

CONSTITUTION

DEVELOPMENT AUCKLAND LIMITED

Signed as a true and correct copy of
the constitution of **Development
Auckland Limited** as at [•] 2015 by:

Stephen Tamm

**CONSTITUTION
OF
DEVELOPMENT AUCKLAND LIMITED**

1. DEFINITIONS AND INTERPRETATION

In this Constitution, unless the context otherwise requires:

1.1 Definitions:

Act means the Companies Act 1993;

Auckland Council means the unitary authority established under the Local Government (Auckland Council) Act 2009;

Auckland Council Representative means any person, as notified to the Board in writing by Auckland Council, who has express authority to act on behalf of the Auckland Council;

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

Company means **Development Auckland Limited**;

Company Purpose means the intended purpose of the Company set out in clause 3.1;

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

Council-Controlled Organisation, or **CCO**, has the meaning set out in section 6 of the Local Government Act 2002;

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

Distribution means:

(a) the direct or indirect transfer of money or property, other than Shares, to or for the benefit of the Shareholder; or

(b) the incurring of a debt to or for the benefit of the Shareholder,

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

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

Local Government Acts means the Local Government Act 1974, the Local Government Act 2002, the Local Government (Tamaki Makaurau Reorganisation) Act 2009, the Local Government (Auckland Transitional Provisions) Act 2010 and the Local Government (Auckland Council) Act 2009;

month means calendar month;

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

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

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

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

Shareholder means Auckland Council;

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

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

Statement of Intent means the statement of intent to be completed by the Board in accordance with section 64 of the Local Government Act 2002 and, where the context so requires, means the most recent statement of intent (including any modification thereof) so completed by the Board; and

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

1.2 Interpretation: In this Constitution, unless the context otherwise requires:

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

2. CCO STATUS AND STATUS OF CONSTITUTION

2.1 Council-Controlled Organisation: The Company is established as a Council-Controlled Organisation, which is a wholly-owned subsidiary of Auckland Council.

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

2.3 Relationship to Act and Local Government Acts: If there is any conflict:

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

(b) between:

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

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

then the provision, word or expression in this Constitution prevails.

3. COMPANY PURPOSE, CCO OBJECTIVES AND CAPACITY

3.1 Company Purpose: Development Auckland will:

(a) Contribute to the implementation of the Auckland Plan and encourage economic development by facilitating urban redevelopment that optimises and integrates good public transport outcomes, efficient and sustainable infrastructure and quality public services and amenities.

(b) Manage-council's non-service¹ property portfolio and provide strategic advice on council's other property portfolios.

(c) Recycle or redevelop sub-optimal or under-utilised council assets and aim to achieve an overall balance of commercial and strategic outcomes.

(d) Undertake, assist or advise on any other property-related development, management or transformation activities specified by Auckland Council.

3.2 Nature of Company Purpose: The Company is not established to operate a trading undertaking for the purpose of making a profit (as referred to in the definition of council-controlled trading organisation in section 6 of the Local Government Act 2002). For the avoidance of doubt, this does not preclude the Company from undertaking activities within the Company Purpose that may make a profit.

3.3 CCO Objectives: In accordance with section 59 of the Local Government Act 2002, as a Council-Controlled Organisation the principal objective of the Company in pursuing the Company Purpose and carrying out its activities and functions is to:

¹ Non service properties are defined in the Local Government (Tamaki Makaurau Reorganisation) Council-controlled Organisations Vesting Order 2010 as property that is not infrastructure or used to deliver services (for example, property not used as council offices, a park or reserve, art gallery, library, swimming pool, recreation centre, sporting facility, community hall, community centre, or other community facility, early childhood centre, public toilet, as housing for elderly persons, a wharf or boat ramp, or as a heritage property).

- (a) achieve the objectives of Auckland Council, both commercial and non-commercial, in relation to the Company Purpose, as specified in the Statement of Intent;
- (b) be a good employer (as defined in clause 36 of Schedule 7 of the Local Government Act 2002); and
- (c) exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so.

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

4. STATEMENT OF INTENT

In preparing the Statement of Intent, the Board must comply with its obligations under the Local Government Act 2002 and any further requirements notified to the Company, in writing, by the Auckland Council under section 91 of the Local Government (Auckland Council) Act 2009 with regard to the preparation and completion of a Statement of Intent for each financial year.

5. AUCKLAND COUNCIL ACCOUNTABILITY REQUIREMENTS

5.1 Auckland Council Plans: In accordance with section 92 of the Local Government (Auckland Council) Act 2009, the Company must:

- (a) give effect to the relevant aspects of the Auckland Council long-term plan; and
- (b) act consistently with the relevant aspects of any other plan (including a local board plan) or strategy of the Auckland Council to the extent specified in writing by the governing body of the Auckland Council.

5.2 Auckland Council Substantive Council-Controlled Organisation Accountability Policy: The Company must comply with any expectations and requirements relevant to the Company set out in Auckland Council's substantive Council-Controlled Organisation accountability policy adopted in accordance with section 90 of the Local Government (Auckland Council) Act 2009.

5.3 Additional Accountability Requirements: If required by Auckland Council in a written notification, the Company must comply with the additional accountability requirements set out in section 91 of the Local Government (Auckland Council) Act 2009.

5.4 Treaty of Waitangi: The Company must comply with all applicable statutory and regulatory obligations relating to Maori and the Treaty of Waitangi, including those in the Local Government Act 2002.

5.5 LGOIMA: The Company must comply with the Parts 1-6 of the Local Government Official Information and Meetings Act 1987.

6. REPORTING

6.1 Quarterly report: If required by Auckland Council in a written notice, no later than six weeks after the end of the first, third and fourth quarter of each financial year of the Company, the Board must deliver to the Shareholder a report on the Company's operations during each quarter. That report must include the information required to be included by the Statement of Intent.

Half yearly report: Within two months after the end of the first half of the financial year of the Company, the Board must deliver to the Shareholder a report on the Company's operations during that half year. That report must include the information required to be included by the Statement of Intent.

6.2 Annual report: Within three months after the end of each financial year of the Company, the Board must deliver to the Shareholder, and make available to the public, a report on the Company's operations during that year. That report must include the information required to be included by:

- (a) sections 68 and 69 of the Local Government Act 2002;
- (b) the Statement of Intent; and
- (c) the Act.

6.3 Protection from disclosure of sensitive information: Nothing in this clause 6 requires the inclusion in any Statement of Intent, annual report, financial statement, half-yearly report or quarterly report required to be produced under this Constitution by the Company of any information that may be properly withheld, if a request for that information was made under the Local Government Official Information and Meetings Act 1987.

7. APPOINTMENT AND REMOVAL OF DIRECTORS

7.1 Number of Directors: The number of Directors may not at any time be more than nine.

7.2 Appointment: Subject to clauses 7.3 to 7.6, a person may be appointed as a Director at any time by Ordinary Resolution or by written notice to the Company signed by the Shareholder (or executed by an Auckland Council Representative). Two or more persons may be appointed as Directors by a single resolution or notice.

7.3 Term of Appointment: No person may be appointed as a Director for a term greater than three years. Any Director may be reappointed at the expiry of his or her term of appointment, provided that no Director may be appointed for more than three consecutive terms.

7.4 Statutory requirements: Any appointment or removal of Directors must at all times comply with the Local Government Acts.

7.5 Restrictions on appointment: A person must not be appointed as a Director if the person is, at the time of the appointment, a member of the governing body or a local board of Auckland Council, or an employee of Auckland Council, provided that the Auckland Council Chief Executive, or his or her representative, may be appointed as a Director.

7.6 Appointment of Chairperson and Deputy Chairperson: Auckland Council must appoint the chairperson and deputy chairperson of the Board.

7.7 Removal: A Director may at any time be removed from office by Ordinary Resolution or by written notice to the Company signed as provided in clause 7.9.

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

- (a) be signed, or purport to be signed by an Auckland Council Representative; and
- (b) be given to the Company by delivering the notice, or by sending the notice through the post or by facsimile or other electronic means of communication, to its registered office.

A notice will be effective from the time of receipt of the notice by the Company at its registered office.

7.9 Tenure of office: A Director ceases to be a Director when his or her term expires pursuant to clause 7.3, or if he or she:

- (a) dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988;
- (b) resigns by written notice delivered to the Company at its address for service or at its registered office (such notice to be effective at the time when it is so received unless a later time is specified in the notice);
- (c) becomes disqualified from being a Director pursuant to section 151 of the Act;
- (d) is removed from office in accordance with clause 7.8; or
- (e) becomes bankrupt or makes an arrangement or composition with his or her creditors generally.

7.10 Resignation of Directors: Without limiting the proviso in clause 7.4, a Director who is elected to Auckland Council's governing body or a local board or becomes an employee of the Auckland Council will be required to resign as a Director before taking up such position. If such a Director does not resign prior to his or her election to the governing body of the Auckland Council or a local board, or his or her employment with the Auckland Council, that Director is deemed to have ceased to be a Director from the date of such election or employment.

8. REMUNERATION AND OTHER BENEFITS OF DIRECTORS

The Board may not exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section to or in respect of a Director in his or her capacity as such, without the prior approval of the Shareholder.

9. INDEMNITY AND INSURANCE

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

9.2 Indemnity: The Company may (and shall to the extent required by the Shareholder) enter into deeds of indemnity with its Directors and employees against liability and costs of the type referred to in clause 9.1, provided all such deeds are in a form approved by the Shareholder.

10. POWERS OF DIRECTORS

10.1 Management of Company: The business and affairs of the Company must be managed by, or under the direction or supervision of, the Board.

10.2 Role of Directors: The role of a Director is to assist the Company to meet its objectives and any other requirements in the Statement of Intent. This clause does not limit or affect the other duties that a Director has.

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

10.4 Limitations on powers of Board: Notwithstanding clauses 10.1 and 10.3, the business and affairs of the Company must be managed in accordance with the applicable provisions of this Constitution, the Statement of Intent and the Local Government Acts.

10.5 Delegation of powers: The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the second schedule to the Act. The Board remains responsible at all times for any delegated powers.

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

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

11. INTERESTS OF DIRECTORS

11.1 Disclosure of Interests: A Director must comply with the provisions of section 140 of the Act (relating to disclosure of interest of directors) but failure to comply with that section does not affect the operation of clause 11.2.

11.2 Personal involvement of Directors: Without limiting sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is Interested) and section 199(2) of the Act (prohibiting a director from acting as auditor of a company), or any applicable rule of law or equity, a Director shall not without the prior written approval of the shareholder:

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

- (c) have any direct or indirect personal involvement or interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;
- (d) become a director or other officer of, or otherwise be interested in, any corporation promoted by the Company or in which the Company may be directly or indirectly interested as a shareholder or otherwise; or

retain any remuneration, profit or benefits in relation to any of the foregoing.

If a contract or arrangement of the kind referred to in this clause is approved by the Shareholder, it may not be avoided by reason of a Director's interest. The foregoing does not apply to any transaction on which the director may vote under clause 11.3(e) and (f).

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

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

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

- (e) any payment or other benefit of the kind referred to in section 161 of the Act in respect of that Director in his or her capacity as such in accordance with clause 8; and
- (f) the entry into an indemnity and/or insurance arrangement in respect of that Director in his or her capacity as such in accordance with clause 9.

11.4 Director may act in Auckland Council's interests: A Director may, when exercising powers or performing duties as a Director, act in a manner which he or she believes is in the best interests of Auckland Council even though it may not be in the best interests of the Company.

12. PROCEEDINGS OF BOARD

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

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

- (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

- (b) by means of audio, or audio and visual, communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

- 12.3 Public meetings:** Without limiting section 96 of the Local Government (Auckland Council) Act 2009, meetings of the Board shall be open to the public unless the Board considers, in accordance with guidelines and requirements communicated to the Board by Auckland Council, that there are specific reasons to exclude the public from the meeting or any part of it.
- 12.4 Procedure:** Except as provided in this Constitution and without limiting section 96 of the Local Government (Auckland Council) Act 2009, the Board may regulate its own procedure.
- 12.5 Convening of meeting:** A Director, or an employee of the Company at the request of a Director, may convene a meeting of the Board by giving notice in accordance with clause 12.6.
- 12.6 Notice of meeting:** The following provisions apply in relation to meetings of the Board except where otherwise agreed by all Directors in relation to any particular meeting or meetings:
- (a) Not less than five working days' notice of a meeting will be given to each Director (other than a Director who has waived that right).
 - (b) Notice to a Director of a meeting may be:
 - (i) given to the Director in person by telephone or other oral communication;
 - (ii) delivered to the Director;
 - (iii) posted to the address given by the Director to the Company for such purpose;
 - (iv) sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose; or
 - (v) sent by electronic means in accordance with any request made by the Director from time to time for such purpose.
 - (c) A notice of meeting must:
 - (i) specify the date, time and place of the meeting;
 - (ii) in the case of a meeting by means of audio, or audio and visual, communication, specify the manner in which each Director may participate in the proceedings of the meeting; and
 - (iii) give an indication of the matters to be discussed, in sufficient detail to enable a reasonable Director to appreciate the general import of the matters, unless this is already known to all the Directors or is impracticable in any particular circumstances.
 - (d) A notice of meeting given to a Director pursuant to this clause is deemed to be given:
 - (i) in the case of oral communication, at the time of notification;

- (ii) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
 - (iii) in the case of posting, three working days after it is posted;
 - (iv) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Director;
 - (v) in the case of electronic means, at the time of transmission.
 - (e) If all reasonable efforts have been made to give notice of a meeting to a Director in accordance with clause 12.6(d) but the Director cannot be contacted, notice of the meeting will be deemed to have been duly given to that Director.
- 12.7 Director may convene meeting:** Without limiting the provisions of clauses 12.4 or 12.6, a Director has the right at any time to convene a meeting of the Board, or to require an employee of the Company to convene a meeting of the Board, at the registered office of the Company or at the place where the meetings of the Board for the time being are customarily held, by giving not less than five working days' written notice signed by or on behalf of the Director to each of the other Directors stating the date, time and place of the meeting and the matters to be discussed.
- 12.8 Waiver of notice irregularity:** An irregularity in the giving of notice of a meeting is waived if each of the Directors either attends the meeting without protest as to the irregularity or agrees (whether before, during or after the meeting) to the waiver.
- 12.9 Quorum:** A quorum for a meeting of the Board is a majority of the Directors. No matter may be considered at a meeting of the Board if a quorum is not present.
- 12.10 Chairperson:** If at any meetings of Directors:
- (a) no chairperson is appointed, the Directors present may choose one of their number to be chairperson of the meeting;
 - (b) a chairperson has been appointed, but that chairperson is not present within 15 minutes after the time determined for the commencement of the meeting, the deputy chairperson will be the chairperson of the meeting; or
 - (c) both the chairperson and deputy chairperson are not present within 15 minutes after the time determined for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.
- 12.11 Voting:** Every Director has one vote. The chairperson does not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent, or if a majority of the votes cast on it are in favour of the resolution. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly dissents from or votes against, or expressly abstains from voting on, the resolution at the meeting (and such dissents, votes against or abstentions shall be noted in the minutes).

- 12.12 Written resolution:** A resolution in writing signed or assented to by a majority of the Directors entitled to vote on that resolution is as valid and effective as if passed at a meeting of the Board duly convened and held provided those Directors would constitute a quorum for consideration of the resolution at a meeting of the Board. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in similar form, each signed or assented to by one or more Directors. A copy of any such resolution must be entered in the Records. The Company must, within five Working Days after any resolution is passed in accordance with this clause, send a copy of the resolution to each Director who has not signed or assented to the resolution.
- 12.13 Committees:** A committee of Directors must, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.
- 12.14 Validity of actions:** The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.
- 12.15 Minutes:** The Board must ensure that minutes are kept of all proceedings at Shareholder meetings and of the Board. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.
- 12.16 Other Meetings / Briefings:** The Board may meet with or brief Auckland Council elected members and officers, and members of the Independent Maori Statutory Board, from time to time. Such meetings and briefings shall be consistent with, and do not otherwise limit, any applicable Auckland Council policy and shall not constitute part of Board proceedings.
- 13. METHOD OF CONTRACTING**
- 13.1 Deeds:** A deed which is to be entered into by the Company may be signed on behalf of the Company, by:
- (a) two or more Directors; or
 - (b) a Director, and any person authorised by the Board, whose signatures must be witnessed; or
 - (c) one or more attorneys appointed by the Company.
- 13.2 Other written contracts:** An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.
- 13.3 Other obligations:** Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.
- 14. SHARES**
- 14.1 Shares in the Company:** At the time of adoption of this Constitution there are 1000 Shares in the Company that are held by Auckland Council. No money is payable for calls or otherwise on those Shares.

- 14.2 Issue of Shares:** Subject to clause 14.3, the Board may, but only with the approval of the Shareholder, issue Shares (including redeemable shares), securities that are convertible into or exchangeable for Shares, or options to acquire Shares and on such terms as the Board thinks fit. The Company is expressly authorised to issue redeemable Shares for the purposes of section 68 of the Act.
- 14.3 Restriction on issue:** No Shares (including redeemable shares), securities that are convertible into or exchangeable for Shares, or options to acquire Shares may be issued to any person other than Auckland Council.

15. SHARE CERTIFICATES

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

subject to satisfactory proof of that fact, payment of the reasonable expenses of the Company and, if so required by the Board, an appropriate indemnity being given to the Company.

16. CALLS ON SHARES

- 16.1 Board may make calls:** Subject to clause 14.1, the Board may, from time to time, make such calls as it thinks fit upon the Shareholder in respect of any amounts unpaid on any Shares held by them which are not made payable at a fixed time or times by the terms of issue of those Shares, and the Shareholder must, subject to receiving at least 10 Working Days' written notice specifying the time or times and place of payment, pay to the Company at the time or times and place so specified the amount called. A call may be made payable by instalments. The Board may revoke or postpone any call.
- 16.2 Fixed instalments deemed calls:** An amount which, by the terms of issue of a Share, is payable on allotment or at a fixed date is deemed for the purposes of this Constitution to be a call duly made and payable on the date on which the amount is payable.

17. NO TRANSFER OF SHARES

The Shareholder may not sell, transfer or otherwise dispose of any Share to any person, while the Company is to remain a substantive council-controlled organisation as defined in section 4(1) of the Local Government (Auckland Council) Act 2009.

18. DISTRIBUTIONS

- 18.1 Power to authorise:** The Board, if satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the solvency test, may, subject to the Act, this Constitution and the Statement of Intent, and with the prior approval of the Shareholder, authorise Distributions by the Company to the Shareholder at times, and of amounts, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.
- 18.2 Deduction of amounts due:** The Board may deduct from a Distribution payable to the Shareholder any amount which is due and payable by the Shareholder to the Company on account of calls or otherwise in relation to any Shares held by the Shareholder.
- 18.3 Method of payment:** A Distribution payable in cash may be paid in such manner as the Board thinks fit to the Shareholder, or to such other person and in such manner as the Shareholder may in writing direct.
- 18.4 No interest on Distributions:** The Company is not liable to pay interest in respect of any Distribution.

19. EXERCISE OF POWERS OF SHAREHOLDER

- 19.1 Alternative forms of meeting:** A Shareholder meeting may be held either:
- (a) by Auckland Council (constituting a quorum as the only Shareholder of the Company), at the place, date and time appointed for the meeting; or
 - (b) if determined by the Shareholder, by means of audio, or audio and visual, communication by which Auckland Council (constituting a quorum as the only Shareholder of the Company), can hear any other person participating in the meeting throughout the meeting.
- 19.2 Exercise of power by meeting or written resolution:** A Shareholder's resolution in writing under section 122 of the Act may consist of one or more documents in similar form (including letters, facsimiles, email or other similar means of communication) each signed or assented to by or on behalf of the Shareholder.

20. SHAREHOLDER MEETINGS

- 20.1 Annual meetings:** The Company must hold annual Shareholder meetings in accordance with section 120 of the Act unless in the case of any annual meeting, everything required to be done at that meeting (by resolution or otherwise) is done by resolution in writing signed in accordance with section 122 of the Act.
- 20.2 Special meetings:** A special Shareholder meeting:
- (a) may be called by the Board at any time; and
 - (b) must be called by the Board on the written request of the Shareholder .
- 20.3 Time and place of meetings:** Each Shareholder meeting will be held at such time and place as the Shareholder appoints.

21. NOTICE OF SHAREHOLDER MEETINGS

- 21.1 Written notice:** Written notice of the time and place of a Shareholder meeting must be sent to the Shareholder and to every Director, and to the auditor of the Company, not less than 10 Working Days before the meeting, but with the consent of the Shareholder, it may be convened by such shorter notice and in such manner as the Shareholder agrees.
- 21.2 Contents of notice:** A notice of meeting must state:
- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable the Shareholder to form a reasoned judgment in relation to it; and
 - (b) the text of any Special Resolution to be submitted to the meeting.
- 21.3 Waiver of notice irregularity:** An irregularity in a notice of a meeting is waived if the Shareholder attends the meeting without protest as to the irregularity, or if the Shareholder agrees to the waiver.
- 21.4 Accidental omission of notice:** The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, any person, does not invalidate the proceedings at that meeting.
- 21.5 Notice of adjourned meeting:** If a Shareholder meeting is adjourned for less than 21 Working Days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting will be given in accordance with clause 21.1.

22. CHAIRPERSON OF SHAREHOLDER MEETINGS

At the time of adoption of this Constitution, the Shareholder has appointed the Chair of the Accountability and Performance Committee to chair all Shareholder meetings. The Shareholder may, at any time and for any reason whatsoever, revoke the chairperson's appointment by giving written notice to the chairperson. In the event of such revocation, the Shareholder must appoint such other person to chair all Shareholder meetings, as the Shareholder thinks fit.

23. AUCKLAND COUNCIL REPRESENTATIVE

Auckland Council has the right to appoint an Auckland Council Representative as its proxy to attend and vote at Shareholder meetings on its behalf. Any Auckland Council Representative so appointed is entitled to attend and be heard at such meetings and to demand or join in demanding a poll, as if that Auckland Council Representative was the Auckland Council.

24. SHAREHOLDER PROPOSALS AND MANAGEMENT REVIEW

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

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

25. INSPECTION OF RECORDS

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

25.2 Inspection by Shareholder: The Shareholder is not entitled to inspect any accounting or other records of the Company, except as expressly authorised by law or permitted by the Board. Subject to the provisions of section 216 of the Act (which permits inspection of certain records by shareholders) the Board may from time to time determine whether, to what extent, at what times and places, and under what conditions, the accounting or other records of the Company or any of them are open to the inspection of the Shareholder.

26. NOTICES

26.1 Reports, etc to Shareholder: Annual reports, notices and other documents required to be sent to the Shareholder will be sent in the manner provided in section 391 of the Act and in accordance with any applicable requirements under the Local Government Acts.

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

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

27. LIQUIDATION

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

27.1 distribute to the Shareholder in kind the whole or any part of the assets of the Company; and

27.2 vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that the Shareholder is not compelled to accept any shares or other securities on which there is any liability.