

CONSTITUTION

TĀMAKI REDEVELOPMENT COMPANY LIMITED



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**CONSTITUTION
OF
TĀMAKI REDEVELOPMENT COMPANY LIMITED**

1. DEFINITIONS AND INTERPRETATION

In this Constitution, unless the context otherwise requires:

1.1 Definitions:

Act means the Companies Act 1993;

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

Business Case means the document titled "New Zealand Treasury and Tāmaki Redevelopment Company: Large Scale Redevelopment Options Report to Shareholders" dated 30 September 2015 and any document supplementary to or replacing that document;

Class means a class of Shares having attached to them identical rights, privileges, limitations and conditions;

Company means Tāmaki Redevelopment Company Limited;

Company Purpose is the purpose of the Company described in clauses 3.1;

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

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

Council Director means the Director appointed or deemed to have been appointed pursuant to clause 10.2(b);

Council Representative means any person, as notified to the Board in writing by Council, who has express authority to act on behalf of the Council and who is not a Director of the Company;

Council Shares means the Shares referred to in clause 18.1(b);

Crown means Her Majesty the Queen in right of New Zealand;

Crown Director means the Director appointed or deemed to have been appointed pursuant to clause 10.2(a);

Crown Entities Act means the Crown Entities Act 2004;

Crown Requirements means requirements that the Crown has of entities such as the Company which is listed in Schedule 4A of the Public Finance Act to comply with Cabinet Office circulars and the Cabinet Manual;

Crown Shares means the Shares referred to in clause 18.1(a);

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

Good Employer has the meaning as defined and described in section 118 of the Crown Entities Act 2004;

Group means the Crown Shares or the Council Shares, as the case may require;

High Risk Investment means an investment with a risk profile that is determined to be high risk by The Treasury based on its risk profile assessment methodology;

HNZL means Housing New Zealand Limited;

month means calendar month;

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);

Public Finance Act means the Public Finance Act 1989;

Redevelopment Programme means the programme for the accelerated regeneration of Tāmaki involving the acquisition of HNZL's approximately 2,800 houses in Tāmaki and their redevelopment in accordance with the Business Case;

Representative means:

- (a) a person appointed as a proxy in accordance with the Act;
- (b) in respect of the Crown, any Shareholding Minister;
- (c) in respect of the Council, the Council Representative;

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

Shareholding Minister means a Minister of the Crown by and through whom the Crown acts as holder of Shares in the Company in terms of clause 6;

Significant Transaction means, whether a single transaction or by means of a series of transactions:

- (a) the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than \$25 million; or
- (b) the disposition of, or an agreement to dispose of, whether contingent or not, assets of the company the value of which is more than \$25 million; or
- (c) a transaction that has or is likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than \$25 million.

Statement of Intent means the statement of intent to be completed by the Company from time to time at the direction of the Crown;

Tāmaki means the Tāmaki geographic area of Auckland, encompassing approximately 600 hectares of Glen Innes, Point England and parts of Panmure as indicatively set out in the map attached as Schedule 1; and

Transformation Objectives means the following four objectives for the transformation of Tāmaki:

- (a) Social: Supporting Tāmaki residents and families to get the skills, knowledge and employment opportunities to progress in their lives.
- (b) Economic: Strengthening the local economy and unlocking the potential of the Tāmaki area to enable a prosperous community and deliver better value for money to the Crown (with a focus on increasing the return on investment and realising the potential value from state and council owned housing).
- (c) Spatial: Creating safe and connected neighbourhoods that support the social and economic development of Tāmaki and its community.
- (d) Housing resources: Optimising the use of land and existing housing stock to effectively support and deliver social and economic results, including progressing private housing development and better public housing options for Tāmaki.

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

- (a) the table of contents and headings 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 capitalised but not otherwise defined in this Constitution have the same meaning as in the Act;
- (f) the term "includes" or "including" (or any similar expression) is deemed to be followed by the words "without limitation";
- (g) where any word or expression is defined in this Constitution, any other grammatical form of that word or expression has a corresponding meaning;

- (h) references to clauses, sections and schedules are references to clauses, sections and schedules in this Constitution, unless stated otherwise; and
- (i) references to Shareholder approval, or Shareholder agreement means approval or agreement by Ordinary Resolution.

2. CONSTITUTION

Effect of this constitution: The provisions of this Constitution prevail over the Act to the maximum extent permitted at law (including by negating or modifying provisions of the Act where permitted).

3. PURPOSE OF THE COMPANY

3.1 The Company Purpose: The purpose of the Company is to pursue the Transformation Objectives, in accordance with the Statement of Intent (once formally approved by the Shareholders) by:

- (a) leading and integrating a programme of activities (with involvement of public, private and non-government organisations) to transform Tāmaki, including planning and preparatory activities;
- (b) procuring and/or influencing physical and spatial development, including with regard to housing, infrastructure and amenities; and
- (c) facilitating the alignment design and delivery of place-based social and economic projects to lift prosperity and well-being in Tāmaki.

3.2 Financial returns: The Company will seek to maximise the Company's financial return having regard to:

- (a) parameters agreed by Shareholders and notified to the Company; and
- (b) the economic and social outcomes the Company is expected by the Crown to deliver as reflected in its Statement of Intent.

3.3 Balance sheet management: The Company must seek to only use its assets, and procure that its subsidiaries and related entities only use their assets, for purposes directly connected with this Constitution and the Statement of Intent. The Company must seek to minimise the level of surplus capital it holds on its balance sheet provided in doing so it does not significantly adversely affect its ability to achieve the Company Purpose.

3.4 Capacity: Subject to the Act, the Crown Entities Act, any other applicable law and this Constitution, 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 to pursue the Company Purpose.

4. STATEMENT OF INTENT / SHAREHOLDER REQUIREMENTS

- 4.1 Obligation to prepare Statement of Intent:** Subject to clause 4.2, the Company must prepare Statements of Intent for the Company in accordance with section 45OA(1)(n) of the Public Finance Act (which applies sections 138 to 149 of the Crown Entities Act). Statements of Intent must reflect the Business Case and be prepared as soon as practical after they are required by the Crown.
- 4.2 Shareholder policies:** The Company must have regard to relevant policies, strategies and plans of the holder of the Council Shares (including the Auckland Plans, Long-Term Plan, and Maungakiekie-Tāmaki Local Board Plan) and the holder of the Crown Shares (including Government policy statements, and development schemes approved by the Minister of Housing under the Housing Act 1955), but shall not be bound by such policies, strategies and plans, except to the extent any aspect of them is reflected in the Statements of Intent, in the Constitution or is a Crown Requirement.

5. NATURE OF THE COMPANY

- 5.1 Schedule 4A organisation:** The Company is majority owned and controlled by the Crown and is named as an organisation in Schedule 4A of the Public Finance Act and Schedule 1 of the Ombudsmen Act 1975. The Company is not a Council-Controlled Organisation (as defined in section 6 of the Local Government Act 2002).
- 5.2 Application of Crown Entities Act:** Pursuant to section 45OA(1)(a) - (p) of the Public Finance Act, sections 79, 81 - 85 (inclusive), 89 - 92 (inclusive), 94 - 97 (inclusive), 99, 100, 102, 107 - 111 (inclusive), 113, 114, 118, 132 - 158 (inclusive), and 161 to 164 (inclusive) of the Crown Entities Act shall apply to the Company as if the Company were a Crown entity under the Crown Entities Act, and as if those sections were expressly incorporated in this Constitution.
- 5.3 Interpretation:** For the avoidance of doubt, any sections of the Crown Entities Act which apply to the Company by virtue of the Public Finance Act, this Constitution or otherwise, shall apply to the Company as if references in those sections to:
- (a) Crown entity company were to the Company;
 - (b) responsible Ministers were to the Shareholding Ministers;
 - (c) Crown entity group were to the Company and its subsidiaries;
 - (d) the board were to the Board of the Company; and
 - (e) members were to Directors of the Company,
- respectively.
- 5.4 Auditor:** Under the Public Audit Act 2001 the Controller and Auditor-General is to be the auditor of the Company.

6. PROVISIONS RELATING TO THE CROWN'S SHAREHOLDING

- 6.1 Crown's shareholdings:** Shares in the Company held by the Crown acting by and through a person described as the holder of a specified Ministerial portfolio shall be held by the Crown acting by and through the person for the time being holding that portfolio. A Shareholding Minister shall be entitled to exercise all rights and powers in relation or attaching to those Shares, on behalf of the Crown, as if that Minister was the person registered in the Company's share register as the holder of those Shares and, to the extent that provisions of the Crown Entities Act apply to the Company, either under the Public Finance Act or by virtue of this Constitution, such Shareholding Minister shall have all the powers of a responsible Minister under those provisions in relation to the Company, as if the Company were a Crown entity company under the Crown Entities Act.
- 6.2 Change to Ministerial portfolio:** The Prime Minister may at any time or times, by written notice to the registered office of the Company which specifies the existing Ministerial portfolio and the new Ministerial portfolio, change the Ministerial portfolio by and through which the Crown acts in relation to any shares in the Company and any such change shall have effect from the date specified in the notice (or, if no date is specified, from the date on which the notice is received by the Company).
- 6.3 No Share transfer:** It shall not be necessary to complete or register a transfer of Shares in the Company consequent upon a change in the person holding a Ministerial portfolio as contemplated by clause 6.1 or upon a change in a Ministerial portfolio as contemplated by clause 6.2. The new person or holder of the new Ministerial portfolio may, on behalf of the Crown, act in relation to the Shares as if the person or holder was registered in the Company's Share Register as the person by and through whom the Crown acts in relation to the Shares.
- 6.4 Appointment of representative:** A Shareholding Minister may at any time or times, by written notice to the registered office of the Company, authorise (on such terms and conditions as are specified in the notice) such person as the Shareholding Minister thinks fit to act as the Crown's representative at any or all of the meetings of Shareholders, and any person so authorised shall be entitled to exercise at the meeting or meetings the same powers as the Crown acting by and through that Shareholding Minister could exercise as if present in person at the meeting or meetings.

7. COUNCIL REPRESENTATIVE

The Council has the right to appoint a Council Representative as its proxy to attend and vote at meetings of Shareholders on its behalf. Any 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 Council Representative was the Council.

8. REPORTING

- 8.1 Reports:** No later than one month after the end of the first and third quarter of each financial year of the Company, the Board must deliver to the Shareholders a report on the Company's operations during that quarter. That report must include the information required to be included by the Statement of Intent.

- 8.2 Annual Report:** At the end of each financial year of the Company, a report on the affairs of the Company (or for such other periods as unanimously required by the Shareholders) must be prepared, presented and published in accordance with sections 150 and 151 of the Crown Entities Act.
- 8.3 Post investment review:** The Company must, if required by the Crown, provide a post investment review of investment during the preceding financial year within eight months of the end of that year.
- 8.4 Balance date and financial reporting:**
- (a) For the purposes of the Council's public financial reporting requirements, the Company will be required to provide year-end audited (or audit cleared) financial information in time to enable the Council to fulfil its New Zealand stock-exchange reporting requirements.
 - (b) Given the Transformation Objectives and the Company Purpose, the Company is a public benefit entity for purposes of financial reporting standards.

9. PLANNING

- 9.1** The Board must deliver to the Shareholders for consultation:
- (a) a 5 year development plan within 6 months of expiry of the previous plan or if there is a major change in the Company's operation within six months of being requested to produce a new development plan by the Shareholders;
 - (b) an annual business plan at least one month prior to the end of the financial year; and
 - (c) a business case in respect of every Significant Transaction or High Risk Investment.
- 9.2** Each Shareholder may, at any time, appoint one representative to any steering committee or working group (or equivalent) considering a Significant Transaction or High Risk Investment or involved in implementing the Business Case.

10. APPOINTMENT AND REMOVAL OF DIRECTORS

- 10.1 Number of Directors:** The minimum number of Directors shall be five and the maximum number of Directors shall be nine.
- 10.2 Appointment and removal:** Subject to the limitations in clause 10.3, a person may be appointed or removed as a Director as follows:
- (a) the holder of the Crown Shares may, at any time by written notice to the Company, appoint or remove in its sole discretion one person to be Crown Director;

(b) the holder of the Council Shares may, at any time by written notice to the Company, appoint or remove in its sole discretion one person to be Council Director; and

(c) the balance of Directors may be appointed or removed by Ordinary Resolution. Two or more persons may be appointed or removed under this sub-clause by a single resolution.

10.3 Restrictions on appointment: A person must not be appointed as a Director (or as an alternate director under clause 10.5 for any Director) if the person is, at the time of the appointment, a member of the governing body or a local board of the Council.

10.4 Chairperson: The chairperson of the Board shall be agreed by the Shareholders.

10.5 Alternate directors: Each Director will have the power from time to time to nominate, by notice in writing to the Company, any person who is not disqualified by the Act from being a director and is not already a Director and who is acceptable to the appointing Shareholder (in the case of any Director appointed in accordance with clauses 10.2(a) or 10.2(b)) or approved by Ordinary Resolution (in the case of any other Director) to act as an alternate director in his or her place either for a specified period or generally during the absence from time to time of such Director and, in like manner, to remove any such alternate director. Unless otherwise provided for by terms of his or her appointment, an alternate director will have the same rights, powers and privileges (including the right to receive notice of meetings of the Board but excluding the power to appoint an alternate director) and will discharge all the duties of and be subject to the same provisions as the Director in whose place he or she acts. An alternate director will not be remunerated otherwise than out of the remuneration of the Director in whose place he or she acts and will automatically vacate office if and when the Director in whose place he or she acts vacates office. Any notice appointing or removing an alternate director may be given by delivering the same or by sending the same through the post or by facsimile or other electronic means of communication to the registered office of the Company and will be effective as from its receipt by the Company. Any alternate for a Director cannot be an alternate for any of the other Directors.

10.6 Notice of appointment and removal: Any notice to the Company pursuant to clauses 10.2(a) and 10.2(b) appointing or removing a Director must:

(a) if given by the Crown, be signed, or purport to be signed, on behalf of the Crown by a Shareholding Minister;

(b) if given by the Council, be signed, or purport to be signed by a Council Representative; and

(c) 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.

10.7 Tenure of office: A Director ceases to be a Director if he or she:

- (a) dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988;
- (b) resigns by written notice delivered to the Company at its 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 10.2; or
- (e) becomes bankrupt or makes an arrangement or composition with his or her creditors generally.

10.8 Resignation of Directors: Any Director (or an alternate) who is elected to the Council's governing body or a local board will be required to resign as a Director (or an alternate) before taking up such position. If a Director (or an alternate) does not resign prior to his or her election to the governing body of the Council or a local board, that Director (or alternate) is deemed to have ceased to be a Director (or alternate) from the date of such election or employment.

11. 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 prior Shareholder approval.

12. INDEMNITY AND INSURANCE

12.1 Authority: The Company is expressly authorised to indemnify and/or insure any Director or employee against liability for acts or omissions, and/or costs incurred in connection with claims relating 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.

13. RESTRICTIONS

13.1 Matters permitted in the Statement of Intent: The Company shall not carry out any of the following activities, except to the extent permitted in its Statement of Intent (or otherwise approved by Ordinary Resolution):

- (a) any matter which would require approval under any of the provisions of the Crown Entities Act to the extent they apply to the Company, either under the Public Finance Act or by virtue of this Constitution;
- (b) the issue to any person or the acquisition from any person of debt, equity or hybrid securities;

- (c) the entry into any third party financing arrangements, including any non-ordinary course of business securitisation of any Company assets; and
- (d) the provision of a guarantee or indemnity to any person (whether with or without security), with the exception of any indemnity of the kind referred to in clause 12.

14. POWERS OF DIRECTORS

- 14.1 Management of Company:** Subject to this Constitution, the business and affairs of the Company must be managed by, or under the direction or supervision of, the Board.
- 14.2 Role of Directors:** The role of a Director is to assist the Company to meet its Company Purpose and any other requirements in the Statement of Intent. This clause does not limit or affect the other duties that a Director has.
- 14.3 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 Shareholders.
- 14.4 Limitations on powers of Board:** Notwithstanding clauses 14.1 and 14.3, the business and affairs of the Company must be managed in accordance with the applicable provisions of this Constitution.
- 14.5 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.
- 14.6 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.
- 14.7 Ratification by Shareholders:** Subject to the provisions of section 177 of the Act (relating to ratification of Directors' actions) the Shareholders, 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.

15. INTERESTS OF DIRECTORS

- 15.1 Disclosure of Interests:** A Director must comply with the provisions of section 140 of the Act (relating to disclosure of Interests of Directors) but failure to comply with that section does not affect the operation of clause 15.2.
- 15.2 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 prior Shareholder approval:

- (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 Interested in, any corporation or entity promoted by the Company or in which the Company may be directly or indirectly Interested as a shareholder or otherwise; or
- (e) retain any remuneration, profit or benefits in relation to any of the foregoing.

In the event that a contract or arrangement of the kind referred to in this clause is approved by the Shareholders, it may not be avoided by reason of a Director's Interest.

15.3 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; or
- (d) do any other thing in his or her capacity as a Director in relation to that transaction,

provided that a Director may vote 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 11; 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 12.

16. PROCEEDINGS OF BOARD

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

16.2 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.

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

16.4 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 16.5.

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

- (a) 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, unless a message is received indicating that the notice was not transmitted.
- (e) If all reasonable efforts have been made to give notice of a meeting to a Director in accordance with clause 16.5(d) but the Director cannot be contacted, notice of the meeting will be deemed to have been duly given to that Director.

16.6 Director may convene meeting: Without limiting the provisions of clauses 16.3 or 16.5, 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.

16.7 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.

16.8 Quorum: A quorum for a meeting of the Board is a majority of the Directors, including at least the Crown Director and the Council Director (or any alternate director for the Crown Director or the Council Director, as applicable) unless the Crown Director or the Council Director (as the case may be) waives their quorum right for that meeting (provided that such waivers cannot be exercised for more than two consecutive meetings). No matter may be considered at a meeting of the Board if a quorum is not present.

16.9 Chairperson: If at any meeting 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.

- 16.10 Voting:** Every Director has one vote. The chairperson does not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent, or if a majority of the votes cast on it are in favour of the resolution. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly dissents from or votes against, or expressly abstains from voting on, the resolution at the meeting.
- 16.11 Written resolution:** A resolution in writing signed or assented to by a majority of the Directors entitled to vote on that resolution is as valid and effective as if passed at a meeting of the Board duly convened and held provided those Directors would constitute a quorum (for the avoidance of doubt, including at least a Crown Director and a Council Director or their alternates) for consideration of the resolution at a meeting of the Board. Any such resolution may consist of several documents (including facsimile or other electronic 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.
- 16.12 Committees:** A committee of Directors must, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.
- 16.13 Validity of actions:** The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.
- 16.14 Minutes:** The Board must ensure that minutes are kept of all proceedings at meetings of the Shareholders and of the Board. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

17. METHOD OF CONTRACTING

- 17.1 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.
- 17.2 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.
- 17.3 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.

18. SHARES

18.1 Groups of Shares: The Shares are divided into the following Groups:

- (a) **Crown Shares** comprising the Shares held by:
 - (i) the Minister of Housing on behalf of the Crown which shall be numbered 1 to 295;
 - (ii) the Minister of Finance on behalf of the Crown which shall be numbered 296 to 590; and
- (b) **Council Shares** comprising the Shares to be held by the Council which shall be numbered 591 to 1000,

and upon the issue of new Shares which are expressed or intended to form part of a Group, the relevant Group shall thereafter include those Shares and this clause shall be deemed to be varied accordingly. Except as expressly provided in this Constitution, all the Crown Shares and Council Shares have the same rights and privileges and are subject to the same restrictions.

18.2 Issue of Shares: Subject to clauses 13.1 and 18.3, the Board may, with Shareholder approval, issue Shares (including redeemable shares), securities that are convertible into or exchangeable for Shares, or options to acquire Shares to such persons 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. Section 45 applies to the Company.

18.3 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 the Shareholders named in clause 18.1.

19. ALTERATION OF SHAREHOLDER RIGHTS

19.1 Special Resolution required: Any action affecting the rights, privileges, limitations or conditions attached to any Shares by this Constitution or the Act must be approved by Special Resolution of each Interest Group.

19.2 Meetings of Interest Groups: The provisions of this Constitution relating to meetings of Shareholders will apply to separate meetings of the Shareholders in each Interest Group, except that the necessary quorum will be two persons (if there is more than one holder in such Interest Group, and otherwise the necessary quorum shall be one person) holding or representing the holders of not less than one third of the Shares of the relevant Interest Group. Any Shareholder in the Interest Group present in person or by Representative may demand a poll.

19.3 Issue of further Shares: The issue of further Shares ranking equally with, or in priority to, any existing Shares, whether as to voting rights, Distributions or otherwise, is deemed to be an action affecting the rights attaching to the existing Shares.

20. SHARE CERTIFICATES

20.1 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 a Shareholder, send to that Shareholder a Share certificate, in accordance with section 95 of the Act.

20.2 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.

21. CALLS ON SHARES

21.1 Board may make calls: The Board may, from time to time, make such calls as it thinks fit upon the Shareholders in respect of any 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 Shareholders 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.

21.2 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.

22. SHAREHOLDING

Permitted Shareholders: Shares may only be held by the Crown and by the Council.

23. DISTRIBUTIONS

23.1 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 prior Shareholder approval, authorise Distributions by the Company at times, and of amounts, and to any Shareholders, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution. Shareholder approval under this clause 23.1 shall be deemed to have been given, if the relevant Distribution is in accordance with any five year development plan or any business plan, which the Shareholders have previously approved, to the extent that any of these plans provide for that Distribution.

23.2 Form of Distribution: Subject to the rights of holders of any Shares in a Class, the Board may make a Distribution in such form as it thinks fit, but will not differentiate between Shareholders as to the form in which a Distribution is made without prior Shareholder approval.

23.3 Entitlement to dividends: Subject to section 107 of the Act (relating to unanimous consent to certain actions), the Board will not authorise a dividend:

- (a) in respect of some but not all the Shares; or
- (b) that is of a greater value per Share in respect of some Shares than it is in respect of other Shares,

unless the amount of the dividend in respect of a Share is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder under this Constitution or under the terms of issue of the Share, but a Shareholder may waive that Shareholder's entitlement to receive a dividend or any part thereof by written notice to the Company signed by or on behalf of that Shareholder.

23.4 Deduction of amounts due: The Board may deduct from a Distribution payable to a 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 that Shareholder.

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

24. EXERCISE OF POWERS OF SHAREHOLDERS

24.1 Methods of holding meetings: A meeting of Shareholders may be held either:

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

24.2 Exercise of power by meeting or written resolution: Subject to clause 24.3, a power reserved to the Shareholders by the Act or by this Constitution may be exercised:

- (a) at a meeting of Shareholders; or
- (b) by a resolution in writing signed in accordance with section 122 of the Act.

24.3 Exercise of powers: The Shareholders shall exercise their respective rights as Shareholders in the Company in accordance with the Act, and this Constitution.

25. MEETINGS OF SHAREHOLDERS

- 25.1 Annual meetings:** The Company must hold annual meetings of Shareholders 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 (including a Council Representative where Council is voting on the resolution or a Shareholding Minister where the Crown is voting on the resolution).
- 25.2 Special meetings:** A special meeting of Shareholders entitled to vote on an issue:
- (a) may be called by the Board at any time; and
 - (b) must be called by the Board on the written request of the Shareholders.
- 25.3 Time and place of meetings:** Each meeting of Shareholders will be held at such time and place (for annual meetings) as the Board appoints or (for special meetings) as the shareholders request.

26. NOTICE OF MEETINGS OF SHAREHOLDERS

- 26.1 Written notice:** Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting 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 all Shareholders entitled to attend and vote at a meeting, it may be convened by such shorter notice and in such manner as those Shareholders agree.
- 26.2 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 a Shareholder to form a reasoned judgment in relation to it; and
 - (b) the text of any Special Resolution to be submitted to the meeting.
- 26.3 Waiver of notice irregularity:** An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.
- 26.4 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.
- 26.5 Notice of adjourned meeting:** If a meeting of Shareholders 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 26.1.

27. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

- 27.1 Requirement for quorum:** Subject to clause 27.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.
- 27.2 Quorum:** Subject to clause 27.3, a quorum for a meeting of Shareholders is present if shareholders or their proxies are present who are, on a poll, between them able to cast a majority of votes attaching to the Crown Shares and a majority of the votes attaching to the Council Shares.
- 27.3 Lack of quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting called by the Board on the written request of Shareholders entitled to exercise that right, the meeting is dissolved;
 - (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Board may appoint and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their Representatives present are a quorum.
- 27.4 Adjournment of meeting:** The Chairperson may, with the consent of a meeting at which a quorum is present (and must, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the relevant meeting.
- 27.5 Invitees:** Each Shareholder is entitled to invite such number of persons as they deem necessary or desirable to attend any meeting of the Shareholders.

28. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

- 28.1 Chairperson:** If a chairperson of the Board has been appointed, and he or she is present at a meeting of Shareholders, he or she will chair the meeting, unless or except to the extent that the chairperson considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting.
- 28.2 Shareholders may appoint chairperson:** If at any meeting of Shareholders:
- (a) no chairperson of the Board has been appointed, the Directors present may choose one of their number to be chairperson of the meeting;
 - (b) a chairperson of the Board has been appointed, but that chairperson is not present within 15 minutes after the time determined for the commencement of the meeting or considers it not proper or desirable to act as chairperson, the deputy chairperson of the Board will be the chairperson of the meeting;
 - (c) neither the chairperson nor deputy chairperson of the Board are present within 15 minutes after the time determined for the commencement of the meeting or consider themselves not proper or desirable to act as

chairperson, the Directors present may choose one of their number to be chairperson of the meeting; or

- (d) none of (a) to (c) above apply, the Shareholders present may choose one of their number to chair the meeting.

29. VOTING AT MEETINGS OF SHAREHOLDERS

- 29.1 Voting at meeting in one place:** In the case of a meeting of Shareholders held under clause 24.1(a), unless a poll is demanded in accordance with the Act, the chairperson of the meeting will determine whether voting will be by voice or by show of hands.
- 29.2 Voting at audio/visual meeting:** In the case of a meeting of Shareholders held under clause 24.1(b), unless a poll is demanded in accordance with the Act, voting at the meeting will be by the Shareholders signifying individually their assent or dissent by voice.
- 29.3 Postal votes:** Unless the Board determines otherwise, Shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines that postal voting will be permitted at a meeting, the provisions of clause 7 of the first schedule to the Act (relating to postal votes) will apply, with such modifications (if any) as the Board thinks fit.
- 29.4 Entitlement to vote:** A Shareholder may exercise the right to vote either in person or by Representative.
- 29.5 Number of votes:** Subject to clause 29.7 and to any rights or restrictions for the time being attached to any Class of Shares:
- (a) where voting is by show of hands or by voice every Shareholder present in person or by Representative has one vote;
 - (b) on a poll every Shareholder present in person or by Representative has one vote in respect of each Share held by that Shareholder.
- 29.6 Declaration by chairperson:** A declaration by the chairperson of a meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with the Act.
- 29.7 No vote when amount owing on Share:** A Shareholder is not entitled to vote at any meeting of Shareholders (including a meeting of an Interest Group) in respect of any Share if any amount is due and payable on that Share by the Shareholder to the Company.

30. SHAREHOLDER PROPOSALS AND MANAGEMENT REVIEW

- 30.1 Shareholder proposals:** A Shareholder may give written notice to the Board of a matter which the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote. The provisions of clause 9 of the first schedule to the Act apply to any notice given pursuant to this clause.
- 30.2 Management review by Shareholders:** The chairperson of a meeting of Shareholders will allow a reasonable opportunity for Shareholders at the meeting

to question, discuss, or comment on the management of the Company. The Shareholders may pass a unanimous resolution relating to the management of the Company either:

- (a) at that meeting; or
- (b) as a written resolution in lieu of a meeting,

and any such resolution is binding on the Board to the extent that such resolution is expressed in binding or mandatory terms.

31. RECORDS AND INFORMATION

31.1 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.

31.2 Inspection by Shareholders: No Shareholder who is not also a Director is 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) and section 133 of the Crown Entities Act, 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 Shareholders who are not also Directors.

31.3 Information: Any information that is provided by the Company to any Shareholder must be provided to all other Shareholders at the same time.

32. NOTICES

32.1 Reports, etc to Shareholders: Annual reports, notices and other documents required to be sent to a Shareholder will be sent in the manner provided in section 391 of the Act.

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

32.3 Waiver by Shareholders: Subject to section 212(2) of the Act, a 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.

33. LIQUIDATION

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

- (a) divide among the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose fix such value as the liquidator deems fair in respect of any property to be so divided, and may determine how the

division will be carried out as between Shareholders or between different Groups of Shares; and

- (b) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities on which there is any liability.

33.2 Subject to the terms of issue of any Shares in the Company and to clause 33.1 above, on the liquidation of the Company, the assets, if any, remaining after payment of the debts and liabilities of the Company and the costs of winding-up the Company (**surplus assets**) shall be distributed among the Shareholders in proportion to their shareholding provided however that the holders of Shares not fully paid up shall only receive a proportionate share of their entitlement being an amount which is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder to the Company in respect of the Shares either under this Constitution or pursuant to the terms of issue of the Shares,

SCHEDULE 1: INDICATIVE TĀMAKI MAP



Tamaki Transformation Programme

2010 / 2011 Aerial Imagery

Indicative Boundary Alignment



SCALE 1:17,000 @ A3

