purchase Price (on a cashless basis). **Inconsistency with other documents**

| Shareholder | Number of Shares | Issue Price | Amount to be paid up immediately on issue | Amount of issue price to remain outstanding |
|-------------------------|------------------|-------------|-------------------------------------------|---------------------------------------------|
| Tasman District Council | 400 | \$1 | \$400 | \$0 |
| Nelson City Council | 400 | \$1 | \$400 | \$0 |

5. Inconsistency with other documents

5.14.1 If there is a conflict or inconsistency between this agreement and the Constitution or any other document between the Parties or any of them, this agreement will prevail to the extent of that inconsistency.

5.24.2 To give effect to clause 4.1, if any Shareholder gives notice to the other Shareholders, the Shareholders will:

- (a) do all such things and sign all such documents necessary to alter the Constitution or any other document between the Shareholders or any of them to remove any inconsistency or conflict; and
- (b) pass a Unanimous Resolution (as the case may require) to approve and ratify any and all past acts of the Board, the Company or the Shareholders done in accordance with this agreement, which might otherwise be invalid as a result of any conflict or inconsistency with the Constitution.

6.5. Directors

6.45.1 Directors (including an Independent chairperson) are to be appointed in accordance with clauses 12.2 to 12.56 of the Constitution.

6.25.2 Directors are to be remunerated in accordance with clause 12.4922 of the Constitution.

6.35.3 Any appointment of a director of a Subsidiary, and any remuneration of any such director, is to be made by the Board.

6.45.4 The Company will:

- (a) indemnify each Director; and
- (b) effect insurance,

in accordance with any part or all of section 162 of the Act. The Shareholders will take all reasonable steps to cause the Board to do this.

7.6. Key Decisions

The Board must not, and must not cause the Company to do any of the following, unless first approved in writing by Unanimous Resolution:

- (a) enter into any "major transaction" as defined in the Act;
- (b) make any material disposal of assets which are not budgeted for and/or provided for in the Statement of Intent in the relevant Financial Year (or any series of related disposals which, if considered together, would be material); or
- (c) engage in any business or activity which is not the Business or reasonably incidental to the Business; or
- (d) undertake any capital raising or external debt financing or refinancing that is not in accordance with the Company's corporate treasury structure policies or existing lending and/or borrowing agreements; or

- (e) enter into, terminate or grant a waiver of rights under, or material amendment to, any contract in relation to a transaction with a Shareholder or a Subsidiary which has not been included in an approved budget, Statement of Intent or otherwise previously approved; or
- (f) grant any security interest over the assets of the Company, other than in the ordinary course of business or as permitted by the Company's policies regarding the granting of security interests and/or the Company's existing lending and/or borrowing agreements; or
- (g) appoint an administrator or take a step to liquidate, dissolve or wind up the Company; or
- (h) make any decision to undertake an initial public offering; or
- (i) make any alteration to, or revocation of, the Constitution or the adoption of a new constitution for the Company; or
- (j) issue, cancel, buy-back or make any reduction of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares; or
- (k) transfer any Shares held by the Company or purchase or ~~other~~ otherwise acquire its own Shares; or
- (l) approve any transfer of Shares by any Shareholder; or
- (m) give financial assistance for the purposes of, or in connection with, the purchase of Shares; or
- (n) consolidate, divide or subdivide any Shares or create, alter or cancel any rights attaching to Shares; or
- (o) apply any amounts available for distribution in paying up Shares or other securities; or
- (p) exercise the right to issue shares in lieu of dividends conferred by section 54 of the Act; or
- (q) make any amendment to this agreement not expressly contemplated by the provisions of this agreement; or
- (r) create, acquire or sell any Subsidiary.

8.7. Loans and guarantees

No Shareholder will be required to:

- (a) make any loans to the Company; or
 - (b) guarantee the obligations of the Company to a creditor,
- except with the express agreement of that Shareholder and then only in accordance with all applicable laws.

9.8. Dividends

The dividend policy of the Company must be included in each annual Statement of Intent and accordingly approved by Unanimous Resolution.

10.9. Additional Shareholders

10.49.1 Shares may only be transferred in accordance with the Constitution.

10.29.2 Before a person becomes an Additional Shareholder, they must execute an Accession Deed.

10.39.3 The Board will refuse to approve a transfer of Shares if this clause is not complied with.

11.10. Grant of security over Shares

A Shareholder may not mortgage or pledge as security its Shares to any person without obtaining the prior written consent of all other Shareholders.

12.11. Provision of information

12.411.1 The Company must comply with the reporting obligations of Council-Controlled Trading Organisations in accordance with the Local Government Act 2002, including producing an annual Statement of Intent and the publication of required reports.

12.211.2 The Parties agree that they will ensure that:

- (a) each Subsidiary complies with any applicable reporting obligations under the Local Government Act 2002, the Port Companies Act 1988 and any other relevant legislation; and
- (b) prior to incorporation of any Subsidiary, the Parties will agree the timing and content of regular reporting to be provided by the Subsidiary to the Company.

13.12. Confidentiality

13.412.1 Subject to clause 12.2, each Shareholder will keep confidential, and make no disclosure of:

- (a) the contents of this agreement;
 - (b) all information obtained from the other Shareholder under this agreement or in the course of negotiations in respect of this agreement; and
 - (c) all information obtained from the Company, or developed or held for the purposes of the Company,
- (together, **Confidential Information**).

13.212.2 Confidential Information may be disclosed if:

- (a) disclosure is required by law, or is necessary to comply with the listing rules of any recognised stock exchange; or

- (b) that Confidential Information already is, or becomes, public knowledge other than as a result of a breach of this clause by that Shareholder; or
- (c) disclosure is made to an officer, employee, agent, contractor, financier, lawyer, accountant, or other professional adviser for that Shareholder on a need-to-know basis and such person is advised of the confidentiality obligations under this clause and reasonable security measures are put in place to safeguard the Confidential Information; or
- (d) disclosure is authorised in writing by the other Shareholders and then only on the terms, if any, specified in such written authority.

43.312.3 If any Shareholder is permitted by this agreement and by law to make a disclosure or announcement under the preceding clause, before doing so they must:

- (a) give to the other Shareholder the maximum notice reasonably practicable in the circumstances, specifying the requirement under which it is required to disclose Confidential Information, and the precise Confidential Information which it is required to disclose;
- (b) comply with all reasonable directions by the other Shareholders to contest or resist the requirement to disclose Confidential Information; and
- (c) consult in good faith with the other Shareholders with a view to agreeing on the form and timing of the disclosure.

43.412.4 The provisions of this clause will survive the termination or expiration of this agreement.

44.13. Governance and Appointments Committee

44.113.1 The Company will have a Governance and Appointments Committee to recommend to the Board the appointments for which the Company is responsible, including the appointment of directors to any Subsidiary.

44.213.2 The Governance and Appointments Committee will have a maximum of six members and not less than three.

44.313.3 Nelson City Council is entitled to appoint one member to the Governance and Appointments Committee at any time and may likewise remove and/or replace that member at any time, in each case by notice in writing to the Company signed by a duly authorised officer of Nelson City Council.

44.413.4 Tasman District Council is entitled to appoint one member to the Governance and Appointments Committee at any time and may likewise remove and/or replace that member at any time, in each case by notice in writing to the Company signed by a duly authorised officer of Tasman District Council.

44.513.5 The Board shall be entitled to appoint, remove and replace up to four members to the Governance and Appointments Committee at any time.

44.613.6 Each member of the Governance and Appointments Committee holds office until his or her resignation, retirement, disqualification or removal in accordance with this agreement.

~~14.7~~13.7 The Governance and Appointments Committee will elect one of their number to be chairperson.

~~13.8~~ The Company will remunerate each member of the Governance and Appointments Committee in a manner determined by the Board.

~~14.8~~13.9 A quorum for a meeting of the Governance and Appointments will be three members (including the member appointed in accordance with each of clauses 13.3 and 13.4) present in person or by means of audio, or audio and visual, communication. The members must all be able to simultaneously hear each other throughout the meeting.

~~13.10~~ To avoid doubt, no decision or recommendation to the Board may be made by the Governance and Appointments Committee at any meeting where a quorum is not present.

~~14.9~~13.11 Except as otherwise provided in this agreement, the Governance and Appointments Committee may regulate its procedure and meetings as it considers fit.

~~15.14.~~ **Term**

~~15.14.1~~ 14.1 The term of this agreement (**Term**) will commence on the Effective Date and continue until it is terminated on the earlier of the date on which:

- (a) the Shareholders unanimously agree in writing to terminate this agreement;
- (b) the Company is liquidated in accordance with this agreement or the Act; or
- (c) one Shareholder owns all of the Shares.

In the case of any Shareholder, it will also cease to apply in respect of that Shareholder when that Shareholder ceases to hold (whether beneficially or legally) any Shares. However, that Shareholder will remain liable to fulfil its obligations under this agreement or under any legislation prior to ~~their~~ ceasing to hold any Shares.

~~15.214.2~~ 14.2 Termination of this agreement will not affect the rights and obligations of the Parties which are intended to survive the termination of this agreement. Such termination will be without prejudice to, and will not be deemed a waiver of any claims which any Party may have against any other Party in respect of any breach or other failure to comply with any provision of this agreement prior to the date of termination.

~~16.15.~~ **Dispute resolution**

~~16.15.1~~ 14.1 If any Party has any dispute (**Dispute**) with any other Party in connection with this agreement:

- (a) that Party will promptly give full written particulars of the Dispute to the others; and
- (b) the Parties will promptly meet together and in good faith try to resolve the Dispute.

~~16.215.2~~ 14.2 If the Dispute is not resolved within 20 Working Days of written particulars being given (or any longer period agreed to by the Parties), the Dispute will be referred to

mediation by either Party giving written notice of such referral to mediation to the other.

~~46.315.3~~ Until mediation ceases, neither Party may commence arbitration or legal proceedings.

~~46.415.4~~ The mediation procedure is:

- (a) the Party who wishes to resolve a Dispute must give a notice of Dispute to the other Party;
- (b) the notice must state that the Dispute has arisen, and state the matters in dispute;
- (c) when the notice has been given the Parties will appoint a mediator. If they fail to appoint a mediator within 10 Working Days, on request by either Party, the mediator will be appointed by the President of the New Zealand Law Society or the President's nominee;
- (d) the Parties must co-operate with the mediator in an effort to resolve the Dispute;
- (e) if the Dispute is settled, the Parties must sign a copy of the terms of the settlement;
- (f) if the Dispute is not settled within 20 Working Days after the mediator has been appointed, or within any extended time that the Parties agree to in writing, the mediation must cease; ~~and~~
- (g) the Company will pay the mediator's fee and costs including travel, room hire, refreshments ~~etc.~~

~~46.515.5~~ The terms of settlement bind the Parties and override the terms of this agreement if there is any conflict.

~~46.615.6~~ The terms of settlement may not be used as evidence in any mediation, arbitration or legal proceedings except with the prior written approval of all Parties.

~~46.715.7~~ Written statements given to the mediator or to one another, and any discussions between them or between them and the mediator during the mediation are not admissible by the recipient in any arbitration or legal proceedings.

~~46.815.8~~ This clause will not apply to an application by either Party seeking urgent interlocutory relief from any court.

~~46.915.9~~ Pending resolution of any Dispute the Parties will perform this agreement in all respects including performance of the matter which is the subject of dispute.

~~46.1015.10~~ Either Party may commence arbitration when the mediation procedure ceases by giving written notice to the other Party.

~~46.1115.11~~ The arbitration will be conducted by one arbitrator appointed by the Parties. If they cannot agree on an arbitrator within 10 Working Days, on request by either Party, the appointment will be made by the President of the New Zealand Law Society or the President's nominee.

~~46.1215.12~~ The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.

~~16.13~~15.13 Neither Party will unreasonably delay the dispute resolution procedures in this clause.

~~16.14~~15.14 This clause does not apply to:

- (a) any dispute arising in connection with any attempted renegotiation of this agreement; or
- (b) an application by either Party for urgent interlocutory relief.

~~17.16~~ **General provisions**

Exclusion of implied relationships

~~17.116.1~~15.116.1 Nothing contained in this agreement will be deemed or construed to constitute any Party a partner, agent, or representative of any other Party, or to create any trust, and this agreement must not be construed as giving to any Party any of the rights or subjecting any Party to any of the liabilities incidental to a partnership, agency, representative or trust relationship. No Party may make any warranties or representations or incur any obligation on behalf of any other Party.

Costs

~~17.216.2~~15.216.2 The Parties will ensure that the Company pays the legal costs of the Parties associated with the preparation and negotiation of this agreement and all related ancillary documents.

Assignment

~~17.316.3~~15.316.3 Except as provided elsewhere in this agreement, no Party may assign, transfer or novate any of that Party's rights or obligations under this agreement.

Entire agreement

~~17.416.4~~15.416.4 This agreement constitutes the entire agreement between the Parties as to its subject. It supersedes and cancels any previous agreement, understanding, or arrangement whether written or oral. The Parties agree that it is fair and reasonable that this clause is conclusive between them, as required by section 50 of the Contract and Commercial Law Act 2017.

Further assurance

~~17.516.5~~15.516.5 Each Party will execute all documents and do all other acts and things which are both reasonable and necessary to carry out its obligations under, and the intention of, this agreement.

Severance

~~17.616.6~~15.616.6 If any provision of this agreement is held to be unenforceable, illegal or invalid by any court or tribunal:

- (a) the rest of this agreement will remain in full force and effect;
- (b) the Parties will co-operate to ensure that the spirit and intention of this agreement is carried out as far as is reasonably possible; and
- (c) the Parties will, if necessary, amend this agreement accordingly.

Waiver

47.716.7 None of the provisions of this agreement will be considered to have been waived by a Party except when such waiver is given in writing.

47.816.8 No delay or omission of any Party in exercising any right, power, privilege or remedy (each, a **Right**) under this agreement will operate to impair such Right or be construed as a waiver of such Right. Any single or partial exercise of any such Right will not preclude any other future exercise of such Right or the exercise of any other Right.

47.916.9 No waiver by a Party of any breach will be deemed a waiver of any continuing or recurring breach unless it is expressly agreed in writing to be so by that Party.

Notices

47.1016.10 Any notice or other communication (**Notice**) given under this agreement must be in writing.

47.1116.11 A notice may be served personally or sent to the relevant Party's following communication points:

Tasman District Council Address: 189 Queen Street, Richmond
 Representative: Mike Drummond, Group Manager-
 Finance

Email: Mike.Drummond@tasman.govt.nz

Nelson City Council

Address: 110 Trafalgar Street, Nelson
 Representative: Nikki Harrison, Group
 Manager Corporate Services
 Email: nikki.harrison@ncc.govt.nz

Company

Address: 8 Vickerman Street, Port Nelson, Nelson
 Representative: Daryl Wehner, Chief Financial
 Officer, Port Nelson Limited
 Email: daryl.wehner@portnelson.co.nz

47.1216.12 Each Party will notify the other in writing of any changes to the communication points.

47.1316.13 Notices are deemed served at these times when:

- (a) given personally, on delivery; or
- (b) sent by email, as evidenced by the sender's sent email history, unless another party can prove it was not received.

47.1416.14 Any notice served on a Saturday, Sunday or public holiday is deemed served on the first Working Day after that day.

47.1516.15 If the Party is a company or limited partnership, the notice may be given to a director of that Party or a director of the general partner of that Party or the Representative named above, if any.

~~47.46~~16.16 Time is of the essence.

Governing law and jurisdiction

~~47.47~~16.17 This agreement is governed by and construed according to the laws of New Zealand and the Parties submit to the exclusive jurisdiction of the courts of that jurisdiction in respect of any dispute or proceeding arising out of this agreement.

Counterparts

~~47.48~~16.18 This agreement may be executed by each signatory in separate counterpart copies, whether originals, photocopies, ~~fax~~ or electronic copies. When each signatory has executed at least one copy, the separately signed documents when brought together will form a binding legal document.

Signed by

Signed by **Tasman District Council** by its duly authorised officer in the presence of:

[name and title of authorised officer]

Signature of witness

Name of witness

Occupation

Address

Signed by **Nelson City Council** by its duly authorised officer in the presence of:

[name and title of authorised officer]

Signature of witness

Name of witness

Occupation

Address

Signed by **Infrastructure Holdings Limited** ~~Limited~~ as the Company:-

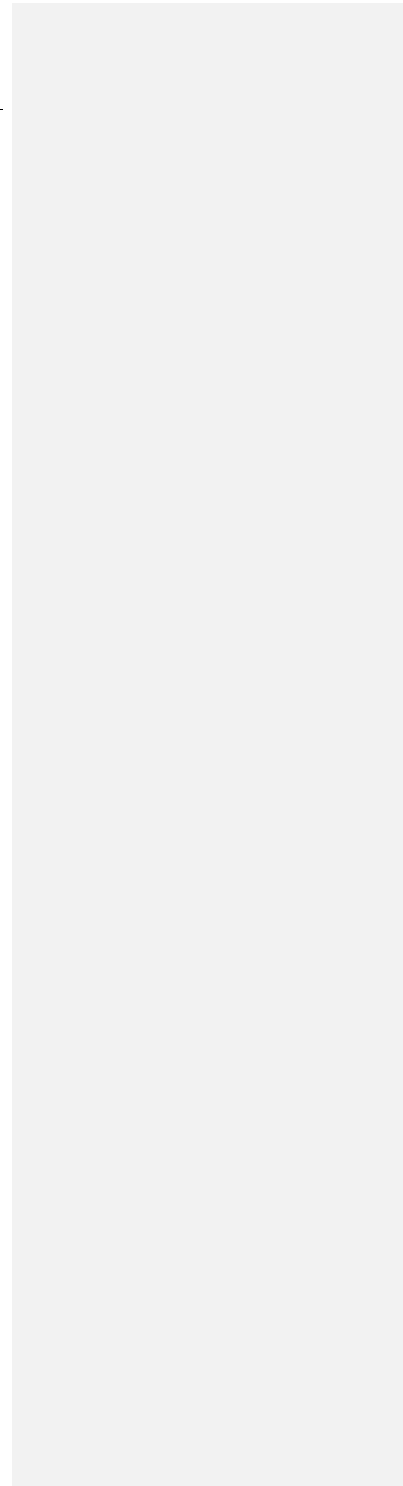
Director's signature

Director's signature

Director's full name

Director's full name

DRAFT





IMPORTANT! Please do not return your signed consent by post.
You must upload this document online. Refer to our [help guide on filing shareholder consent forms](#)

Consent of shareholder of proposed company

Section 12(1) Companies Act 1993

Name of proposed company

INFRASTRUCTURE HOLDINGS LIMITED

Barcode (for office use)

50002746828

Proposed company number

8342909

Shareholder's full legal name

Nelson City Council

Shareholder's address

110 Trafalgar Street
Nelson
Nelson7010
NZ

Number of shares held

42230

Shareholder's consent

I consent to act as shareholder of the above proposed company and to taking the number of shares specified.

(Signature)

Name of signatory

Date

IMPORTANT INFORMATION

Shareholders

- > A trust, whether expressed, implied or constructive, cannot be entered on the share register. Where, for example, shares are held by a family trust the name of the trustees must be entered individually as members of a share parcel.
- > Initials of the person's name are not allowed. The full legal name must be provided.
- > A postal address, private bag or DX number is not permitted for the shareholder's address.
- > Only one person must complete this form. If the shares are held jointly with others then each shareholder must complete and sign their own form, indicating they own them jointly.
- > If the shareholder is a natural person, please give a residential address. If the shareholder is a body corporate, please give the address of its registered office or, if it does not have a registered office, the address of its principal place of business.
- > If this form has been signed by an agent, it must be accompanied by the instrument authorising the agent to sign it. An example where this would be used is when the shareholder is overseas and unable to sign the form when the company is to be incorporated.
For more information on this process including a sample authorisation form, visit our website - <https://companies-register.companiesoffice.govt.nz/filing-consent-forms>.
- > If this form is signed under power of attorney, the attorney must provide a Certificate of Non-Revocation.
For more information on this process, visit our website - <https://companies-register.companiesoffice.govt.nz/filing-consent-forms>

Completed by

Sue Christine CROLL (PITT&MOORE)
78 Selwyn Place
Nelson
Nelson 7010
NZ

IMPORTANT! Please do not return your signed consent by post.
 You must upload this document online. Refer to our [help guide on filing shareholder consent forms](#)

Consent of shareholder of proposed company

Section 12(1) Companies Act 1993

Name of proposed company

INFRASTRUCTURE HOLDINGS LIMITED

Barcode (for office use)

50002746827

Proposed company number

8342909

Shareholder's full legal name

Tasman District Council

Shareholder's address

189 Queen Street
 Richmond
 Richmond 7020
 NZ

Number of shares held

42230

Shareholder's consent

I consent to act as shareholder of the above proposed company and to taking the number of shares specified.

.....
 (Signature)

Name of signatory

Date

IMPORTANT INFORMATION

Shareholders

- > A trust, whether expressed, implied or constructive, cannot be entered on the share register. Where, for example, shares are held by a family trust the name of the trustees must be entered individually as members of a share parcel.
- > Initials of the person's name are not allowed. The full legal name must be provided.
- > A postal address, private bag or DX number is not permitted for the shareholder's address.
- > Only one person must complete this form. If the shares are held jointly with others then each shareholder must complete and sign their own form, indicating they own them jointly.
- > If the shareholder is a natural person, please give a residential address. If the shareholder is a body corporate, please give the address of its registered office or, if it does not have a registered office, the address of its principal place of business.
- > If this form has been signed by an agent, it must be accompanied by the instrument authorising the agent to sign it. An example where this would be used is when the shareholder is overseas and unable to sign the form when the company is to be incorporated.
 For more information on this process including a sample authorisation form, visit our website - <https://companies-register.companiesoffice.govt.nz/filing-consent-forms>.
- > If this form is signed under power of attorney, the attorney must provide a Certificate of Non-Revocation.
 For more information on this process, visit our website - <https://companies-register.companiesoffice.govt.nz/filing-consent-forms>

Completed by

Sue Christine CROLL (PITT&MOORE)
 78 Selwyn Place
 Nelson
 Nelson 7010
 NZ

SG DRAFT DATED 12 MAY 2022

**Agreement for Sale and Purchase of
Shares in Port Nelson Limited and Nelson
Airport Limited**

between
Nelson City Council
and
Tasman District Council
and
Infrastructure Holdings Limited

PITT & MOORE
LAWYERS AND NOTARIES PUBLIC

SER-023544-426-59-V1

Agreement for Sale and Purchase of Shares in Port Nelson Limited and Nelson Airport Limited

Date:

2022

Parties

Nelson City Council (NCC)

Tasman District Council (TDC)

(Vendor)

Infrastructure Holdings Limited (Purchaser)

Agreement

1. Definitions and interpretation

Definitions

1.1 In this agreement, unless the context otherwise requires:

| | |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Company or Companies | means Port Nelson Limited and Nelson Airport Limited, further details of which are set out in schedule 1; |
| Encumbrance | includes any mortgage, charge, lien, pledge, hypothecation, restriction against transfer, encumbrance, option, right of pre-emption and other security interest or third party interest (whether legal or equitable); |
| Nelson Airport Shares | 1,200,000 ordinary shares owned by TDC and 1,200,000 ordinary shares owned by NCC (being together all the ordinary shares) on the date of this agreement; |
| Port Nelson Shares | 12,707,702 ordinary shares owned by TDC and 12,707,702 ordinary shares owned by NCC in Port Nelson Limited (being together all the ordinary shares) on the date of this agreement; |
| Purchase Price | means \$8,446,000 in total, \$4,223,000 of which is payable to each Vendor; |
| Settlement | means the point in time where the settlement obligations of the Purchaser are completed in accordance with this agreement; |
| Settlement Date | means [insert settlement date] ; |

| | |
|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Shares | means the Port Nelson Shares and the Nelson Airport Shares; |
| Shareholders' Agreement | means the shareholders' agreement between the Vendors and the Purchaser dated on or about the date of this agreement in relation to shares held in the Purchaser; and |
| Subscription Amount | means the total amount to be paid up by each Vendor to the Purchaser immediately upon issue of the ordinary shares in the Purchaser pursuant to clauses 3.1 and 3.4 of the Shareholders' Agreement. |

Interpretation

- 1.2 In this agreement, unless the context otherwise requires:
- (a) A reference to a person includes any other entity or association recognised by law and vice versa.
 - (b) Words referring to the singular include the plural and vice versa.
 - (c) Any reference to a party includes:
 - (i) that party's executors, administrators, or permitted assigns; or
 - (ii) if a company, limited partnership, or any other body corporate, its successors or permitted assigns or both.
 - (d) Clause headings are for reference only.
 - (e) References to clauses and schedules are references to clauses of and schedules to this agreement.
 - (f) Reference to any document includes reference to that document as amended, novated, supplemented, or replaced from time to time.
 - (g) References to money will be New Zealand currency, unless specified otherwise.
 - (h) Expressions referring to **writing** will be construed as including references to words printed, typewritten or otherwise visibly represented, copied or reproduced (including by fax or email).
 - (i) In this agreement, time is of the essence.

2. Sale and purchase of Shares

- 2.1 Each Vendor agrees to sell its Shares, and the Purchaser agrees to purchase the Shares, together with all rights attached to them, for the Purchase Price with effect from Settlement and in accordance with this agreement.
- 2.2 The Shares will be sold and purchased free of all Encumbrances.

- 2.3 The Shares will be sold and purchased with all benefits, rights, privileges and entitlements which accrue or attach to them as at the date of this agreement including the right to all bonuses, dividends and other distributions made or paid in respect of the Shares on or after the date of this agreement.

3. Purchase price

Payment of purchase price

- 3.1 On the Settlement Date, the Purchaser must pay the Purchase Price to each Vendor in the portions described in the definition of "Purchase Price".
- 3.2 The Purchase Price must be paid in cleared funds, subject to clause 3.3, without any set-off, deduction, or withholding to such bank account as each Vendor nominates in writing before the Settlement Date.
- 3.3 The Purchaser may satisfy its obligation to pay each Vendor its portion of the Purchase Price by way of set-off against the Subscription Amount, as set out in the Shareholders' Agreement.

Lowest price

- 3.4 The purchase price for the Shares is the lowest price that the parties would have agreed on for them at the date this agreement is entered into under the rules relating to the accrual treatment of income and expenditure in the Income Tax Act 2007 and on that basis, no income or expenditure arises in respect of the sale and purchase of the Shares under those rules.

Pre-emptive rights

- 3.5 The Vendors, being all the ordinary shareholders in each of Port Nelson Limited and Nelson Airport Limited, agree that any pre-emptive rights they may have in connection with a transfer of any of the Shares are waived.

4. Settlement

Vendor's obligations

- 4.1 On Settlement, and as a condition of Settlement, each Vendor must deliver to the Purchaser:
- (a) a transfer of its Shares to the Purchaser executed by that Vendor;
 - (b) the share certificates (if any) for its Shares or, if none, a statutory declaration by an officer of each Company officer stating that no share certificate has been issued for any of the Shares;
 - (c) evidence satisfactory to the Purchaser that the transfer of its Shares to the Purchaser has been recorded in each Companies' respective share register so that the Purchaser is recorded as the legal owner of the Shares;
 - (d) resolutions of the board of directors of each Company approving the transfers of the respective Shares and directing that on presentation of the executed transfer, the Purchaser be entered in each Company's register of shareholders

as the holder of the Shares and the existing share certificates (if any) for the Shares be cancelled; and

- (e) evidence satisfactory to the Purchaser that sole title in the Shares will vest in the Purchaser free from any Encumbrances, at Settlement.

4.2 The Vendors will procure that on the Settlement Date there will be, in the possession and control of each Company:

- (a) all registers and statutory records required by the Companies Act 1993 and all other books, records and documents relating to each Company's affairs; and
- (b) all books of record and account (including all tax returns, statement of taxation, account and correspondence with IRD) of each Company and all computerised records of each Company.

Purchaser's obligations

4.3 On Settlement, subject to compliance by the Vendor with all of its obligations under clause 4.1 and 4.2, the Purchaser will pay the Purchase Price to the Vendors in accordance with clause 3.

Title, Property and Risk

4.4 Subject to Settlement occurring, title to, possession of, property in and the benefit and risk of, the Shares:

- (a) until Settlement, remains solely with the Vendors; and
- (b) from Settlement, passes to the Purchaser on and from Closing.

5. Share Register

5.1 The Purchaser will ensure that the share registers of each Company are updated to reflect the sale of the Shares promptly following Settlement.

6. Kiwi Share

6.1 The Kiwi Share (as defined in the constitution of Nelson Airport Limited) is not being transferred.

7. Warranties and undertakings

7.1 As at the date of this agreement and again on the Settlement Date, the Vendors each warrant to the Purchaser, and the Purchaser warrants to each Vendor, that:

- (a) it has full power and authority to sign and perform this agreement, and has taken all necessary action to authorise this agreement's execution, delivery and performance; and
- (b) this agreement constitutes a valid and binding obligation enforceable against it in accordance with its terms.

7.2 As at the date of this agreement and again on the Settlement Date, each Vendor warrants to the Purchaser that:

(10c) Draft Sale and Purchase Agreement(36573535.2).docx

- (a) it is the legal and beneficial owner of the Shares with title to them to the exclusion of all others;
- (b) the Shares are fully paid up; and
- (c) the Shares are free from all Encumbrances.

8. General

Further assurance

- 8.1 Each party will execute all documents and do all other acts and things which are both reasonable and necessary to carry out its obligations under, and the intention of, this agreement.

Waiver

- 8.2 No failure or delay by a party to exercise (in whole or in part) any right, power or remedy under this agreement will operate as a waiver of that right, power or remedy.
- 8.3 The single or partial exercise of any right, power or remedy under this agreement does not preclude the exercise of any other right, power or remedy, or its further exercise.
- 8.4 A waiver given by a party will not be effective unless it is in writing and is signed by the party against whom it is claimed.
- 8.5 Any waiver given by a party in accordance with this clause will be effective only in the specific instance and for the specific purpose for which it is given.

Non-merger

- 8.6 This agreement, and anything done under or in connection with this agreement, will not operate as a merger of any of the rights, powers, or remedies of either party under or in connection with this agreement or at law. Those rights, powers, and remedies will survive and continue in full force and effect to the extent that they are unfulfilled.

Entire agreement

- 8.7 This agreement constitutes the entire agreement between the parties as to its subject. It supersedes and cancels any previous agreement, understanding, or arrangement whether written or oral. The parties agree that it is fair and reasonable that this clause is conclusive between them, as required by section 50 of the Contract and Commercial Law Act 2017.

Survival

- 8.8 Any provision of this agreement which by its nature is intended to survive the termination, Settlement, or expiration of this agreement will survive the termination, Settlement, or expiration of this agreement.

Counterpart

- 8.9 This agreement may be executed by each signatory in separate counterpart copies, whether originals, photocopies, fax, or electronic copies. When each signatory has

executed at least one copy, the separately signed documents when brought together will form a binding legal document.

Copies

8.10 Any copy of this agreement that is received by facsimile or via email in PDF or other document reproduction format (including any copy of any document evidencing a party's signature to this agreement) may be relied on by any party as though it were an original copy of this agreement.

Amendment

8.11 No amendment to this agreement will be effective unless it is in writing and signed by each party.

Execution

Signed by **Nelson City Council** as Vendor by its [describe delegated officer] under delegated authority in the presence of:

[describe delegated officer]

Signature of witness

Name of witness

Occupation

Address

Signed by **Tasman District Council** as Vendor by its [describe delegated officer] under delegated authority in the presence of:

[describe delegated officer]

Signature of witness

Name of witness

Occupation

Address

Signed by **Infrastructure Holdings Limited** as Purchaser:

Director's signature

Director's signature

Director's full name

Director's full name

SCHEDULE 1**COMPANIES**

Company name: Port Nelson Limited

Company Number: 401730

Place of Incorporation: New Zealand

Incorporation Date: 29 September 1988

Registered Office: 8 Vickerman Street, Port Nelson, Nelson 7010, New Zealand

Directors: Megan Ruth Matthews, Anthony Peter Reynish, Jonathan Peter Safey, Kim Louise Wallace, Gerrard Llewellyn Wilson and Paul Alan Zealand

Issued Shares: 25,415,404

Shareholders: Nelson City Council and Tasman District Council

Company name: Nelson Airport Limited

Company Number: 663266

Place of Incorporation: New Zealand

Incorporation Date: 9 May 1996

Registered Office: Nelson Airport Management Offices, Trent Drive, Nelson 7011, New Zealand

Directors: Matthew Clarke, Quinton Charles Hall, Matthew Dudley McDonald, Paul James Steere and Catherine Joy Taylor

Issued Shares: 2,400,001

Shareholders: Nelson City Council, Tasman District Council and Her Majesty the Queen (Ministry of Transport)

SHARE TRANSFER

FOR THE CONSIDERATION stated below the "Transferor(s)" named below do hereby transfer to the "Transferee(s)" named below the shares or stock specified below subject to the several conditions on which the said shares are or stock is now held by the Transferor(s) and the Transferee(s) do hereby agree to accept and hold the said shares or stock subject to the conditions aforesaid.

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| Full name of Company | Nelson Airport Limited (company number 663266) |
| Number and full description of shares | 1,200,000 ordinary shares |
| TRANSFER FROM Transferor Name Full postal address | Nelson City Council Civic House, 110 Trafalgar St, Nelson, PO Box 645, Nelson 7040 |
| CONSIDERATION (Words and Figures) | \$1,200,000 (One million two hundred thousand dollars) |
| TRANSFER TO Transferee Name Full postal address | Infrastructure Holdings Limited PO Box 844 NELSON 7040 |
| THIS SHARE TRANSFER IS DATED the _____ day of _____ 2022 | |
| SIGNED by the Transferor in the presence of: Signature of Witness: Name of Witness: Occupation: Address: | Signature of Transferor (Seller) |
| SIGNED by the Transferee in the presence of: Signature of Witness: Name of Witness: Occupation: Address: | Signature of Transferee (Buyer) |

SHARE TRANSFER

FOR THE CONSIDERATION stated below the "Transferor(s)" named below do hereby transfer to the "Transferee(s)" named below the shares or stock specified below subject to the several conditions on which the said shares are or stock is now held by the Transferor(s) and the Transferee(s) do hereby agree to accept and hold the said shares or stock subject to the conditions aforesaid.

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| Full name of Company | Nelson Airport Limited (company number 663266) |
| Number and full description of shares | 1,200,000 ordinary shares |
| TRANSFER FROM Transferor Name Full postal address | Tasman District Council 189 Queen Street, Private Bag 4, Richmond 7050 |
| CONSIDERATION (Words and Figures) | \$1,200,000 (One million two hundred thousand dollars) |
| TRANSFER TO Transferee Name Full postal address | Infrastructure Holdings Limited PO Box 844 NELSON 7040 |
| THIS SHARE TRANSFER IS DATED the _____ day of _____ 2022 | |
| SIGNED by the Transferor in the presence of: Signature of Witness: Name of Witness: Occupation: Address: | Signature of Transferor (Seller) |
| SIGNED by the Transferee in the presence of: Signature of Witness: Name of Witness: Occupation: Address: | Signature of Transferee (Buyer) |

Share transfer form NAL TDC 1/2022

SHARE TRANSFER

FOR THE CONSIDERATION stated below the "Transferor(s)" named below do hereby transfer to the "Transferee(s)" named below the shares or stock specified below subject to the several conditions on which the said shares are or stock is now held by the Transferor(s) and the Transferee(s) do hereby agree to accept and hold the said shares or stock subject to the conditions aforesaid.

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|
| Full name of Company | Port Nelson Limited (company number 401730) |
| Number and full description of shares | 12,707,702 ordinary shares |
| TRANSFER FROM Transferor Name | Nelson City Council |
| Full postal address | Civic House, 110 Trafalgar St, Nelson, PO Box 645, Nelson 7040 |
| CONSIDERATION (Words and Figures) | \$3,023,000 (Three million and twenty three thousand dollars) |
| TRANSFER TO Transferee Name | Infrastructure Holdings Limited |
| Full postal address | PO Box 844 NELSON 7040 |
| THIS SHARE TRANSFER IS DATED the _____ day of _____ 2022 | |
| SIGNED by the Transferor in the presence of: Signature of Witness: Name of Witness: Occupation: Address: | Signature of Transferor (Seller) |
| SIGNED by the Transferee in the presence of: Signature of Witness: Name of Witness: Occupation: Address: | Signature of Transferee (Buyer) |

SHARE TRANSFER

FOR THE CONSIDERATION stated below the "Transferor(s)" named below do hereby transfer to the "Transferee(s)" named below the shares or stock specified below subject to the several conditions on which the said shares are or stock is now held by the Transferor(s) and the Transferee(s) do hereby agree to accept and hold the said shares or stock subject to the conditions aforesaid.

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|
| Full name of Company | Port Nelson Limited (company number 401730) |
| Number and full description of shares | 12,707,702 ordinary shares |
| TRANSFER FROM Transferor Name | Tasman District Council |
| Full postal address | 189 Queen Street, Private Bag 4, Richmond 7050 |
| CONSIDERATION (Words and Figures) | \$3,023,000 (Three million and twenty three thousand dollars) |
| TRANSFER TO Transferee Name | Infrastructure Holdings Limited |
| Full postal address | PO Box 844 NELSON 7040 |
| THIS SHARE TRANSFER IS DATED the _____ day of _____ 2022 | |
| SIGNED by the Transferor in the presence of: Signature of Witness: Name of Witness: Occupation: Address: | Signature of Transferor (Seller) |
| SIGNED by the Transferee in the presence of: Signature of Witness: Name of Witness: Occupation: Address: | Signature of Transferee (Buyer) |

Share transfer form DN-TC-1-2011

Draft 1
31 May 2022

UNCALLED CAPITAL SUBSCRIPTION AGREEMENT

NELSON CITY COUNCIL

TASMAN DISTRICT COUNCIL

INFRASTRUCTURE HOLDINGS LIMITED

DRAFT



Simpson Grierson

Barristers & Solicitors
Auckland, Wellington & Christchurch
New Zealand

www.simpsongrierson.com

CONTENTS

| CLAUSE | PAGE |
|-----------------------------------|-------------|
| 1. DEFINITIONS AND INTERPRETATION | 1 |
| 2. AGREEMENT TO ISSUE SHARES | 2 |
| 3. CONSIDERATION | 3 |
| 4. ALLOTMENT | 3 |
| 5. NOTICES | 3 |
| 6. GENERAL | 3 |

DRAFT

Subsidiary Agreement for the issue of shares to the Tasman District Council

AGREEMENT DATED

2022

PARTIES

1. **NELSON CITY COUNCIL**, a Council duly constituted as a territorial authority under the Local Government Act 2002 (**NCC**)
2. **TASMAN DISTRICT COUNCIL**, a Council duly constituted as a territorial authority under the Local Government Act 2002 (**TDC**)

(NCC and TDC are each a **Subscriber** and together the **Subscribers**)
3. **INFRASTRUCTURE HOLDINGS LIMITED**, a company incorporated in New Zealand (company number [●]) (**Company**)

BACKGROUND

- A. The Subscribers own all of the ordinary shares in the Company.
- B. The Subscribers have agreed to subscribe for, and the Company has agreed to issue, further ordinary shares in the Company, on the terms and conditions set out in this agreement.

THE PARTIES AGREE THAT:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: In this agreement, unless the context indicates otherwise:

Business Day means any day excluding Saturdays, Sundays and statutory public holidays in Nelson and excluding any day in the period beginning on 25 December in any year and ending on 5 January in the following year;

Company has the meaning given to that term in the “Parties” section of this agreement;

Issue Date means [●];

NCC Issue Price means \$116,500,000;

NCC Shares means 1,165,000 ordinary shares in the capital of Company to be issued by the Company to NCC pursuant to the terms of this agreement;

Shares means the NCC Shares and the TDC Shares;

Subscriber and **Subscribers** each have the meanings given to those terms in the “Parties” section of this agreement;

TDC Issue Price means \$116,500,000;

TDC Shares means 1,165,000 ordinary shares in the capital of Company to be issued by the Company to TDC pursuant to the terms of this agreement; and

Total Issue Price means \$233,000,000 (being an amount equal to the sum of the NCC Issue Price and the TDC Issue Price).

1.2 Interpretation: In this agreement, unless the context indicates otherwise:

- (a) **Defined Expressions:** expressions defined in the main body of this agreement have the defined meaning throughout this agreement, including the background;
- (b) **Headings:** clause and other headings are for ease of reference only and will not affect this agreement's interpretation;
- (c) **Several Obligations:** undertakings, warranties, representations, covenants, agreements and other obligations of the Subscribers will bind and be deemed to have been given or assumed by each of them severally (and not jointly) in proportion to their individual shareholding in the Company at the date of this agreement;
- (d) **Parties:** references to any **party** include that party's successors and permitted assigns;
- (e) **Persons:** references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (f) **Plural and Singular:** references to the singular include the plural and vice versa;
- (g) **Clauses/Schedules:** references to clauses and schedules are to clauses in, and the schedules to, this agreement. Each such schedule forms part of this agreement;
- (h) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (i) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (j) **Inclusive Expressions:** the term **includes** or **including** (or any similar expression) is deemed to be followed by the words **without limitation**; and
- (k) **Documents:** references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.

2. AGREEMENT TO ISSUE SHARES

2.1 Issue of Shares: On the Issue Date, the Company will issue and:

- (a) NCC will subscribe for the NCC Shares; and

- (b) TDC will subscribe for the TDC Shares.

The Shares will rank equally with the existing ordinary shares in the Company.

- 2.2 Shares uncalled and unpaid:** The Total Issue Price will, on issue, remain uncalled and unpaid until such time as the board of directors of the Company makes a call on the Shares in accordance with clause 4 of the Company's constitution.

3. CONSIDERATION

The consideration for the issue of the Shares will be the sum of \$100.00 for each Share (being, in total, an amount equal to the Total Issue Price). The Total Issue Price will be paid by the Subscribers to the Company in accordance with the terms of clause 2.2 of this agreement.

4. ALLOTMENT

- 4.1 Company's obligations:** On the Issue Date the Company will:

- (a) **Allot Shares:** allot the Shares;
- (b) **Share register:** enter the names of the Subscribers as the holder of the NCC Shares and TDC Shares (as appropriate) in the Company's share register; and
- (c) **File documents:** file all requisite documents with the Registrar of Companies.

5. NOTICES

- 5.1 Method of Delivery:** Any written notice required under this agreement must be signed by an authorised representative of the party giving that notice and will be deemed validly given only if:

- (a) **Hand:** delivered by hand to the intended recipient's physical address as notified to each other party by written notice from time to time and signed by the party giving that notice; and
- (b) **Email:** sent by email to the intended recipient's email address and provided that the recipient acknowledges receipt (whether by way of an automated message or otherwise).

- 5.2 Time of Delivery:** Any notice transmitted by email or delivered after 5.00 pm on a Business Day, or at any time on a non Business Day, will be deemed received at 9.00 am on the next Business Day (being, in each case, the time of day at the intended place of receipt of that notice).

6. GENERAL

- 6.1 Costs:** Unless otherwise stated in this agreement, each party will bear its own costs and expenses in connection with the negotiation, preparation and implementation of this agreement.

- 6.2 Partial Invalidity:** If any provision of this agreement is or becomes invalid or unenforceable, that provision will be deemed deleted from this agreement. The invalidity or unenforceability of that provision will not affect the other provisions of this agreement, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- 6.3 Entire Agreement:** This agreement records the entire understanding and agreement of the parties relating to the matters dealt with in this agreement. This agreement supersedes all previous understandings or agreements (whether written, oral or both) relating to such matters.
- 6.4 Further Assurances:** Each party will do all things and execute all documents reasonably required to give effect to the provisions and intent of this agreement.
- 6.5 Waiver:** Any waiver by a party of any of its rights or remedies under this agreement will be effective only if it is recorded in writing and signed by that party. If the waiver relates to a breach of any provision of this agreement, this will not (unless stated otherwise) operate as a waiver of any other breach of that provision. No waiver of any breach, or failure to enforce any provision, of this agreement at any time by a party will in any way affect, limit or waive that party's right to subsequently require strict compliance with this agreement.
- 6.6 Counterparts:** This agreement may be signed in counterparts. All executed counterparts will together constitute one document.
- 6.7 Copies:** Any copy of this agreement that is received by facsimile or via email in PDF or other document reproduction format (including any copy of any document evidencing a party's signature to this agreement) may be relied on by any party as though it were an original copy of this agreement. This agreement may be entered into on the basis of an exchange of facsimile, PDF or other document reproduction format.
- 6.8 Amendment:** No amendment to this agreement will be effective unless it is in writing and signed by each party.
- 6.9 Assignment:** Neither party will assign or otherwise transfer any of its rights or obligations under this agreement to any other person without the prior written consent of each other party.
- 6.10 Governing Law and Jurisdiction:** This agreement is governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this agreement.

SIGNATURES

SIGNED on behalf of **NELSON CITY COUNCIL** by its duly authorised officer in the presence of:

Signature of authorised officer

Witness:*

Name of authorised officer

Signature of witness

Full name of witness

Occupation of witness

Address of witness

**The witness must not be a party to this deed.*

SIGNED on behalf of **TASMAN DISTRICT COUNCIL** by its duly authorised officer in the presence of:

Signature of authorised officer

Witness:*

Name of authorised officer

Signature of witness

Full name of witness

Occupation of witness

Address of witness

**The witness must not be a party to this deed.*

SIGNED on behalf of **INFRASTRUCTURE HOLDINGS LIMITED** by:

Signature of director

Signature of director

Name of director

Name of director



To Nikki Harrison, Nelson City Council **24 May 2022**
 Mike Drummond, Tasman District Council

From Josh Cairns and Mace Gorringer, Simpson Grierson

Subject Local Government Act 2002 – Legality of Uncalled Capital Facility

Background

1. Nelson City Council (**NCC**) and Tasman District Council (**TDC**) (together, **Councils**) propose to jointly establish a council-controlled trading organisation (**CCTO**), Infrastructure Holdings Limited (**IHL**), to join the Local Government Funding Agency (**LGFA**) debt issuance programme.
2. To join, IHL must provide LGFA with an agreed package of credit support. This cannot include guarantees from the Councils, as the Local Government Act 2002 (**LGA**) prohibits local authorities from guaranteeing any obligation of a CCTO.¹
3. Instead, it is proposed that the Councils will subscribe for an agreed amount of unpaid shares in IHL. IHL will then grant security to secured creditors (initially being Westpac and LGFA), including over its call rights, and the proceeds of calls, on the unpaid shares (**Uncalled Capital Facility**).

Question

4. **Is an Uncalled Capital Facility, as required as a condition to joining LGFA's debt programme, a prohibited guarantee?**

Answer

5. In our opinion, the Councils may lawfully support IHL through the Uncalled Capital Facility. This would not be a prohibited "guarantee", as the Councils are not promising to pay any IHL creditor, and as the subscription for shares is a matter as between the Councils and IHL only and is not given "*in respect of the performance of any obligation [by IHL]*".
6. Uncalled Capital Facilities are not uncommon in the New Zealand local government sector, and are used particularly where it is unlikely that they would let their CCTO assets fail (such as where supported CCTOs hold strategic assets).
7. Where a local authority gives a prohibited guarantee, the local authority is treated as having incurred a "loss", by unlawfully incurring a liability,² and the Auditor-General may report on how that loss is to be compensated.³ We are not aware of any issues having been raised by the Auditor-General about similar uncalled capital structures implemented by other local authorities.
8. One example is Dunedin City Council (**DCC**) and its CCTO, Dunedin City Holdings Limited (**DCHL**), which have had an Uncalled Capital Facility in place since DCHL's incorporation in 1996. Its public accounts show that the amount of uncalled capital has been regularly added to over the years, including after the enactment of the LGA.

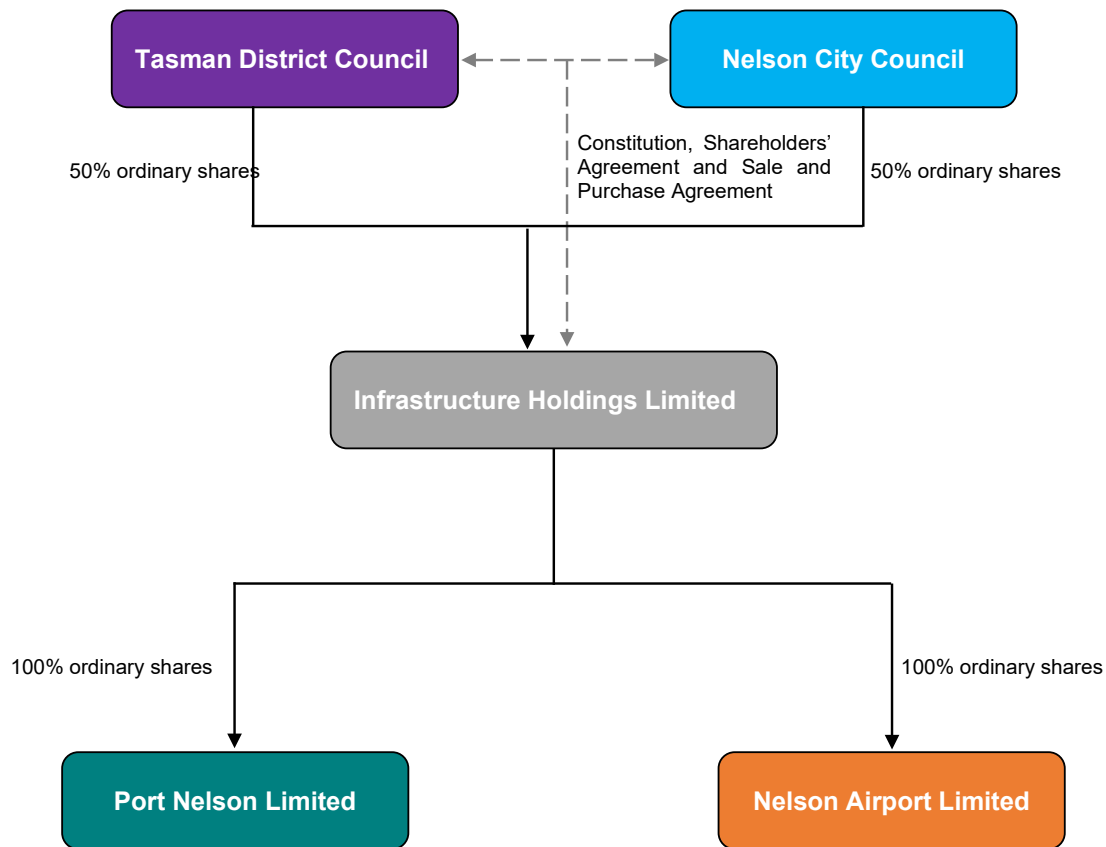
¹ Local Government Act 2002, s 62. Section 62 provides "[a] local authority must not give any guarantee, indemnity, or security in respect of the performance of any obligation by a council-controlled trading organisation".

² Local Government Act 2002, s 44(1).

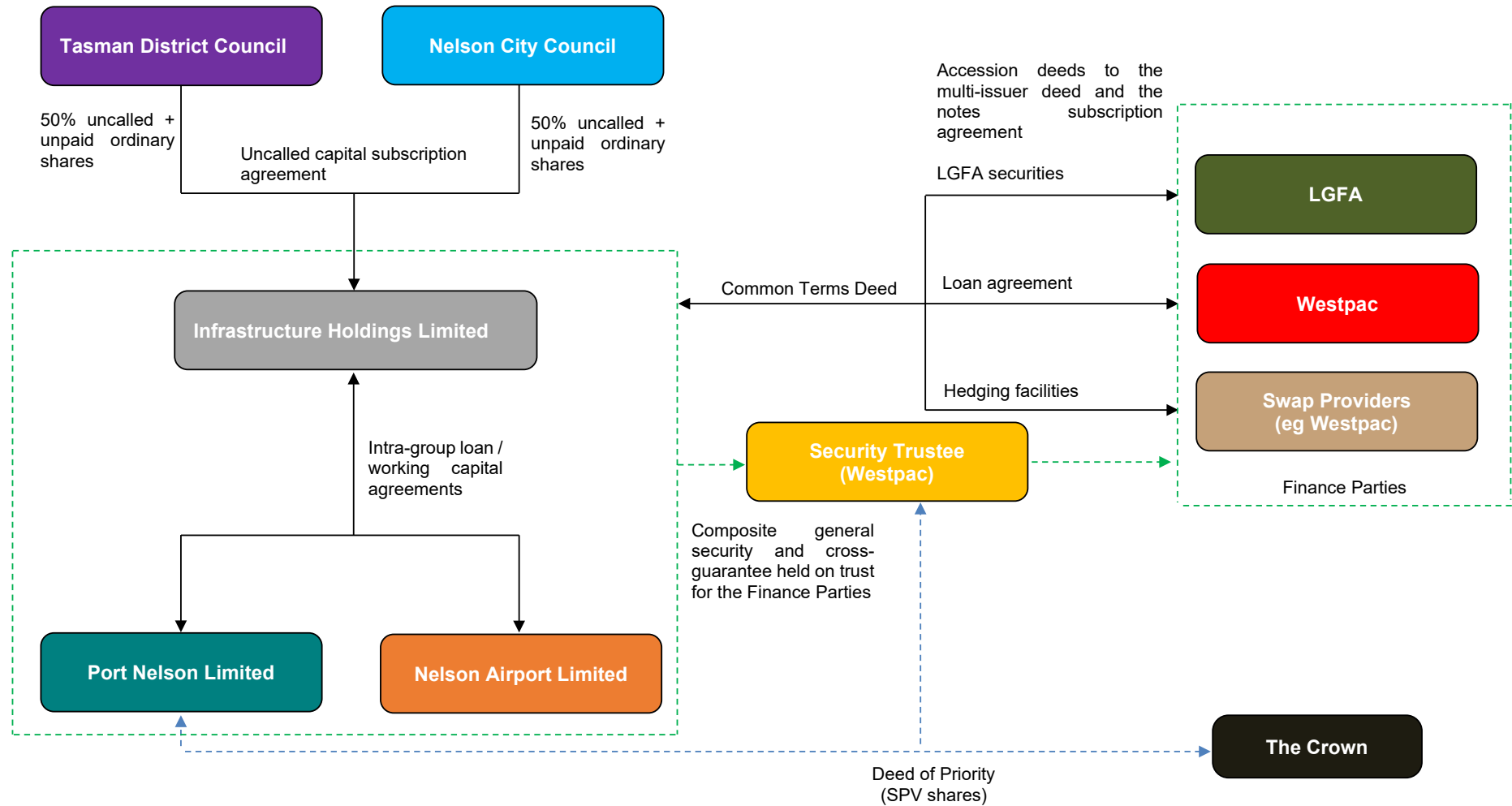
³ Local Government Act 2022, s 44(2)

Restructuring of Port Nelson Limited and Nelson Airport Limited

Structure diagram



Financing of Port Nelson Limited and Nelson Airport Limited



RESTRUCTURING AND FINANCING OF PORT NELSON LIMITED AND NELSON AIRPORT LIMITED

KEY DOCUMENT LIST

 **Simpson Grierson**
Barristers & Solicitors
Auckland, Wellington & Christchurch
New Zealand
www.simpsongrierson.com

Part A: Key

| Parties | |
|---------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Abbreviation | Name |
| Beneficiaries | LGFA, Westpac (as lender and counter-party to risk-management facilities), the Security Trustee and any other entity that, from time to time, accedes to the Common Terms Deed as a Beneficiary |
| IHL | Infrastructure Holdings Limited |
| LGFA | New Zealand Local Government Funding Agency Limited |
| NAL | Nelson Airport Limited |
| NCC | Nelson City Council |
| Obligors | IHL, PNL and NAL |
| PNL | Port Nelson Limited |
| Security Trustee | Westpac |
| TDC | Tasman District Council |
| Westpac | Westpac New Zealand Limited |

DRAFT

Part B: CORPORATE AUTHORITIES

| No. | Document | Description | Parties |
|-----|------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 1. | NCC council resolutions | Resolutions of NCC to approve the incorporation of IHL, the restructuring transactions and the financing transactions. | NCC |
| 2. | TDC council resolutions | Resolutions of TDC to approve the incorporation of IHL, the restructuring transactions and the financing transactions. | TDC |
| 3. | IHL board resolutions (restructuring transactions) | Resolutions of IHL's board of directors to: <ul style="list-style-type: none"> - ratify the initial issue of shares to NCC and TDC, among other actions taken to incorporate IHL; and - approve the purchase of the shares in NAL and PNL. | All directors of IHL |
| 4. | IHL board resolutions (financing transactions) | Resolutions of IHL's board of directors to approve the entry into its financing arrangements with LGFA and Westpac. | All directors of IHL |
| 5. | IHL shareholders' resolutions (restructuring transactions) | Resolutions of IHL's shareholders (being NCC and TDC) to approve IHL's initial issue of shares to NCC and TDC, and IHL's entry into the restructuring transactions. | NCC and TDC |
| 6. | IHL shareholders' resolutions (financing transactions) | Resolutions of IHL's shareholders (being NCC and TDC) to approve IHL's issue of further shares to NCC and TDC on an uncalled and unpaid basis, and IHL's entry into the financing transactions. | NCC and TDC |
| 7. | PNL board resolutions (share transfer) | Resolutions of PNL's board of directors to approve the transfer of shares in it from NCC and TDC to IHL, and to update the share register accordingly. | All directors of PNL |
| 8. | NAL board resolutions (share transfer) | Resolutions of NAL's board of directors to approve the transfer of shares in it from NCC and TDC to IHL, and to update the share register accordingly. | All directors of NAL |
| 9. | PNL board resolutions (financing transactions) | Resolutions of PNL's board of directors to approve the entry into the financing arrangements with LGFA and Westpac, and the intra-group loan agreement. | All directors of PNL |

| No. | Document | Description | Parties |
|-----|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 10. | NAL board resolutions (financing transactions) | Resolutions of NAL's board of directors to approve the entry into the financing arrangements with LGFA and Westpac, and the intra-group loan agreement. | All directors of NAL |

DRAFT

Part C: RESTRUCTURING DOCUMENTS

| | Document | Description | Parties |
|----|------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| 1. | Shareholders' Agreement | <p>The Shareholders' Agreement for IHL, when read in conjunction with the constitution and the Companies Act 1993, sets out the relationship between the shareholders of IHL and how they envisage the business of IHL being carried out.</p> <p>The Shareholders' Agreement also includes provisions that effect the initial issue of shares in IHL to NCC and TDC.</p> | NCC, TDC and IHL |
| 2. | Constitution | The Constitution is a document that, when read in conjunction with the Shareholders' Agreement and Companies Act 1993, sets out how IHL will be governed. It sets out the rights, powers, and duties of IHL, the board and each shareholder. | N/A |
| 3. | NCC shareholder consent form | A New Zealand Companies Office form declaring that NCC consents to being a shareholder of IHL. | NCC |
| 4. | TDC shareholder consent form | A New Zealand Companies Office form declaring that TDC consents to being a shareholder of IHL. | TDC |
| 5. | Sale and Purchase Agreement | The Sale and Purchase Agreement is an agreement under which, in return for equity in IHL, NCC and TDC sell their respective shares in PNL and NAL to IHL. | NCC, TDC and IHL |
| 6. | NCC share transfer forms | Standard form documents that record NCC's transfer of its shares in PNL and NAL to IHL. | NCC and IHL |
| 7. | TDC share transfer forms | Standard form documents that record TDC's transfer of its shares in PNL and NAL to IHL. | TDC and IHL |
| 8. | PNL statutory declaration (share certificates) | A statutory declaration from a director of PNL declaring that no share certificates have been issued. | One director of PNL |
| 9. | NAL statutory declaration (share certificates) | A statutory declaration from a director of NAL declaring that no share certificates have been issued. | One director of NAL |

Part D: FINANCING DOCUMENTS

| | Document | Description | Parties |
|----|----------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| 1. | Common Terms Deed | <p>The Common Terms Deed sets out the principal commercial terms and conditions for IHL's financing arrangements with LGFA and Westpac.</p> <p>It will include a cross-guarantee from and between each of the Obligors in respect of all indebtedness of the Obligors owing to the Beneficiaries under certain documents (including the Common Terms Deed itself, the LGFA documents listed in this section, the Westpac documents listed in the section, and the composite general security agreement.)</p> | IHL, PNL, NAL, LGFA and Westpac |
| 2. | Composite General Security Agreement | The general security agreement grants the Security Trustee a security interest over all present and after acquired property of the Obligors including IHL's rights to its uncalled capital. The Security Trustee will hold the security interest on trust for the benefit of the Beneficiaries. | IHL, PNL, NAL and the Security Trustee |
| 3. | Accession Deed to the Multi-Issuer Deed | <p>This accession deed provides for IHL to become a party to the LGFA Multi-issuer Deed.</p> <p>Under the LGFA Multi-issuer Deed, local authorities and CCOs can issue debt securities to LGFA so that those local authorities and CCOs can borrow funds from LGFA.</p> | IHL, NCC, TDC, and LGFA |
| 4. | Accession Deed to the Notes Subscription Agreement | <p>This accession deed provides for IHL to become a party to the LGFA Notes Subscription Agreement.</p> <p>Under the Notes Subscription Agreement, each local authority and CCO that borrows from LGFA subscribes for "Borrower Notes" (subordinated debt issued to LGFA).</p> | IHL, NCC, TDC and LGFA |

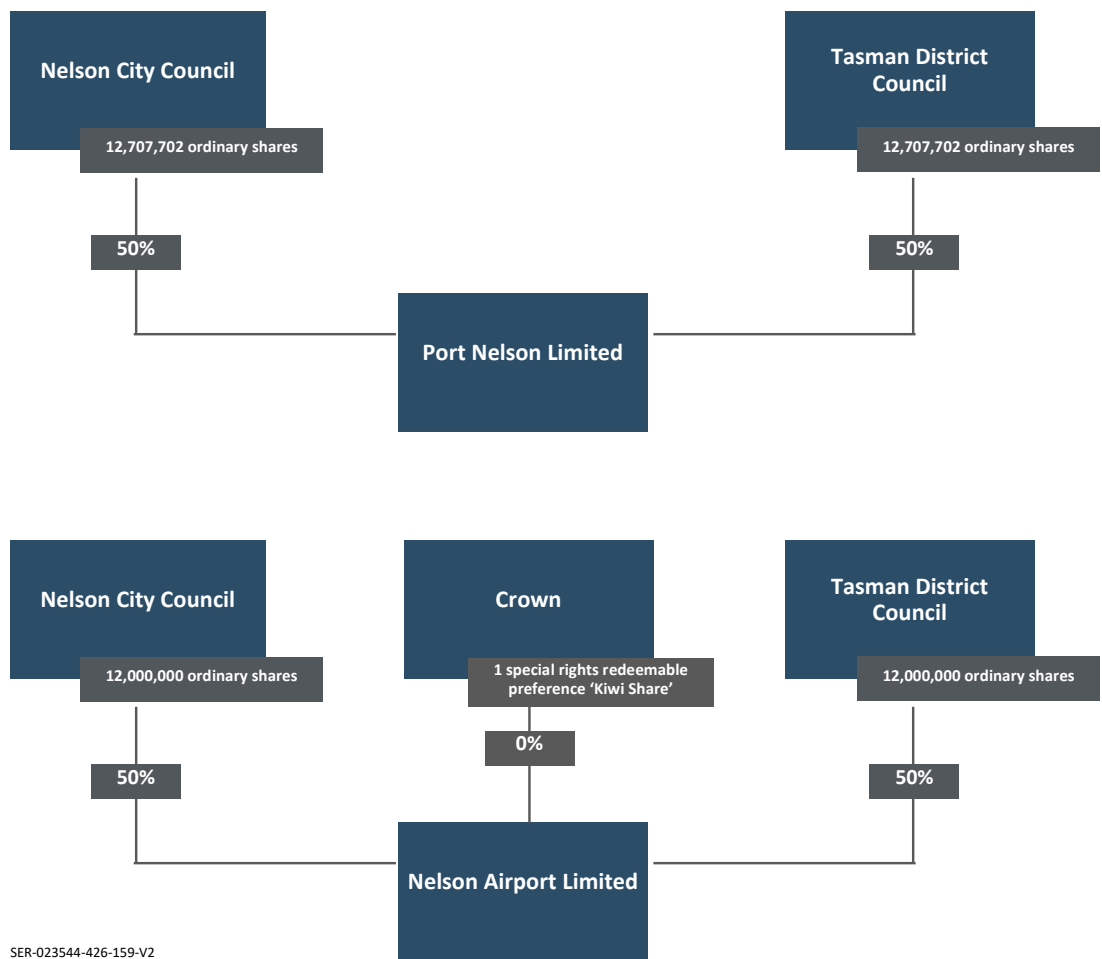
| | Document | Description | Parties |
|-----|-----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| 5. | Westpac Loan Agreement | Loan agreement under which Westpac makes funds available to IHL for working capital requirements. | IHL and Westpac |
| 6. | Westpac Hedging Facilities | Risk management facilities (such as interest-rate hedging). | IHL and Westpac |
| 7. | Intra-group Loan Agreement | A loan agreement under which IHL lends amounts borrowed from LGFA and Westpac to PNL and NAL. | IHL, PNL and NAL |
| 8. | Deed of Priority (SPV shares) | A deed of priority under which the Crown will have priority as against the Security Trustee over shares in a special purpose vehicle incorporated as a subsidiary of PNL to obtain funding from the Crown for the Port Nelson Slipway Project. | Security Trustee, the Crown and PNL |
| 9. | Uncalled Capital Subscription Agreement | A subscription agreement under which NCC and TDC will together subscribe for, and IHL will issue, 2,350,000 ordinary shares on an uncalled and unpaid basis. | IHL, NCC and TDC |
| 10. | LGFA director's certificate – IHL | A certificate from director of IHL that makes certain statements of fact, or expresses opinions, in relation to IHL and the LGFA Accession. Director's certificates are commonly used in financing transactions and standard forms have been developed. | A director of IHL |
| 11. | LGFA director's certificate – PNL | A certificate from director of PNL that makes certain statements of fact, or expresses opinions, in relation to PNL and the LGFA Accession. Director's certificates are commonly used in financing transactions and standard forms have been developed. | A director of PNL |
| 12. | LGFA director's certificate – NAL | A certificate from director of NAL that makes certain statements of fact, or expresses opinions, in relation to NAL and the LGFA Accession. Director's certificates are commonly used in financing transactions and standard forms have been developed. | A director of NAL |
| 13. | Westpac director's certificate – IHL | A certificate from director of IHL that makes certain statements of fact, or expresses opinions, in relation to IHL and its entry into transactions with Westpac. Director's certificates are commonly | A director of IHL |

| | Document | Description | Parties |
|-----|--------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| | | used in financing transactions and standard forms have been developed. | |
| 14. | Westpac director's certificate – PNL | A certificate from director of PNL that makes certain statements of fact, or expresses opinions, in relation to PNL and its entry into transactions with Westpac. Director's certificates are commonly used in financing transactions and standard forms have been developed. | A director of PNL |
| 15. | Westpac director's certificate – NAL | A certificate from director of NAL that makes certain statements of fact, or expresses opinions, in relation to NAL and and its entry into transactions with Westpac. Director's certificates are commonly used in financing transactions and standard forms have been developed. | A director of NAL |

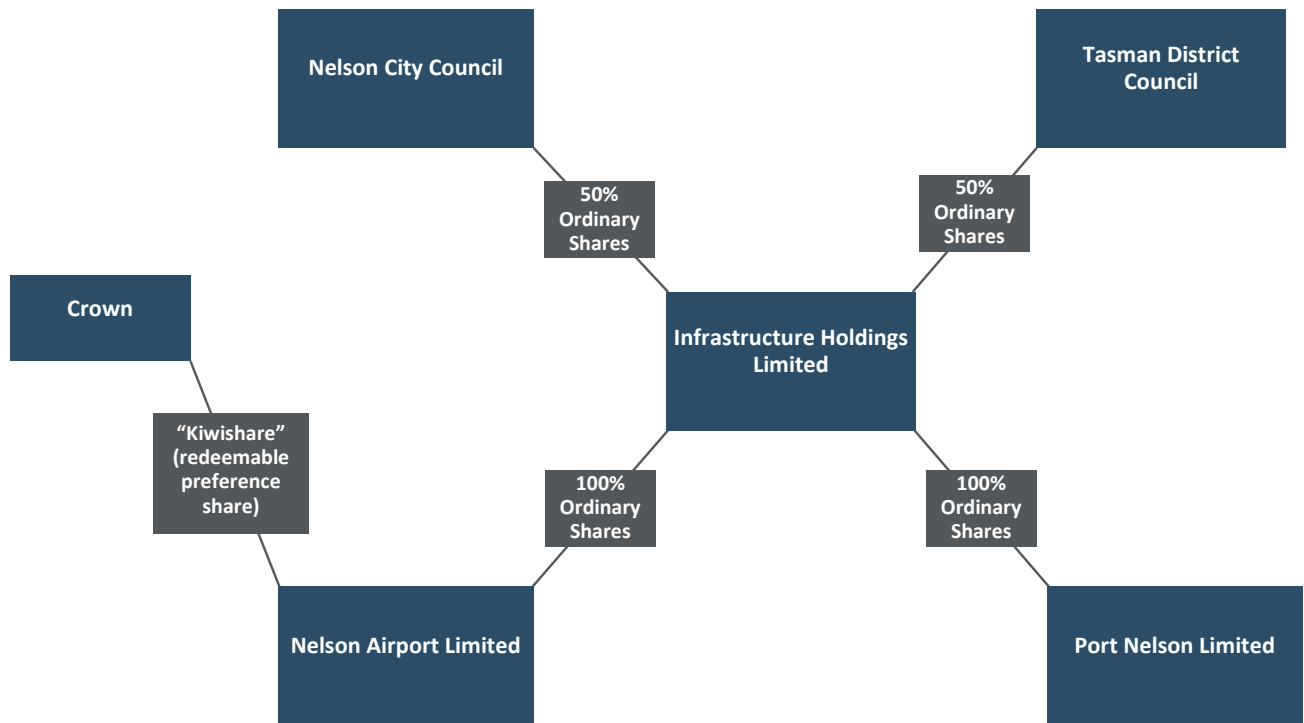
DRAFT

Port Nelson Ltd, Nelson Airport Ltd and Infrastructure Holdings Ltd – corporate structuring and governing documentation comparison

Existing structure



Proposed structure post share transfer to holding company



Companies Act and constitutions generally

The Companies Act 1993 sets out matters which must be complied with by all companies – certain of these matters may be amended for a particular company if that company has a constitution specifically changing those matters. Most constitutions set out a summary of applicable

SER-023544-426-159-V2

Companies Act requirements in an attempt to be the relevant company's founding document and to aid ease of reference / be more user-friendly – however, one must still always comply with the Companies Act.

Each New Zealand company is on the whole managed and operated by its board of directors. Certain key matters are reserved for the decisions of the shareholders (for example, major transactions, amendments to the constitution, liquidations and amalgamations) but otherwise the day to day operation and decision making falls to the directors in a voting manner agreed in advance by the shareholders.

A constitution is a company's founding document – it establishes the way a company must be run. A constitution must be registered on the Companies Office website, and accordingly it is public and anyone can access it. Shareholders often make a separate contractual arrangement amongst themselves (with the company as a party) as a means of the shareholders instructing the board of directors of the company as to how they wish certain matters to be dealt with and also to agree certain more private terms amongst themselves which they do not wish to be accessible by the public.

Existing structure

In the case of Port Nelson Ltd and Nelson Airport Ltd, the constitutions and the Companies Act regulate the constitutional framework of these entities (setting aside for the time-being issues of industry specific legislation such as the Port Companies Act and Local Government Acts). There are no shareholders' agreements between Nelson CC and Tasman DC in relation to these entities that we are aware of. Given that Nelson CC and Tasman DC are the direct shareholders, it would appear that the rights these shareholders required at the time of incorporation were incorporated into the relevant constitutions without the need for any behind the scenes contractual arrangement between the shareholders and the companies.

On a day to day basis, the boards of Port Nelson Ltd and Nelson Airport Ltd regulate these entities with reference only to the shareholders, Nelson CC and Tasman DC, in relation to certain key matters set out in those entities' constitutions (and the Companies Act). As each of Nelson CC and Tasman DC directly controls the board appointments to Port Nelson Ltd and Nelson Airport Ltd, the shareholders get a degree of comfort that the persons in control of these entities are those the shareholders have themselves chosen and trusted with the role. Nelson CC and Tasman DC also have the right to remove directors should they together agree to do so.

Infrastructure Holdings introduction

As you're aware, it is proposed that Nelson CC and Tasman DC incorporate a holding company, Infrastructure Holdings Ltd, which they will each own 50% of and then both Nelson CC and Tasman DC transfer all of their shares in Port Nelson Ltd and Nelson Airport Ltd to that holding company. This means that whilst Nelson CC and Tasman DC will continue to be the ultimate owners of Port Nelson Ltd and Nelson Airport Ltd, their shareholdings will change from being direct shareholdings in the entities to indirect shareholdings via the holding company.

In the case of the holding company, Infrastructure Holdings Ltd, Nelson CC and Tasman DC will be the direct shareholders – key rights of the shareholders will be incorporated into the constitution and, when read with the Companies Act, allow Nelson CC and Tasman DC to together control Infrastructure Holdings Ltd in a manner similar to that of Port Nelson Ltd and Nelson Airport Ltd. It is important to note that Infrastructure Holdings Ltd will not be a very active entity – it is intended to be an investment vehicle which holds shares and does not actively operate/trade on a day to day basis like Port Nelson Ltd and Nelson Airport Ltd.

Once Infrastructure Holdings Ltd acquires all of the shares in Port Nelson Ltd and Nelson Airport Ltd (with the exception of the Crown's Kiwishare), Nelson CC and Tasman DC become further removed from the direct operation of Port Nelson Ltd and Nelson Airport Ltd – in practice, the board of directors of Infrastructure Holdings Ltd will act as the sole shareholder of Port Nelson Ltd and Nelson Airport Ltd. There is a degree of comfort in this, in that Nelson CC and Tasman DC have by way of the Joint Shareholders' Committee appointed the board of directors of Infrastructure Holdings Ltd – that is, Nelson CC and Tasman DC have together chosen the individuals they wish to “act” as the shareholder vote for Port Nelson Ltd and Nelson Airport Ltd. These individuals (i.e., the board of directors of Infrastructure Holdings Ltd) will control the appointment of the boards of directors of Port Nelson Ltd and Nelson Airport Ltd and they will also be the sole shareholder vote on particular matters when such is required by Infrastructure Holdings Ltd's constitution or the Companies Act. In addition, Infrastructure Holdings Ltd will have a Governance and Appointments Committee, the members of which will be appointed by Nelson CC and Tasman DC – the role of this committee will be to recommend to the board of directors of Infrastructure Holdings Ltd who should be on the board of each of Port Nelson Ltd and Nelson Airport Ltd.

In order to give Nelson CC and Tasman DC the ability to have greater influence/control over the more material matters relating to each of Port Nelson Ltd and Nelson Airport Ltd, a shareholders' agreement for Infrastructure Holdings Ltd has been drafted which Infrastructure Holdings Ltd will itself be party to – this sets out a contractual relationship between Nelson CC, Tasman DC and (in effect) the board of directors of Infrastructure Holdings Ltd. That is, for matters set out in the shareholders' agreement, (in effect) the board of directors of Infrastructure Holdings Ltd has contractually agreed to act as directed by the shareholders, Nelson CC and Tasman DC, in certain key/material situations.

Comparison of Constitutional Documentation

The table below summarises how certain matters are dealt with in the constitutions of Port Nelson Ltd and Nelson Airport Ltd, and once incorporated, the constitution and shareholders' agreement of Infrastructure Holdings Ltd.

All of the constitutions are by nature bespoke – they are drafted using standard form precedent documents based on the Companies Act provisions, amended to suit the particular circumstances of the relevant companies. The key has been to use simple, user-friendly language which fits as closely with the Companies Act as is possible in a bid to allow corporate flexibility to the Nelson CC and Tasman DC ultimately controlled boards of directors.

As a general principle, when drafting constitutions and shareholders' agreements, the key is to consider what the important matters are for the shareholders to have final say over and what matters the shareholders are happy to trust to their appointed boards in order for the proper functioning of the entity not to be compromised by the inevitable time consuming process of having to obtain Council approvals. That is, it is a balancing act between the Councils maintaining ultimate control versus the entities being set up in a manner which allows the ultimately Council appointed boards of directors a degree of flexibility to operate within the Councils' frameworks as determined at the outset (and amended as and when determined necessary by the Councils). It is generally recognised in the corporate environment that as a matter of good company governance, shareholders are not involved in the day to day operation of the company and this is best left to the board of directors.

Key differences following introduction of holding company

The key for the shareholders (i.e., Nelson CC and Tasman DC) to note in this structure change is that the following matters currently require the approval of Nelson CC and Tasman DC, whereas once Infrastructure Holdings Ltd is introduced as the holding company, these matters will require the approval of the board of Infrastructure Holdings Ltd (albeit Nelson CC and Tasman DC appointed) and not Nelson CC and Tasman DC directly:

1. Nelson Airport Ltd share issues;
2. board appointments to Port Nelson Ltd and Nelson Airport Ltd;
3. major transactions (i.e., greater than 50% asset/liability value) undertaken by Port Nelson Ltd and/or Nelson Airport Ltd; and
4. amendments to constitutions of Port Nelson Ltd and/or Nelson Airport Ltd.

Note Nelson CC and Tasman DC shareholder consent is not currently required to Port Nelson Ltd share issues, so there will be no direct change to this in that the board of Port Nelson Ltd already has control over this – the only difference is that the board of Port Nelson Ltd is currently directly appointed by Nelson CC and Tasman DC, and this will change to the Port Nelson Ltd board being appointed by the board of Infrastructure Holdings Ltd (in turn appointed by Nelson CC and Tasman DC).

Currently, share transfers in Nelson Airport Ltd require Nelson CC and Tasman DC approval. Following the incorporation of Infrastructure Holdings Ltd, it will be made clear that any share transfer in Port Nelson Ltd and/or Nelson Airport Ltd will require Nelson CC and Tasman DC approval, as is in the spirit of a joint venture.

Statements of intent, as required by the Local Government Act 2002 for Nelson Airport Ltd and Infrastructure Holdings Ltd must be approved by both their boards of directors and the ultimate shareholding local authorities, being Nelson CC and Tasman DC.

| | Port Nelson Ltd - existing | Port Nelson Ltd – post HoldCo ownership | Nelson Airport Ltd - existing | Nelson Airport Ltd – post HoldCo ownership | Infrastructure Holdings Ltd |
|---------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Shareholdings | 50% Nelson CC 50% Tasman DC | 100% Infrastructure Holdings | 50% ordinary shares Nelson CC 50% ordinary shares Tasman CC 1 Kiwishare (redeemable preference share) – Crown/Ministry of Transport | 100% Infrastructure Holdings 1 Kiwishare – Crown/Ministry of Transport | 50% Nelson CC 50% Tasman DC |
| Directors | Meg Matthews Anthony Reynish Jonathan Safey Kim Wallace Gerrard Wilson Paul Zealand | | Matthew Clarke Quinton Hall Matthew McDonald Paul Steere Catherine Taylor | | Paul Zealand Gerrard Wilson Paul Steere Catherine Taylor |
| Board make up | Minimum 6 and maximum 7 directors. No more than 2 Directors may be employees/members of a local authority. | Minimum 6 and maximum 7 directors. Employees/members of a local authority excluded from eligibility. | 5 directors | Minimum of 4 and maximum of 6 directors. Employees/members of a local authority excluded from eligibility. | Minimum of 3 and maximum of 4 directors. Employees/members of a local authority excluded from eligibility. |
| Appointment and removal of directors | Nelson CC appoint/remove 1 director. Tasman DC appoint/remove 1 director. Nelson CC and Tasman DC together appoint/remove up to 5 directors. Directors must rotate. | Infrastructure Holdings Ltd (board of directors) appoints/removes all directors. Note that Infrastructure Holdings Ltd's Governance and Appointments Committee will <i>recommend</i> to the | Nelson CC and Tasman DC together appoint/remove all directors. (Nelson CC and Tasman DC have previously been entitled to appoint a director each – this right was removed in early 2021.) Directors must rotate. | Infrastructure Holdings Ltd (board of directors) appoints/removes all directors. Note that Infrastructure Holdings Ltd's Governance and Appointments Committee will recommend to the board of Infrastructure | Nelson CC and Tasman DC, by way of the Joint Shareholders' Committee, appoint/remove all directors. Joint Shareholders' Committee appoints chairperson. Directors must rotate, as determined by the Joint Shareholders' Committee. |

SER-023544-426-159-V2

| | Port Nelson Ltd - existing | Port Nelson Ltd – post HoldCo ownership | Nelson Airport Ltd - existing | Nelson Airport Ltd – post HoldCo ownership | Infrastructure Holdings Ltd |
|---------------------------------------------|------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | board of Infrastructure Holdings Ltd certain individuals to be directors of Port Nelson Ltd. Directors must rotate. | | Holdings Ltd certain individuals to be directors of Nelson Airport Ltd. Directors must rotate. | Infrastructure Holdings Ltd also has a Governance and Appointments Committee with between 3 and 6 members – 1 appointed/replaced by Nelson CC, 1 appointed/replaced by Tasman DC and up to 4 appointed/replaced by the board of Infrastructure Holdings Ltd. This Committee is formed to recommend board appointments to Port Nelson Ltd and Nelson Airport Ltd. |
| Directors’ to vote in best interests | Directors may act in best interests of particular Council shareholder. | Directors may act in the best interests of Infrastructure Holdings. | Directors were permitted to act in the best interests of appointing Council shareholder – however, this provision is non-sensical following the removal of Nelson CC and Tasman DC rights to appoint a director each in 2021. | Directors may act in the best interests of Infrastructure Holdings. | Directors must act in the best interests of Infrastructure Holdings. |

| | Port Nelson Ltd - existing | Port Nelson Ltd – post HoldCo ownership | Nelson Airport Ltd - existing | Nelson Airport Ltd – post HoldCo ownership | Infrastructure Holdings Ltd |
|-----------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| Directors' remuneration | Nelson CC and Tasman DC must approve. | Board of Infrastructure Holdings Ltd determines. | Nelson CC and Tasman DC determine a maximum amount, directors divide amongst themselves. Directors can increase the amount if another director joins, but only by a maximum of the average remuneration paid to the directors. | Board of Infrastructure Holdings determines a maximum amount, directors divide amongst themselves. Directors can increase the amount if another director joins, but only by a maximum of the average remuneration paid to the directors. | Nelson CC and Tasman DC to determine, by way of the Joint Shareholder's Committee. |
| Quorum for voting at directors' meetings | Majority of the directors. | Majority of the directors. | Majority of the directors. | Majority of the directors. | Majority of the directors. |
| Directors' resolutions | Majority directors' agreement for resolutions at meetings. Unanimous directors' agreement for written resolutions. No chairperson casting vote. | Majority directors' agreement for resolutions at meetings. Unanimous directors' agreement for written resolutions. No chairperson casting vote. | Majority directors' agreement for resolutions at meetings. Unanimous directors' agreement for written resolutions. No chairperson casting vote. | Majority directors' agreement for resolutions at meetings. Unanimous directors' agreement for written resolutions. No chairperson casting vote. | Majority directors' agreement for resolutions at meetings. Unanimous directors' agreement for written resolutions. No chairperson casting vote. |
| Issue of shares (Note: Companies Act provides Board may issue shares provided offer to existing shareholders first) | Board may issue in accordance with the Companies Act - offer to existing shareholders (Nelson CC and Tasman DC) in a manner which keeps their existing | Board may issue in accordance with the Companies Act - offer to existing shareholder (Infrastructure Holdings Ltd) in a manner which keeps its existing ownership | Board may issue shares with Nelson CC and Tasman DC approval. Provided Nelson CC and Tasman DC approval obtained to the issue, no pre-emptive rights and shares may be | Board may issue shares with shareholder (Infrastructure Holdings Ltd board) approval. Provided Infrastructure Holdings Ltd board approval obtained to the issue, no pre- | Board may only issue shares if Nelson CC and Tasman DC approve the fact of the issue and any incoming new shareholder. |

SER-023544-426-159-V2

| | Port Nelson Ltd - existing | Port Nelson Ltd – post HoldCo ownership | Nelson Airport Ltd - existing | Nelson Airport Ltd – post HoldCo ownership | Infrastructure Holdings Ltd |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| in a manner which keeps their existing ownership percentages if offer accepted, unless constitution expresses otherwise or unless all entitled persons agree otherwise. Entitled persons are shareholders or persons given special rights in a constitution.) | ownership percentages if offer accepted, or entitled persons’ consent. | percentage if offer accepted, or entitled persons’ consent. | offered to third parties in priority to existing shareholders. | emptive rights and shares may be offered to third parties in priority to existing shareholder. | |
| Transfer of shares (Note: Companies Act provides that any shareholder may transfer to anyone unless constitution expresses otherwise (i.e., no pre-emptive rights which require offers to existing shareholders first).) | No pre-emptive rights – may transfer to anyone if board approves (limited circumstances where board may withhold consent – for example, board considers it is not in the best interest of the company to allow the transfer). | No pre-emptive rights – may transfer to anyone if board approves (limited circumstances where board may withhold consent – for example, board considers it is not in the best interest of the company to allow the transfer). Means Infrastructure Holdings Ltd can transfer if the board of Port Nelson Ltd | Pre-emptive rights exist - A shareholder proposing to transfer must offer to other shareholder first (i.e., Councils must offer to each other first). | Pre-emptive rights exist but irrelevant - A shareholder proposing to transfer must offer to other shareholders first – Infrastructure Holdings 100% owner, so not applicable at this time. Means Infrastructure Holdings Ltd can transfer if the board of Port Nelson Ltd approves - however, the Infrastructure Holdings | Pre-emptive rights exist – must offer to other shareholder first. No third party may become a shareholder unless approved by the non-transferring shareholder. |

| | Port Nelson Ltd - existing | Port Nelson Ltd – post HoldCo ownership | Nelson Airport Ltd - existing | Nelson Airport Ltd – post HoldCo ownership | Infrastructure Holdings Ltd |
|----------------------------------------------------|---------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| | | approves - however, the Infrastructure Holdings Ltd shareholders' agreement provides that Nelson CC and Tasman DC must approve any sale of shares in Port Nelson Ltd, so the board must get Council approval. | | Ltd shareholders' agreement provides that Nelson CC and Tasman DC must approve any sale of shares in Port Nelson Ltd, so the board must get Council approval. | |
| Quorum for voting at shareholders' meetings | Nelson CC and Tasman DC | Board of Infrastructure Holdings Ltd | Nelson CC and Tasman DC - must include a representative from Nelson CC and Tasman CC | Board of Infrastructure Holdings Ltd | Representative of each of Nelson CC and Tasman DC. |
| Shareholders' resolutions | Nelson CC and Tasman DC must approve. | Infrastructure Holdings Ltd board. | Nelson CC and Tasman TDC must approve. Crown must approve land/Kiwishare relevant matters. | Infrastructure Holdings Ltd board. Crown must approve land/Kiwishare relevant matters. | Nelson CC and Tasman DC must approve. |
| Major transaction approval | Nelson CC and Tasman DC must approve. | Infrastructure Holdings Ltd board. | Both Nelson CC and Tasman DC must approve. (Crown must approve in certain instances also – if related to the Kiwishare or land.) | Infrastructure Holdings Ltd board. (Crown must approve in certain instances also – if related to the Kiwishare or land.) | Nelson CC and Tasman DC must approve. |
| Other key decisions requiring approval | Amalgamations, liquidations require | Amalgamations, liquidations require | Amalgamations, liquidations require | Amalgamations, liquidations require | Please see below this table at * the matters which require the |

SER-023544-426-159-V2

| | Port Nelson Ltd - existing | Port Nelson Ltd – post HoldCo ownership | Nelson Airport Ltd - existing | Nelson Airport Ltd – post HoldCo ownership | Infrastructure Holdings Ltd |
|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| | Nelson CC and Tasman DC approval. | Infrastructure Holdings Ltd board approval. | Nelson CC and Tasman DC approval. | Infrastructure Holdings Ltd board approval. | approval of both Nelson CC and Tasman DC before the board of directors may authorise. |
| Distributions | Board approve | Board approve | Board approve | Board approve | Board approve policy, it is then included in the Statement of Intent which requires Nelson CC and Tasman DC approval. |
| Shareholders' information rights | As per Companies Act – any shareholder (Nelson CC and/or Tasman DC) may request information from the Company. | As per Companies Act – any shareholder (Infrastructure Holdings) may request information from the Company. | As per Companies Act – any shareholder (Nelson CC and/or Tasman DC) may request information from the Company. | As per Companies Act – any shareholder (Infrastructure Holdings) may request information from the Company. | As per Companies Act – any shareholder (Infrastructure Holdings) may request information from the Company. |
| Amendments to constitution | Nelson CC and Tasman DC must agree to amend. (Crown/Ministry of Transport must approve any constitutional change.) | Infrastructure Holdings Ltd board may amend. (Crown/Ministry of Transport must approve any constitutional change.) | Nelson CC and Tasman DC must agree to amend. Certain matters relating to land cannot be amended without Crown approval. | Infrastructure Holdings Ltd board may amend. Certain matters relating to land cannot be amended without Crown approval. | Nelson CC and Tasman DC must agree to amend. |
| Shareholders' Agreement | No | No | No | No | Yes |
| Specific relevant legislation | Port Companies Act | Port Companies Act | Local Government legislation re CCTO – Statement of Intent must be prepared by board and approved by Nelson CC and Tasman DC. | Local Government legislation re CCTO. Statement of Intent must be prepared by board and approved by Nelson CC and Tasman DC. | Local Government legislation re CCTO. Infrastructure Holdings Ltd must comply with the reporting obligations of CCTOs, including producing an annual |

| | Port Nelson Ltd - existing | Port Nelson Ltd – post HoldCo ownership | Nelson Airport Ltd - existing | Nelson Airport Ltd – post HoldCo ownership | Infrastructure Holdings Ltd |
|--|----------------------------|-----------------------------------------|-------------------------------|--------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | | | | Statement of Intent which clearly sets out the objectives of the entity – this must be prepared by the board and approved by Nelson CC and Tasman DC. Obligation to ensure that Port Nelson Ltd and Nelson Airport Ltd comply with any relevant legislative reporting obligations also. |

* The board of directors of Infrastructure Holdings Ltd must not do any of the following unless first approved by Nelson CC and Tasman DC:

- (a) make any material disposal of assets which are not budgeted for and/or provided for in the Statement of Intent in the relevant Financial Year (or any series of related disposals which, if considered together, would be material); or
- (b) engage in any business or activity which is not the Business (i.e., holding and administering investments in entities in which Nelson CC and Tasman DC have a substantial interest for the benefit of the Nelson and Tasman regions and securing funding for and providing funding to the same) or reasonably incidental to the Business; or
- (c) undertake any capital raising or external debt financing or refinancing that is not in accordance with the Infrastructure Holdings Ltd’s corporate treasury structure policies or existing lending and/or borrowing agreements; or
- (d) enter into, terminate or grant a waiver of rights under, or material amendment to, any contract in relation to a transaction with Nelson CC and/or Tasman DC or a Subsidiary (i.e., Port Nelson Ltd and/or Nelson Airport Ltd) which has not been included in an approved budget, Statement of Intent or otherwise previously approved; or

SER-023544-426-159-V2

- (e) grant any security interest over the assets of Infrastructure Holdings Ltd, other than in the ordinary course of business or as permitted by Infrastructure Holdings Ltd's policies regarding the granting of security interests and/or Infrastructure Holdings Ltd's existing lending and/or borrowing agreements; or
- (f) appoint an administrator or take a step to liquidate, dissolve or wind up Infrastructure Holdings Ltd; or
- (g) make any decision to undertake an initial public offering; or
- (h) issue, cancel, buy-back or make any reduction of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares; or
- (i) transfer any Shares held by Infrastructure Holdings Ltd or purchase or otherwise acquire its own Shares; or
- (j) approve any transfer of Shares by Nelson CC and/or Tasman DC; or
- (k) give financial assistance for the purposes of, or in connection with, the purchase of Shares; or
- (l) consolidate, divide or subdivide any Shares or create, alter or cancel any rights attaching to Shares; or
- (m) apply any amounts available for distribution in paying up Shares or other securities; or
- (n) exercise the right to issue shares in lieu of dividends conferred by section 54 of the Companies Act; or
- (o) make any amendment to the Shareholders' Agreement not expressly contemplated by the provisions of that agreement; or
- (p) create, acquire or sell any Subsidiary.

Note: This document, the Constitution of Infrastructure Holdings Ltd and the Shareholders' Agreement relating to Infrastructure Holdings Ltd have all been drafted by Pitt & Moore, on the instruction of Port Nelson Ltd and the Steering Committee. DLA Piper has reviewed the Constitution of Infrastructure Holdings Ltd and the Shareholders' Agreement of Infrastructure Holdings Ltd on behalf of Nelson CC and Tasman DC. Pitt & Moore do not act for Nelson CC nor Tasman DC.

