

CONSTITUTION OF KUROW–DUNTROON IRRIGATION COMPANY LIMITED

PURSUANT TO THE COMPANIES ACT 1993

1. Definitions and interpretation

1.1 In this constitution, unless the context otherwise requires, the following words and expressions have the meanings given to them in this clause:

“Act” means the Companies Act 1993.

“alternate director” means a director appointed pursuant to clause 14.7(a).

“amalgamation” means the completed act of the company and one or more other companies amalgamating pursuant to Part XIII of the Act and continuing as one company, which may be one of the amalgamating companies or may be a new company.

“annual meeting” means a meeting of shareholders held pursuant to clause 12.1.

“associated person” means any person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or under common control of a shareholder/s or director. A person shall be deemed to control another person for the purpose of this definition, if the first such person possesses, directly or indirectly, the power to appoint a majority of directors to the second person, or otherwise direct or cause the direct or management for the policies of the second person, whether through the ownership of voting securities, control of the appointment of trustees to a trust, by contract or otherwise.

“balance date” means the date adopted by the company as the end of its financial year for the purpose of its annual financial statements.

“Board” means the directors numbering not less than the required quorum acting as the Board of directors of the company, and where one director is a quorum it means that director so acting alone.

“call” means a resolution of the Board under clause 9.1 requiring shareholders to pay all or part of the unpaid amount of the issue price of any shares and, where the context requires, means the obligation of a shareholder to meet the amount due pursuant to such a resolution.

“class” and “class of shares” means a class of shares having attached to them identical rights, privileges, limitations, and conditions.

“chairperson” means the chairperson of the Board, elected or appointed under clause 17.2.

“company” means Kurow–Duntroon Irrigation Company Limited.

“constitution” means the constitution of the company and all amendments to it from time to time.

“director” means a person appointed and continuing in office for the time being, in accordance with this constitution, as a director of the company.

“distribution”, in relation to shares held by a shareholder, means:

- a) the direct or indirect transfer of money or property, other than shares, by the company to or for the benefit of that shareholder; or
- b) the incurring of a debt by the company to or for the benefit of a 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.

“dividend” means a distribution by the company other than a distribution to which section 59 or section 76 of the Act applies.

“interest group”, in relation to any action or proposal affecting rights attached to shares, means a group of shareholders:

- a) whose affected rights are identical; and
- b) whose rights are affected by the action or proposal in the same way; and
- c) subject to (b) below, who comprise the holders of one or more classes of shares.

For the purposes of this definition:

- a) one or more interest groups may exist in relation to any action or proposal; and

- b) if-
 - (i) action is taken in relation to some holders of shares in a class and not others; or
 - (ii) a proposal expressly distinguishes between some holders of shares in a class and other holders of shares of that class,

holders of shares in the same class may fall into 2 or more interest groups.

“interests register” means a register kept by the company at its registered office as required by section 189(1)(c) of the Act.

“irrigation season” means the period commencing 1 August in each year and ending on 31 May in the following year.

“major transaction”, in relation to the company, means:

- a) the acquisition of, or an agreement to acquire (whether contingent or not), assets the value of which is more than half the value of the company’s assets before the acquisition; 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 half the value of the company’s assets before the disposition; or
- c) a transaction which has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities, the value of which is more than half the value of the company’s assets before the transaction.

Nothing in paragraph (b) or (c) of this definition applies by reason only of the company giving, or entering into an agreement to give, a charge secured over assets of the company the value of which is more than half the value of the company’s assets for the purpose of securing the repayment of money or the performance of an obligation.

“managing director” means a director who is appointed under clause 19 as an employee of the company, with the responsibility for the management of the company (together with any other employee).

“month” means calendar month.

“ordinary resolution” means a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question.

“owner” means the owner of a property.

“property” means a property within the scheme.

“register” means the register of shares required by clause 6 of this constitution and section 87 of the Act to be kept.

“Registrar” means the Registrar of Companies appointed under section 357(1) of the Act.

“scheme” means the properties serviced by irrigation infrastructure owned and operated by the company.

“scheme infrastructure” means all infrastructure owned or operated or constructed and installed by the company for the take and conveyance of water through the company’s irrigation scheme and any other infrastructure necessary to supply water to farms and manage the scheme, including without limitation pumping stations, electrical works, electronic systems, pipes, valves, water races, dams, ponds, water meters, head races, control gates, measuring devices, monitoring equipment, off-take structures.

“share” means a water share.

“shareholder” means a person:

- a) registered in the register as the holder of one of more shares; or
- b) until the person’s name is entered in the register, a person named as a shareholder in the application for registration of the company at the time of registration of the company; or
- c) until the person’s name is entered in the register, a person who is entitled to have that person’s name entered in the register under a registered amalgamation proposal as a shareholder in an amalgamated company.

“solvency test” means an examination to be applied to the financial state of the company, which will be satisfied if:

- a) the company is able to pay its debts as they become due in the normal course of business; and
- b) the value of the company’s assets is greater than the value of its liabilities, including contingent liabilities, and in respect of which regard has been had to the matters referred to in section 4(2) of the Act.

For the purpose of this definition “debts” and liabilities” have the meaning given to those terms in sections 52(4) or 108(5) of the Act as applicable.

“special meeting” means a meeting of shareholders entitled to vote on an issue which:

- a) may be called at any time by the Board or a person authorised by this constitution to call the meeting; or
- (b) must be called by the Board on a written request of shareholders holding shares carrying together not less than 5 per cent of the voting rights entitled to be exercised on the issue.

“special resolution” means a resolution of shareholders approved by a majority of 75 per cent of the votes of those shareholders entitled to vote and voting on the question.

“water” means surface water and ground water.

“Water Supply Agreement” means an agreement between the company and the farmer setting out the terms and conditions on which the company will supply water to a holder of water shares.

“water race” means the relevant water race from which a shareholder takes water.

“water share” means a share conferring the right to take a volume of water to irrigate one hectare and such further rights and obligations set out in clause 3.2 of this constitution.

“working day” means a day of the week other than:

- a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, and Waitangi Day;
- b) if Waitangi or Anzac Day falls on a Saturday or a Sunday, the following Monday;
- c) a day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year;
- d) if the first day of January in any year falls on a Friday, the following Monday; and
- e) if the first day of January in any year falls on a Saturday or Sunday, the following Monday and Tuesday.

- 1.2 In this constitution unless the context otherwise requires:
- a) headings are inserted for convenience only and shall be ignored in construing this constitution;
 - b) the singular includes the plural and vice versa;
 - c) one gender includes the other genders;
 - d) a reference to a person includes an individual, partnership, firm, company, corporation, association, trust, estate, state or agency of a state, government or government department or agency, municipal or local authority and any other entity, whether or not incorporated and whether or not having separate legal personality;
 - e) “written” and “in writing” includes any means of reproducing words, figures or symbols in a tangible and visible form; and
 - f) a reference to a clause is to that clause in this constitution unless stated otherwise.

1.3 Subject to this clause 1, expressions contained in this constitution bear the same meaning as specified in the Act as amended from time to time.

1.4 If the Act changes in a way that would, but for this clause, cause section 31 of the Act to apply to any clause then that clause shall be deemed to be amended in the same manner as the change in the Act so that the constitution does not contravene or become inconsistent with the Act.

2. Capacity and powers

2.1 Rights, powers and duties

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

2.2 Full capacity

Subject to this constitution, the Act, any other enactment, and the general law, the company has both within and outside New Zealand full capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act, or enter into any transaction.

PART II: SHARES AND DIVIDENDS**3. Capital and issue of shares****3.1 Classes of shares**

The share capital of the company will initially consist of one class of shares being water shares.

3.2 Water shares

- a) The following rights and obligations shall attach to water shares:
 - (i) Each water share shall have an initial issue price such as the Board determines in accordance with clause 3.5.
 - (ii) A holder of water shares shall pay an annual water charge and one off capital charges to the company on a per share basis (to be determined by the Board in its absolute discretion) to cover operating and capital costs incurred by the company and as more particularly set out in clause 3.3 and the Water Supply Agreement to which the holder is party.
 - (iii) The right to one vote per water share held up to a maximum vote of 10% of the voting shares on issue by the company to any one shareholder, together with his, her, its associated persons. For the purposes of determining whether a shareholder and/or an associated person of such shareholder holds or controls more than the maximum voting percentage of shares, the company may, by notice in writing to the shareholder, require the shareholder to provide to the company such information as may be reasonably necessary in the discretion of the Board, to make such determination. The determination of the Board will be final.
 - (iv) The right to an equal share in dividends as authorised by the Board.
 - (v) The right to an equal share in the distribution of the surplus assets of the company on winding up.
 - (vi) Water shares may only be issued or transferred to, and held by an owner of a property which forms part of the scheme.

- (vii) Each share shall entitle the holder to take sufficient water to irrigate one hectare, whether borderdyke or spray, at the company's applicable rates, provided however that a holder may (with the company's consent in its absolute discretion) be entitled to irrigate more than one hectare on his or her land at a lower application rate. By way of example, a farmer with 100 shares is entitled to irrigate 100 hectares at .5L/sec, or if he or she so chooses, 120 hectares at .4L/sec.
 - (viii) A holder of water shares shall be bound by the form of Water Supply Agreement notified to the holder of water shares by the company from time to time as applying to all holders of water shares (other than information specific to individual holders) upon receiving written notice from the company to that effect together with a copy of the form of the Water Supply Agreement and in addition, if required by the company, will enter into a Water Supply Agreement in this form (and will be bound by amendments to the Water Supply Agreement). The holder's entitlement to water is subject to the holder being bound by a Water Supply Agreement. In the event of any inconsistency between the terms of the Water Supply Agreement and this constitution the Water Supply Agreement will prevail.
 - (ix) Each shareholder has an obligation to allow water to be conveyed over his property whether via a water race or pipe in accordance with those shareholders and/or the company's rights. The company and shareholder affected shall agree compensation payable by the company to the shareholder for loss of land or use of land, whether temporary or permanent. In the event agreement cannot be reached within 60 days of the company putting the shareholder on notice of its requirement to convey water across the shareholder's property, then either party may refer the matter to arbitration in accordance with the Arbitration Act 1996.
 - (x) Each shareholder must grant an encumbrance over the property which that shareholder irrigates pursuant to the water shares held in the company. Such encumbrance shall be in favour of the company as a first registered charge and on the basis of at least one hectare encumbered for every one water share held in the company.
- b) In addition to the supply of water to holders of water shares in accordance with clause 3.2(a), the company may supply water on

other terms if the Board is satisfied it is in the company's best interests and to the extent permitted by the Water Supply Agreement.

3.3 Water charges

- a) The company may charge on a per share basis, at an amount in its absolute discretion, water charges to recover operating and capital costs including without limiting the generality of the foregoing:
- (i) maintenance and repairs of scheme infrastructure and associated off-take points and other infrastructure;
 - (ii) construction and consent costs in respect of off take points and other infrastructure;
 - (iii) costs for running and administering the company;
 - (iv) monitoring and compliance costs;
 - (v) costs incurred by directors and director's fees;
 - (vi) costs payable to professionals and service providers to the company;
 - (vii) any rental , premises costs (including utilities), if applicable;
 - (viii) bank loans, shareholder advances and/or any other loans and any interest payable on them;
 - (ix) administrative costs in relation to administering the company's obligations under its water consents;
 - (x) cost of obtaining water for the scheme;
 - (xi) scheme wide electricity costs.
- b) In addition to the water charges, an individual shareholder may be charged the costs incurred by the company which are particular to that shareholder in relation to the access to water including without limiting the generality of the foregoing any costs relating to:
- (i) maintenance and repairs of scheme infrastructure and associated off-take points and other infrastructure;

- (ii) construction and consent costs in respect of off-take structures and any infrastructure required to ensure and maintain access to water by the shareholder;
 - (iii) costs incurred as a result of a shareholder breaching his or her Water Supply Agreement and conditions in relation to his or her water take;
 - (iv) administering the efficient use of water and the company's water consent conditions generally; or
 - (v) electricity costs.
- c) The water charges may be set at different rates for borderdyke irrigators and spray irrigators, taking into account such factors as the company deems appropriate, including volume of water per share, cost of delivery and efficiency.

3.4 Irrigation Rates

- a) The company shall from time to time determine in its absolute discretion the water take rates and annual volume of water take for borderdyke irrigators and spray irrigators.
- b) The rates of take and volumes shall at all times comply with the relevant resource consent held by the company.

3.5 Board may issue shares

- a) Subject to this constitution, the Board may from time to time issue in such numbers at such prices as they think fit, water shares to an owner of a property within the scheme or joining the scheme.
- b) The Board may issue additional shares (and rights and options to acquire shares) of any class (including redeemable shares) at any time, to any person and in such numbers as the Board thinks fit, provided that such issue is approved by special resolution.

3.6 Consolidation and subdivision of shares

The Board may authorise:

- a) the consolidation and division of shares or any class of shares in proportion to those shares or the shares in that class; and

- b) the subdivision of the shares or any class of shares in proportion to those shares or the shares in the class.

3.7 Conversion of borderdyke to spray

- a) A shareholder using borderdyke irrigation wishing to convert from borderdyke to spray irrigation shall apply to the Board for its approval to the conversion.
- b) A shareholder's application to convert from borderdyke to spray shall contain the following information:
 - (i) the size or location (designated by GPS coordinates) that is to be converted from borderdyke to spray; and
 - (ii) details of construction and capital works to be undertaken with the conversion, including point of take from existing race or infrastructure.
- c) The company may refuse to approve all or part of the application with or without conditions, in its absolute discretion. Without limiting or fettering the Board's discretion in relation to the above, the company may take into the account the following factors:
 - (i) the interests of the company as a whole;
 - (ii) the impact on existing borderdyke and spray irrigators and the availability of water; and
 - (iii) any cost and work required to the company's infrastructure due to the conversion. For the avoidance of doubt work required to the company's infrastructure would be undertaken by the company but at the shareholder's expense.

4. Repurchase and redemption of shares

4.1 Purchase by company of its shares

The company may purchase or otherwise acquire its shares in accordance with and subject to, sections 58 to 65 and 110 to 112 of the Act, and may hold the acquired shares in accordance with sections 67A to 67C of the Act.

4.2 Redemption of company of water shares

The company may redeem water shares at its option at the paid up value in accordance with sections 68(b)(i), 69(1)(b)(ii) and 71 of the Act if:

- a) a holder of water shares fails to enter into the then current Water Supply Agreement within the expiration of 20 working days' notice (or such longer period as the company may determine at its discretion) from the company requiring the holder to do so;
- b) a holder of water shares requests the company redeem all or part of the water shares held; and
- c) the holders of the water shares alienate the water shares from the property in breach of clause 3.2(a)(vi).

4.3 No liability

The company and the Board shall be under no liability to the shareholders in respect of any cost, loss or damage, whether direct or indirect resulting from the redemption of the water shares in accordance with clause 4.2 other than to redistribute the paid up capital of the shares, at that time.

5. Transfer of Shares

5.1 Sale of property

If any shareholder wishes to sell a property to which water shares relate, then they must also transfer the water shares (or appropriate parcel of shares in the event of a subdivision) to the purchaser of the property. In the event that they default in transferring the water shares, the company shall arrange for the execution of the necessary share transfers on behalf of the shareholder and for avoidance of doubt the shareholder transferring the property irrevocably appoints any of the directors of the company as their power of attorney for the purposes of effecting the transfer of their shares and the sale price of the shares in this instance shall be determined by the directors at their sole discretion. No water shares shall be transferred separately or alienated in any way from the property to which they related other than in accordance with clause 5.7.

5.2 Entry in register

Subject to clause 5.3, shares may be transferred by entry of the name of the transferee on the register.

5.3 Signed transfer

For the purpose of transferring shares, a form of transfer signed by the present holder of the shares or the holder's personal representative must be delivered to the company or to the agent of the company who maintains the register.

5.4 Form of transfer

- a) The form of transfer may be in the form set out in the First Schedule to the Securities Transfer Act 1991 or in any usual or common form, or any other form approved by the Board.
- b) The form of transfer must be signed by the transferee if registration as holder of the shares would impose a liability to the Company on the transferee.

5.5 Board's right to refuse or delay registration of transfer

- a) The Board may, within 30 working days of the receipt of a form of transfer of shares, refuse or delay the registration of the transfer if:
 - (i) the transferee is not the purchaser of the relevant property to which the water shares relate;
 - (ii) the transferee of the shares has not entered into the company's then current Water Supply Agreement;
 - (iii) the holder of the shares has failed to pay an amount due to the company in respect of those shares;
 - (iv) the Board considers that to effect the transfer would result in a breach of the law;
 - (v) the Board considers that it is not in the best interests of the company to register the transfer;
 - (vi) the Board does not approve of the transferee, in respect of which matter the Board shall have absolute discretion in its decision; or
 - (vii) clause 5.3 has not been complied with or the form of transfer has not been properly executed or does not comply with clause 5.4.

- b) A resolution of the Board to refuse or delay a transfer of shares must set out in full the reason for doing so, and a copy of the resolution must be sent to the transferor and transferee within five working days of the date of the resolution being passed.

5.6 Registration of transfer

Subject to clauses 5.3 and 5.4, on receipt of a duly completed form of transfer, the company must enter the name of the transferee on the register as holder of the shares, unless the Board has resolved in accordance with clause 5.5 to refuse or delay the registration of the transfer of the shares.

5.7 Pre-emptive Rights in respect of shares alienated from the Land

- a) Except as provided in clause 5.15 no shares may be sold or transferred by any shareholder, liquidator, official assignee or personal representative of any shareholder separately from the property to which they relate, unless:
 - (i) the company has, in its absolute discretion, approved the transfer; and
 - (ii) the rights of pre-emption conferred in this constitution have been complied with.

5.8 Transfer notice

- a) Except where the transfer is made pursuant to clause 5.15, the person proposing to sell or transfer any shares in accordance with clause 5.7 ("proposing transferor") must give notice in writing ("a transfer notice") to the company stating that the proposing transferor desires to transfer the shares. The transfer notice must specify the sum that the proposing transferor considers to be the value of the shares and must make the company the proposing transferor's agent for the sale or transfer of the shares to any shareholder at the value specified or, at the option of the purchasing shareholder (as defined in clause 5.9), at the fair value to be fixed in accordance with clause 5.10.
- b) If a transfer notice includes several shares it will not operate as if it were a separate transfer notice in respect of each of the shares, and the proposing transferor will be under no obligation to sell or transfer only some of the Shares specified in the transfer notice. Other than as provided in clause 5.11, the transfer notice is not revocable without the sanction of the Board in writing. If no value is specified by a proposing transferor, the proposing transferor will be

deemed to want to sell or transfer the shares at their fair value (determined in accordance with clause 5.10).

5.9 Company finding buyer

If the company, within three months after being served with a transfer notice, purchases the shares itself or finds a shareholder willing to purchase all the shares (“purchasing shareholder”) and gives notice of that fact to the proposing transferor, the proposing transferor will, subject to clause 5.11, be bound upon payment of the sum specified in the transfer notice or, as the case may be, at the fair value determined under clause 5.10 (subject to any right which the company may have under the constitution or the terms of issue to make a deduction in respect of any lien), to transfer the shares to the purchasing shareholder.

5.10 Arbitration of fair value

- a) If any difference arises between a proposing transferor and a purchasing shareholder as to the value of the shares, the fair value of the shares will be fixed on the application of either party by the arbitration of a single arbitrator. Such an application must be made within three months of the date of the transfer notice. If the parties fail to agree on a single arbitrator within 10 working days of the application, then either party may request the President of the Arbitrator’s and Mediators’ Institute of New Zealand or his nominee, to appoint an arbitrator, within 10 working days of the request.
- b) Upon the fair value of the shares being fixed, the value specified in the transfer notice will be deemed to have been the fair value determined by this clause 5.10.
- c) The arbitration will be held in New Zealand and determined in accordance with the provisions contained in the Arbitration Act 1996 or any statutory modification or re-enactment of that Act for the time being in force. The arbitration process shall be as follows:
 - (i) The arbitrator shall review the company accounts and records and make a draft determination of the shares value within 10 working days of his appointment.
 - (ii) On receipt of the draft valuation, the proposing transferor and purchasing shareholder shall both make submissions on the draft determination within a further 10 working days.
 - (iii) The arbitrator shall then produce a final and valuation within a further five working days.

5.11 Right to revoke

If the fair value of the shares fixed in accordance with clause 5.10 is less than the sum specified by the proposing transferor in the proposing transferor's transfer notice, the proposing transferor will be entitled to revoke the transfer notice at any time before the expiration of seven working days after the date of receiving notice of the award fixing the fair value.

5.12 Default by transferor

- a) If a proposing transferor, after becoming bound to transfer the shares described in the transfer notice, defaults in transferring the shares, any director may execute a transfer of the shares on behalf of the proposing transferor and the company may receive the purchase money and cause the name of the purchasing shareholder to be entered in the register as the holder of the shares.
- b) The company will hold the purchase money (subject to any lien in favour of the company in respect of the shares) in trust for the proposing transferor. The receipt of the purchase money by the company will be a good discharge to the purchasing shareholder.

5.13 Company not finding buyer

- a) If the company does not, within three months after being served with a transfer notice, find a shareholder willing to purchase all the shares and the company itself does not wish to purchase the shares and gives notice to the proposing transferor to that effect, the proposing transferor may then, at any time within three months thereafter, revoke the transfer notice.
- b) The proposing transferor may not transfer to any other person.

5.14 Offer to company and shareholders

The shares specified in a transfer notice received by the company must be first offered to the company. If the company does not purchase the shares or only part of the shares, then the shares or remaining shares must be offered to the holders of the same class of shares as in the transfer notice. If more than one shareholder of that class wishes to accept the offer, they will be entitled to accept the shares offered in the same proportion as between themselves as their existing holding in that class. Any shares not so accepted must then be offered to all other shareholders; and if more than one shareholder wishes to accept, they will be entitled to accept the shares offered in the same proportion as the shares held by them.

5.15 Transfer approved by all shareholders

Any share may be transferred by a shareholder to any person if the transfer is approved in writing, by all shareholders. The restrictions in clauses 5.7 to 5.14 do not apply to any transfer authorised by this clause.

5.16 Corporate shareholders

- a) Where a corporation is a shareholder and any one or more of the following events occur (whether by any one or by a series of transactions completed after the date at which the corporate shareholder was first entered in the register):
- (i) the transfer of the legal or beneficial ownership of, or of any interest in any shares in the corporation which in relation to the corporate shareholder or any holding company (as the term is defined in section 5 of the Act) of the corporation:
 - (A) alters the beneficial ownership of 50 per cent or more in nominal value of the shares in the capital of the corporation; or
 - (B) alters the beneficial ownership of 50 per cent or more of the number of shares in the corporation; or
 - (C) alters the beneficial ownership of shares in the corporation carrying 50 per cent or more of the voting rights at any general meeting of the corporation; or
 - (D) alters the beneficial ownership of shares in the corporation allowing the holder to appoint a director of directors having 50 per cent or more of the voting rights at any directors' meeting; or
 - (E) alters the beneficial ownership of shares carrying an entitlement to receive 50 per cent or more of any dividend or distribution declared by the corporation,
 - (ii) the happening of any event whereby the control of the corporation or any holding company (as defined in section 5 of the Act) of the corporation is altered;

the corporation shall immediately give the company a transfer notice pursuant to clause 5.8 in respect of all the shares held by the corporation. If the corporation fails to give such notice, any director

may give a notice on its behalf and the provisions of clauses 5.7 to 5.14 shall apply mutatis mutandis to such transfer notice.

- b) The obligations imposed on corporate shareholders by this clause shall not be capable of being waived by lapse of time, by acquiescence, or by knowledge (whether actual or constructive) of any other shareholder.

6. Share register

6.1 Maintain register

- a) The company must maintain a register which records all shares issued by the company and which states:
 - (i) whether, under this constitution or the terms of issue of any shares, there are any restrictions or limitations on their transfer; and
 - (ii) where any document that contains the restrictions or limitations may be inspected.
- b) The company may appoint an agent to maintain the register.

6.2 Contents of register

The register must state, with respect to each class of shares:

- (a) the names (alphabetically arranged) and the latest known address of each person who is, and each person who has been within the last 10 years, a shareholder;
- (b) the number of shares of that class held by each shareholder within the last 10 years;
- c) the date of any:
 - (i) issue of shares to;
 - (ii) repurchase or redemption of shares from; or
 - (iii) transfer of shares by or to

each shareholder within the last 10 years and in relation to the transfer, the name of the person to or from whom the shares were transferred.

6.3 Directors' duty to supervise register

It is the duty of each director to take reasonable steps to ensure that the register is properly kept and that the transferee's names are promptly entered on it in accordance with clause 6.2.

6.4 Register prima facie evidence

Subject to section 91 of the Act, the entry of the name of a person in the register as holder of a share is prima facie evidence that the legal title to the share is vested in that person.

6.5 Register evidence of rights

The company may treat the registered holder of a share as the only person entitled to:

- a) exercise the right to vote attaching to the share;
- b) receive notices in respect of the share;
- c) receive a distribution in respect of the share; and
- d) exercise the other rights and powers attaching to the share.

6.6 Trust not to be registered or recognized

- a) No notice of a trust, whether express, implied, or constructive, may be entered on the register.
- b) Except as required by law, no person will be recognised by the company as holding any share upon trust or holding any interest in a share (whether equitable, contingent, future or partial) except the absolute legal right to the entirety of the share vested in the registered holder.
- c) A personal representative of a deceased holder of shares is entitled to be entered in the register as a holder of such shares as a personal representative.
- d) The registration of a trustee, executor, or administrator as a personal representative of a deceased shareholder does not constitute notice of a trust.

7. Share certificates

7.1 Application for share certificate

A shareholder may apply to the company for a certificate relating to some or all of the shareholder's shares.

7.2 Issue of share certificate

- a) The company must, within 20 working days after receiving an application for a share certificate under clause 7.1, send to the shareholder a certificate stating the name of the company, and the class and number of shares to which the certificate relates.
- b) If the application relates to some but not all of the applicant's shares, the company must separate the shares shown in the register as owned by the applicant into separate parcels; one parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares.

7.3 Transfer to be accompanied by share certificate

Where a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer is accompanied by the share certificate relating to the shares (or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the Board).

7.4 Surrendered share certificate

Where shares to which a share certificate relates are transferred, and the share certificate has been sent to the company to enable registration of the transfer, the share certificate will be cancelled and no further share certificate will be issued except at the request of the transferee.

8. Transmission of shares

- a) In the case of the death of a shareholder, the survivor (where the deceased was a joint holder) or the legal personal representative of the deceased (where the deceased was a sole holder) will be the only person recognised by the company as having any title to the deceased's interest in the shares. Nothing contained in this clause 8(a) will release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by the deceased with other persons.

- b) The assignee of the property of a bankrupt shareholder is entitled to be registered as the holder of the shares held by the bankrupt.

9. Call on shares

9.1 Board may make calls

- a) Subject to the term of issue of any shares, the Board may resolve to require the holders of unpaid or partly paid shares to pay all or part of the amount unpaid on the shares. The terms of the resolution will constitute the terms of the obligation to pay the call (including payment by instalments). The call may be revoked or postponed at any time by the Board.
- b) If, in the Board's opinion, the company requires further capital for the purpose of or in connection with the Scheme Expansion and Upgrade Project as defined in the Information Memorandum for an offer of shares in the Company dated 30 June 2017 ("IM"), the Board may resolve to make one or more calls for capital. The maximum aggregate amount of all such capital calls will be \$600 per share, except for capital calls on shares issued pursuant to the IM for which the maximum aggregate amount will be \$350 per share. All calls will be made on all shareholders on such terms as determined by the Board in its sole discretion.
- c) Subject to the terms of issue of any class of shares and to clause 9.4, unless all the holders of a class of shares subject to a call unanimously agree, a call (or the postponement or revocation of a call) will apply to all the holders of shares of the class equally.

9.2 Notice of calls

- a) Notice of the call must be given to the shareholder at the time of the call or to a subsequent holder of the shares. Failure to give notice to a shareholder will not invalidate a call but it will not be payable by that shareholder until the notice has been served on the shareholder. The notice must specify the day by which and the place at which the call must be paid.
- b) Notice of a call sent by post to a shareholder to the address recorded in the register as the address of the shareholder will be deemed to have been received by the shareholder the day after it was posted.

9.3 Liability for calls

- a) The joint holders of shares are jointly and severally liable to pay all calls in respect of the shares.
- b) If a call is not paid before or on the day appointed for payment, the person from whom the sum is due will be liable to pay interest on the sum (from the day appointed for payment until the time of actual payment) at such rate as the Board determines either at the time of the call or subsequently.
- c) The liability for a call which has become due and payable attaches to the current shareholder and not a prior shareholder, notwithstanding that at the date of the call (or the date the call fell due for payment) another person was the holder of the shares or that the notice of the call was served on the then shareholder and not the current shareholder.
- d) Following the registration in the register of a change of ownership of shares in respect of which a call has been made, a notice of the call is not required to be served on the new shareholder.
- e) In the case of a call(s) for capital pursuant to clause 9.1(b) a call(s) not paid on or before the day appointed for payment shall be deemed to be an event of default and, in addition to the rights and remedies provided to the company under this constitution, the company shall also be entitled to exercise the rights and remedies available to it under the company's then current Water Supply Agreement.

9.4 Agreement to differentiate between calls

The Board may, on the issue of shares, by agreement with the shareholders concerned, differentiate between the holders of the same class as to the amount to be paid on the shares and the times for payment.

10. Suspension of right to dividends, forfeiture and lien

10.1 Notice of suspension of right to dividends

- a) If a shareholder fails to pay any call (or instalment of a call) on the day appointed for payment, the Board may at any time after that date, while any part of the call or instalment payable by the shareholder remains unpaid, suspend payment of any dividends or other distributions payable to the shareholder.

- b) The amount owing under the call for the purposes of clause 10.1, 10.2 and 10.3 may include any interest which may have accrued and all expenses which may have been incurred by the company by reason of non-payment by the shareholder of the amount owing under the call.

10.2 Application of suspended dividends

All dividends and other distributions suspended pursuant to clause 10.1(a) may be applied by the company to reduce the amount owing under the call or otherwise owing to the company. Dividends so applied will be deemed to have been paid in full.

10.3 Lifting suspension of right to dividends

When the total dividends and distributions withheld and applied under clause 10.2 equal the total amount owing under the call, including amounts owing under clause 10.1(b), the suspension of the right to dividends and distributions will be lifted, and all rights to be paid dividends and distributions on the shares will resume.

10.4 Forfeiture

- a) If a shareholder fails to pay any call or instalment of a call on the day appointed for payment of it, the Board may, while any part of the call or instalment remains unpaid, serve a notice on him or her requiring payment of so much of the call or instalment as is unpaid together with any interest, which may have accrued and all expenses that may have been incurred by the company by reason of such non-payment,
- b) The notice shall name a further day (not earlier than the expiration of ten (10) working days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.
- c) If the requirements of the notice are not complied with, any share in respect of which the notice has been given may, at any time after the notice is given and before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect. Such forfeiture shall include all dividends and any other distribution in respect of the forfeited shares and not actually paid before the forfeiture.

- d) When any share has been forfeited:
 - (i) notice of the resolution shall be given to the shareholder in whose name the share was registered immediately before the forfeiture;
 - (ii) an entry of the forfeiture, with the date of the forfeiture, shall be made in the register; and
 - (iii) the share certificate of any shares forfeited shall be immediately cancelled by the company and the shareholder shall return the share certificate for the forfeited shares to the company within 10 working days of receiving notice of the resolution.

- e) A person whose shares have been forfeited shall cease to be a shareholder in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all money which at the date of the forfeiture was payable by him or her to the company in respect of the shares but his or her liability shall cease if and when the company receives payment in full of all such money in respect of the shares.

- f) The provisions of this constitution as to forfeiture shall apply in the case
 - (i) of non-payment of any sum which by the terms of issue of a share becomes payable at a fixed time as if the same had been payable by virtue of a call duly made and notified.
 - (ii) failure to enter into a Water Supply Agreement in accordance with section 3.2(a)(viii).

- g) Any failure to give the notice, or to make the entry required under clause 10.4(d) does not invalidate the forfeiture.

10.5 Lien

- a) The company has a first and paramount lien upon every share registered in the name of a shareholder (whether solely or jointly with others) and upon the proceeds of sale of those shares. This lien is for:
 - (i) all money payable (whether presently or not) in respect of shares held by the shareholder;

- (ii) all other money presently payable by the shareholder to the company on any account whatever; and
 - (iii) any amount the company may be called upon to pay under any statute or regulation in respect of shares of a deceased shareholder or other shareholder (whether or not the period for the payment, fulfilment or discharge has actually arrived).
- b) The lien extends to all dividends from time to time declared in respect of the shares.

10.6 Sale on exercise of forfeiture or lien

- a) Subject to this 10.6(a) a forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Board thinks fit.
- b) Subject to this 10.6(b), the company may sell in such a manner as the Board thinks fit any shares on which the company has a lien. No sale may be made until:
 - (i) a sum in respect of which the lien exists is due and payable;
 - (ii) a notice in writing stating, and demanding payment of, the amount due and payable (in respect of which the lien exists) has been given to the current registered holder of the share (or the person entitled to that share by reason of the registered holder's death or bankruptcy); and
 - (iii) 10 working days have expired since the giving of that notice.
- c) The net proceeds of the sale of any forfeited shares or any shares sold for the purpose of enforcing a lien are to be applied in or towards satisfaction of any unpaid calls, instalments (in the case of a lien), or any other money in respect of which the lien existed. The residue, if any, shall be paid to the former holder of the shares.
- d) A certificate signed by a director stating that the power of sale provided in this clause 10.6(d) has arisen, and is exercisable by the company under this constitution, or that a share in the company has been duly forfeited on the date stated, will be conclusive evidence of the facts stated in the certificate.

- e) For giving effect to any sale after forfeiture or for enforcing a lien in purported exercise of the powers given in this constitution, the Board may authorise some person to transfer the shares sold to the purchaser. The purchaser will be registered as the holder of the shares comprised in the transfer and will not be bound to see to the application of the purchase money, nor will the purchaser's title to the shares be affected by an irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale will be in damages only, and against the company exclusively. If the share certificate for the forfeited shares is not delivered up to the company, the Board may issue a new certificate distinguishing it as the Board thinks fit from the share certificate not delivered up.

11. Distributions

11.1 Solvency test

- a) Subject to clause 11.2, the Board may, if it is satisfied on reasonable grounds that the company will satisfy the solvency test immediately after the distribution, authorise a distribution by the company to shareholders of any amount and to any shareholders as it thinks fit.
- a) The directors who vote in favour of a distribution must sign a certificate stating that, in their opinion, the company will satisfy the solvency test immediately after the distribution. The grounds for that opinion must also be stated in that certificate.

11.2 Dividends payable pari passu

- a) Subject to clause 11.2(c), the Board may not authorise a dividend:
 - (i) in respect of some but not all of the shares in a class; or
 - (ii) that is of a greater value per share in respect of some shares of a class than in respect of other shares of that class;

unless the amount of the dividend in respect of a share of that class is in proportion to the amount paid to the company in satisfaction of the shareholder's liability under this constitution or under the terms of issue of the share.

- b) A shareholder may waive his or her entitlement to receive a dividend by giving a notice in writing, signed by or on behalf of the shareholder, to the company.

- c) If all the shareholders of the same class concur in writing in respect of each proposed dividend, the company may pay a dividend which is distributed other than in accordance with clause 11.2(a).

11.3 Unclaimed distributions

- a) Any distribution that has not been claimed after one year from the date of the distribution may be invested and otherwise made use of by the Board for the benefit of the company until it is claimed. The company shall not be regarded as holding any such amount used on trust for the claimant.
- b) Any distribution remaining unclaimed for a period of five years from the date of the distribution may be forfeited by the Board for the benefit of the company, provided that the Board may in its discretion cancel the forfeiture and pay the distribution to any person producing evidence satisfactory to the Board that he or she is entitled to the amount claimed.

11.4 Bonus shares in lieu of dividend

The Board may issue shares to any shareholders who have agreed to accept the issue of shares, wholly or partly, in lieu of a proposed dividend or proposed future dividends if:

- a) the right to receive shares, wholly or partly, in lieu of the proposed dividend or proposed future dividends, has been offered to all shareholders of the same class on the same terms; and
- b) relative voting or distribution rights, or both, would be maintained if all shareholders elected to receive the shares in lieu of the proposed dividend; and
- c) the shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it; and
- d) the shares issued to each shareholder are issued on the same terms and subject to the same rights as the shares issued to all shareholders in that class who agree to receive the shares; and
- e) the provisions of section 47 of the Act are complied with by the Board.

11.5 Financial assistance on acquisition of shares

The company may, subject to and in accordance with sections 76 to 81, 107 and 108 of the Act, give financial assistance (whether directly or indirectly) to a person for the purpose of, or in connection with, the purchase of shares issued (or to be issued) by the company, or by its holding company.

11.6 Shareholder proposals

- a) A shareholder may give written notice to the Board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of the shareholders at which the shareholder is entitled to vote.
- b) If the notice is received by the Board not less than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board must (at the expense of the company) give notice of the shareholder's proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- c) If the notice is received by the Board not less than five working days and not more than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board must (at the expense of the shareholder) give notice of the shareholder's proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- d) If the notice is received by the Board less than five working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board may, if practicable and (at the expense of the shareholder) give notice of the shareholder's proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- e) If the directors intend that shareholders may vote on the proposal by proxy they must give the proposing shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.
- f) The Board is not required to include in or with the notice given by the Board a statement prepared by a shareholder which the directors

consider to be defamatory, frivolous, or vexatious.

- g) Where the costs of giving notice of the shareholder's proposal and the text of any proposed resolution are required to be met by the proposing shareholder, the proposing shareholder must (on giving notice to the Board) deposit with the company or tender to the company a sum sufficient to meet those costs.

12. Meeting of shareholders

12.1 Annual Meeting

- a) The Board must, in accordance with section 120 of the Act, call an annual meeting of shareholders to be held:
 - (i) not later than six months after the balance date of the company; and
 - (ii) not later than 15 months after the previous annual meeting, or in respect of the first annual meeting not later than 18 months after the date of the company's incorporation.
- b) The company must hold the annual meeting on the date on which it is called to be held.

12.2 Special Meetings

A special meeting:

- a) may be called at any time by the Board or a person who is authorised by the Board to call the meeting; and
- b) must be called by the Board on the written request of shareholders holding not less than 5 per cent of the votes entitled to be cast on the issue.

12.3 Chairperson of meetings of shareholders

- a) If the directors have elected a chairperson, and that chairperson is present at a meeting of shareholders, he or she must chair the meeting.
- b) If no chairperson has been elected or if, at any meeting of shareholders, the chairperson is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of their number to chair the

meeting.

12.4 Shareholders entitled to notice of meeting

- a) The shareholders entitled to receive notice of a meeting of shareholders are those shareholders of the relevant class:
 - (i) if the Board has fixed a date for the purpose of establishing an entitlement to receive notice of meeting, whose names are registered in the register on that date; or
 - (ii) if the Board does not fix a date for the purpose of establishing an entitlement to receive the notice of meeting, whose names are registered in the register at the close of business on the day immediately preceding the day on which the notice is given.
- b) A date fixed by the Board under clause 12.4(a)(i) must not precede by more than 30 working days nor less than 10 working days the date on which the meeting is to be held.

12.5 Notice of meeting

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 auditor of the company, not less than 10 working days before the meeting.

12.6 Contents of notice

The notice referred to in clause 12.5 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;
- b) the text of any special resolution to be submitted to the meeting.

12.7 Irregularities in notice

- a) 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.

- b) The accidental omission to give notice of a meeting to, or a failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting.

12.8 Method of holding meeting

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) 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.

12.9 Adjournments

- a) The chairperson of a meeting of shareholders may, at the request of those shareholders present in person or by proxy who are between them able to exercise a majority of the votes able to be cast at the meeting, adjourn the meeting.
- b) No business shall be transacted of any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- c) If a meeting of shareholders is adjourned for less than 30 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 shall be given in accordance with clause 12.5 and 12.6.

12.10 Minutes

- a) The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of shareholders.
- b) Minutes which have been signed as correct by the chairperson of the meeting are prima facie evidence of the proceedings.

13. Voting at meetings

13.1 Quorum

- a) A quorum for a shareholders meeting shall be 10 shareholders

entitled to vote present in person or by attorney or proxy in respect of each class of shares.

- b) No business may be transacted at a meeting of shareholders if a quorum is not present.
- c) If a quorum is not present within 30 minutes after the time appointed for meeting:
 - (i) in the case of a meeting called pursuant to a requisition of shareholders under clause 12.2(b), the meeting is dissolved;
 - (ii) 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 directors may appoint.

13.2 Voting

- a) In the case of a meeting of shareholders held under clause 12.2(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:
 - (i) voting by voice; or
 - (ii) voting by show of hands.
- b) In the case of a meeting of shareholders held under clause 12.2(b) unless a poll is demanded, voting at the meeting shall be by shareholders signifying individually their assent or dissent by voice.
- c) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact, unless a poll is demanded in accordance with clause 13.2(e); or
- d) At a meeting of shareholders, a poll may be demanded by:
 - (i) not less than five shareholders having the right to vote at the meeting;
 - (ii) a shareholder or shareholders representing not less than 10 per cent of the total voting rights of all shareholders having the right to vote at the meeting;

- (iii) a shareholder or shareholders holding shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 per cent of the total amount paid up on all shares that confer that right; or
 - (iv) the chairperson of the meeting.
- e) A poll may be demanded either before or after the vote is taken on a resolution.
 - f) If a poll is taken, voters must be counted according to the votes attached to the shares of each shareholder present (in person or by proxy) and voting.
 - g) The chairperson of a shareholders' meeting is not entitled to a casting vote.
 - h) For the purposes of this clause, the instrument appointing a proxy to vote at a meeting confers authority to demand or join in demanding a poll and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.

13.3 Proxies and representatives

- (a) A shareholder may exercise the right to vote either by being present or by proxy.
- (b) A proxy for a shareholder is entitled to attend, be heard, and vote at a meeting of shareholders as if the proxy were the shareholder.
- (c) A proxy must be appointed by notice in writing signed by the shareholder, and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.
- (d) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.
- (e) A body corporate which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy.

13.4 Votes of joint holders

Where two or more persons are recorded in the register as the holder of a

share, the vote of the person named first in the register and voting on a resolution will be accepted to the exclusion of the votes of the other joint holders.

13.5 Unpaid sums

If a sum due to the company in respect of a share has not been paid, then no share registered in the name of that shareholder or issued in respect of the relevant property may be voted at a shareholders' meeting other than at a meeting of an interest group.

13.6 Meetings of interest groups

The provisions of clauses 12 and 13 shall, with such consequential amendments as may be necessary, govern the proceedings of any meeting of an interest group.

13.7 Other proceedings

Except as provided in this constitution the shareholders may regulate their own procedure.

14. Appointment and removal

14.1 Number of directors

Subject to clause 17.10 the number of directors may not be fewer than four directors nor more than six. The minimum and maximum may be varied by ordinary shareholder resolution.

14.2 Directors

All but one of the directors shall be appointed by shareholders as shareholder representative, with the remaining one director being appointed by the shareholders as an independent director. The directors who are shareholder representatives may be shareholders or non-shareholders, however a minimum of three shareholder representative directors must be shareholders. The independent director may only be a non-shareholders.

14.3 Appointment and removal by notice

- a) Subject to clause 14.2 and 14.4, the directors are the persons appointed from time to time as directors by a notice in writing signed by the majority of the shareholders and who have not resigned or been removed or disqualified from office under this

constitution.

- b) A director may be removed from office at any time by a notice in writing signed by a majority of shareholders.
- c) A notice given under clauses 14.3(a) or (b) takes effect upon receipt of it at the registered office of the Company (including the receipt of a facsimile copy) unless the notice specifies at a later time at which the notice will take effect. The notice may comprise one or more similar documents separately signed by the shareholders giving the notice.
- d) A director holds office until his or her resignation, disqualification, or removal in accordance with this constitution.

14.4 Appointment and removal of directors by resolution

- (a) In addition to the appointment or removal of directors under clause 14.3, a director may be appointed or removed from office by an ordinary resolution.
- (b) A resolution to appoint two or more directors may be voted on as one resolution without each appointment being voted individually.
- (c) A notice of meeting at which the removal of a director will be considered must state that a purpose of the meeting is the removal of the director.

14.5 Disqualification and removal

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

- a) absences him or herself from a meeting of directors for a period of six months, or does not attend at least half of the meetings of the directors held in each year, without special leave of absence from the directors; or
- b) being an employee of the company, ceases such employment; or
- c) is removed under clause 14.3 or 14.4; or
- d) resigns in writing under clause 14.6 and is not reappointed in accordance with this constitution; or
- e) becomes disqualified from being a director pursuant to section 151 of the Act; or

- f) is prohibited from being a director or promoter of or being concerned with or taking part in the management of a company under section 382, 383 or section 385 of the Act; or
- g) dies; or
- h) becomes a protected person under the Protection of Personal Property Rights Act 1988; or
- i) is under 18 years of age; or
- j) is an undischarged bankrupt; or
- k) is prohibited by the Companies Act 1955 from being a director or would be so prohibited but for the repeal of that statute.

14.6 Resignation

A director may resign office by signing a written notice of resignation and delivering it to the company. The notice takes effect upon the later of the receipt of it at the registered office of the company (including receipt of a facsimile copy) and any later time specified in the notice.

14.7 Alternate directors

- a) Every director may, by notice given in writing to the company, appoint any person (including any other director) to act as an alternate director in the director's place, either generally, or in respect of a specified meeting or meetings during the director's absence from a meeting.
- b) At the director's discretion, by notice in writing to the company, the appointing director may remove the director's alternate director.
- c) An alternate director may, while acting in the place of the appointing director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of acting as chairperson and signing Board resolutions) of the appointing director. The alternate director is subject in all respects to the same terms and provisions as the appointing director, except as regards remuneration, and except as regards the power to appoint an alternate director under this constitution.
- d) For the purpose of establishing a quorum of the Board, an alternate director is deemed to be the director appointing him, and if the

alternate director is a director he can count separately in both capacities.

- e) An alternate director does not have a right to attend, speak or vote at a meeting of the Board while his appointing director is present.
- f) An alternate director's appointment lapses upon his appointing director ceasing to be a director.
- g) The notice of appointment of an alternate director must include an address for service of notice of meetings of the Board. Failure to give an address will not invalidate the appointment, but notice of meetings of the Board need not be given to the alternate director until an address is provided to the company.
- h) An alternate director shall not be the agent of his appointor, and shall exercise his duties as a director independently of his appointor.

14.8 Rotation and retirement of directors

- a) At the annual general meeting and every year at least one third (to the nearest whole number of directors) must retire from office.
- b) The directors to retire at the annual general meeting will be:
 - (i) firstly, any directors who wish to retire and do not offer themselves for re-election; and
 - (ii) secondly, if those retiring pursuant to clause 14.8(b)(i) do not constitute the number of directors required to retire from office in accordance with clause 14.8(a), those of the other directors who have been longest serving in office since their last election (if any). Persons who become directors on the same day must retire in the same order as they were elected by the shareholders, or if un-elected, then in alphabetical order by reference to their surname.
- c) A retiring director continues to hold office until:
 - (i) he is re-elected; or
 - (ii) if he is not re-elected, until the meeting at which he retires or any adjournment thereof, elects someone in his place; or
 - (iii) if the meeting does not do so, until the end of that meeting or any adjournment thereof.

- d) A retiring director who is not disqualified under the Act is eligible for election.
- e) The independent director is not subject to the rotation and retirement provisions as set out in this clause 14.9.

14.9 Nomination

- a) No person, other than a director retiring at the meeting pursuant to clause 14.8(a) will be eligible for election to the office of director at any general meeting unless:
 - (i) he has been recommended by the Board for election; or
 - (ii) There has, at least 20 working days before the meeting, been served on the company by notice in writing, signed by a shareholder qualified to attend and vote at the meeting for which the notice is given, of its intention to propose a person for election and a notice in writing signed by the person nominated of his willingness to be elected.
- b) A notice of each and every eligible candidate for the office of director must be either included in the notice of the meeting at which the election is to take place or be sent by the company to all persons entitled to receive notice of the meeting at least five working days prior to the meeting. Failure to send such notice to any such person will not invalidate the nomination but the meeting, as far as the election of directors is concerned, must be adjourned until such notices has been sent. However, the accidental omission to give such notice, or the non-receipt of notice of a meeting by any person does not invalidate election of the director at the meeting.
- c) In the event that there is more than one nomination per office vacated by retirement and the number of current directors is below the maximum, then the shareholders shall determine by ordinary resolution prior to the resolutions appointing the directors nominated, the total number of directors required. In the event the number determined is less than the nominees, then the directors appointed shall be the directors with the most votes, to the intent that if there are four nominees and only two vacancies, then the directors with the most votes shall be appointed.
- (d) All independent director be recommended by the Board for election in accordance with clause 14.9(a)(i).

14.10 Additional directors

The directors shall have the power at any time and from time to time to appoint any person to be a director as an addition to the existing directors, but so that the total number of directors does not at any time exceed the number fixed in accordance with this constitution. Any director so appointed shall hold office until the next annual general meeting and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at that meeting.

15. Indemnity and insurance

15.1 Indemnity of directors and employees

- a) The Board may cause the company to indemnify a director or employee of the company or a related company for costs incurred by him in any proceeding:
 - (i) that relates to liability for any act or omission in his capacity as a director or employee; and
 - (ii) in which judgment is given in his favour or in which he is acquitted, or which is discontinued.

- b) The Board may cause the company to indemnify a director or an employee of the company or a related company in respect of:
 - (i) liability to any person other than the company or a related company for any act or omission in his capacity as a director or employee; or
 - (ii) costs incurred by the director or employee in defending or settling any claim or proceeding relating to any liability under paragraph (a) above;

not being:
 - (iii) criminal liability;
 - (iv) liability for the breach of section 131 of the Act; or
 - (v) liability for breach of any fiduciary duty owed to the company or related company.

15.2 Insurance of directors and employees

- a) The Board may, subject to section 162 of the Act, cause the company to effect insurance for directors and employees of the company or a related company in respect of:
 - (i) liability, not being criminal liability, for any act or omission in his capacity as a director or employee; or
 - (ii) costs incurred by such directors or employees in defending or settling any claim or proceeding relating to any such liability; or
 - (iii) costs incurred by a director or employee in defending any criminal proceedings that have been brought against the director or employee in relation to any act or omission in his capacity as a director or employee and in which he is acquitted.
- b) The directors who vote in favour of authorising the effecting of insurance under clause 15.2 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the company.
- c) The Board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the company or related company are forthwith entered in the interests register.

15.3 Definitions

For the purpose of this clause 15, “director” includes a former director and “employee” includes a former employee.

16. Powers and duties of the Board

16.1 Powers of the Board

- a) Subject to clause 16.1(b) and any restrictions in the Act or this constitution, the business and affairs of the company must be managed by or under the direction or supervision of the Board.
- b) The Board has, and may exercise, all the powers necessary for managing, directing and supervising the management of the business and affairs of the company except to the extent that this constitution or the Act expressly requires those powers to be

exercised by the shareholders or any other person.

16.2 Delegation by Board

- a) Subject to the Act, the Board may delegate to a committee of directors, a director, an employee of the company, or any other person any one or more of its powers.
- b) The Board is responsible for the exercise of a power by any delegate (where that power is delegated under this clause 16.2(a)) as if the power had been exercised by the Board, unless the Board:
 - (i) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the directors by the Act and this constitution; and
 - (ii) has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.
- c) The proceedings of meetings of any committee formed pursuant to clause 16.2(a) shall be in accordance with the provisions of clause 17, with such consequential amendments as may be necessary, and any other rules that may be imposed on its by the Board.

16.3 Directors to act in good faith

- a) Subject to this clause 16.3, a director, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the company.
- b) Nothing in this clause 16.3 limits the power of a director to make provision for the benefit of employees of the company in connection with the company ceasing to carry on the whole or part of its business.

16.4 Major transactions

The Board may not procure or permit the company to enter into a major transaction unless the transaction is:

- a) approved by a special resolution; or
- b) made contingent on approval by a special resolution.

17. Proceedings of the Board

17.1 Third Schedule

The provisions of this clause apply instead of the provisions of the third schedule to the Act.

17.2 Chairperson

- a) The directors may elect a chairperson and vice chairperson from two of their number from the Board. If the chairperson is a non-shareholder, then the vice chairperson shall be a shareholder.
- b) The directors elected as chairperson and vice chairperson hold those offices until they cease to be a director or the directors elect a chairperson and/or vice chairperson in their place.
- c) If no chairperson or vice chairperson is elected, or if at a meeting of the Board the chairperson or vice chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the directors present may choose one of their number to be chairperson of the meeting.

17.3 Notice of meeting

- a) A director or, if requested by a director to do so, an employee of the company, may convene a meeting of the Board by giving notice in accordance with this clause 17.3.
- b) Not less than two working days notice of a meeting of the Board must be given to every director who is in New Zealand. The notice must include the date, time and place of the meeting and the matters to be discussed.
- c) The giving of a notice of a meeting or an irregularity in the notice is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.
- d) Notice of a meeting may be given by any means, including by telephone. Notice given by a letter addressed to a director at his or her last known residential address will be deemed to have been given on the day following the day the letter is posted.
- e) It is not necessary to give notice of a meeting of the Board to any director for the time being absent from New Zealand but if a director

is resident outside New Zealand, or to the knowledge of the company is temporarily absent from New Zealand, and the director has appointed an alternate director under the provisions of this constitution, notice must (subject to clause 14.7(g)) be given to the alternate director.

17.4 Method of holding meetings

- a) A meeting of the Board may be held either:
 - (i) by a number of directors sufficient to form a quorum, being assembled together at the place, date and time appointed for the meeting; or
 - (ii) by means of audio, or audio and visual communication, by which all the directors participating in the meeting and constituting a quorum, can simultaneously hear each other throughout the meeting.
- b) Where a meeting of the Board is held pursuant to clause 17.4(a)(ii), at the commencement of the meeting each director participating must acknowledge his presence to all the other directors participating. A director may not leave the meeting by disconnecting his means of communication unless he has previously obtained the express consent of the chairperson.

17.5 Quorum

- (a) A quorum for a meeting of the Board is a majority of the directors.
- (b) No business may be transacted at a meeting of directors if a quorum is not present.
- (c) In accordance with clause 14.7(d), an alternate director present at a meeting may be included for the purpose of establishing a quorum.

17.6 Voting

- a) Every director has one vote.
- b) The chairperson does not have a casting vote.
- c) 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 are in favour of it.

- d) 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 expressly dissents from (or votes against) the resolution at the meeting.
- e) Subject to clause 18.3, a director may vote in respect of any transaction in which the director is interested and if the director does so the director's vote will be counted and the director will be counted in the quorum present at the meeting.
- f) An alternate director may attend and vote at meetings of the Board in accordance with and subject to clause 14.7(e) if the director that has appointed the alternate director is absent from the meeting.

17.7 Minutes

- a) The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of the Board.
- b) Minutes of proceedings of the Board which have been signed correct by the chairperson are prima facie evidence of the proceedings.

17.8 Unanimous resolution

- a) A resolution in writing, signed or assented to by all directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- b) Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors.
- c) A copy of such resolution must be entered in the minute book of Board proceedings.

17.9 Other proceedings

Except as provided in this clause 17 the Board may regulate its own procedure.

17.10 Continuing directors

The continuing directors will continue to comprise the Board notwithstanding any vacancy in the number of directors. If their number is reduced below the

number fixed by or pursuant to this constitution as the minimum number of directors, the continuing directors will comprise the Board only for the purpose of summoning a special meeting.

17.11 Matters requiring shareholders consent by special resolution

- a) Notwithstanding clause 16.1, the company may not engage in any of the following activities or determine any of the following matters without the approval of by way of a special resolution of shareholders, being:
- (i) any material change in the nature, scope or size of the business of the company;
 - (ii) the issue of shares or other voting securities in the company;
 - (iii) the determination of directors' remuneration;
 - (iv) the making of loans by the company to any shareholder or any related party of a shareholder;
 - (v) the sale, charge or other disposition of any property of the company having a value in excess of an amount equal to \$200,000.00;
 - (vi) the acquisition by purchase, lease, license or otherwise of any property having a value in excess of \$200,000.00;
 - (vii) the lending of any moneys to, or suffering the indebtedness of any person, otherwise than in the ordinary course of the ordinary business of the company or its administrators;
 - (viii) the entering into of any transaction or series of related transactions which involve expenditure, or the incurring of liability in excess of \$200,000.00;
 - (ix) the entering into of any new undertaking by the company outside the ordinary business of the company; or
 - (x) the company ceasing to carry on all or any substantial part of its business;

provided always that the directors shall have absolute discretion in respect of any decision on repairs and maintenance, notwithstanding the value of such repair and maintenance.

18. Interested directors

18.1 Authority to remunerate directors

- a) The Board may authorise:
 - (i) the payment of remuneration (or the provision of other benefits) by the company to a director for his or her services as a director (or in any other capacity), or by way of compensation for loss of office;
 - (ii) the making of loans by the company to a director;
 - (iii) the giving of guarantees by the company for debts incurred by a director; and
 - (iv) the entering into of a contract to do any of the things set out in clause (i) to (iii) (inclusive) of this clause 18.1(a);

if the Board is satisfied that to do so is fair to the company.

- b) The payment of remuneration (or the giving of any other benefit) to a director in accordance with a contract authorised pursuant to clause 18.1(a) need not be separately authorised by the Board.
- c) The Board must ensure that forthwith after authorizing any payment, loan, guarantee, or contract under clause 18.1(a), particulars are entered in the interests register.
- d) The directors who vote in favour of authorizing a payment, loan, guarantee or contract under clause 18.1(a) must sign a certificate stating that, in their opinion, the making of the payment or loan or the giving of the guarantee, or the entering into of the contract is fair to the company. Grounds for that opinion must also be stated in the certificate.

18.2 Other offices with company held by director

- a) Any director may act by himself or herself, or by the director's firm in a professional capacity for the company; and the director of the director's firm will be entitled to remuneration for professional services as if the director were not a director. Nothing in this clause authorises a director or the director's firm to act as auditor for the company.

- b) A director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with the director's office of director, for such period and on such terms (as to remuneration and otherwise) as the Board may determine.
- c) A director is not disqualified by virtue of his or her office from entering into any transaction with the company. Any such transaction will be valid and enforceable to the same extent as if he or she were not a director and not in a fiduciary relationship with the company. No such director shall be liable to account to the company for any profit realised by the transaction by reason of the director holding that office or of the fiduciary relationship thereby established.

18.3 Notice of interest to be given

- a) A director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the company, cause to be entered into the interests register, and, if the company has more than one director, disclose to the Board of the company:
 - (i) if the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
 - (ii) if the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.
- b) A director is not required to comply with clause 18.3(a) if:
 - (i) the transaction or proposed transaction is between the director and the company; and
 - (ii) the transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.
- c) For the purposes of clause 18.3(a), a general notice entered in the interests register or disclosed to the Board to the effect that a director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

19. **Managing directors**

19.1 **Appointment and dismissal**

- a) The Board may from time to time appoint one or more of their body to the office of managing director or managing directors of the company, either for a fixed term or an indefinite term.

- (a) Every managing director is liable to be dismissed or removed by a resolution of the Board. The Board may enter into any agreement on behalf of the company with any person who is or is about to become a managing director with regard to the length and conditions of the managing director's employment. The remedy of any such person for any breach of the agreement will be in damages only and the managing director will not have a right or claim to continue in office as managing director contrary to the will of the Board.

19.2 **Termination of employment**

A managing director is, subject to the terms of any contract, subject to the same provisions as regards resignation, removal and disqualification as the other directors. If the managing director ceases to hold the office of director for any reason, the managing director will immediately cease to be a managing director.

20. **Authority to bind**

20.1 **Method of contracting**

- a) A contract or other enforceable obligation may be entered into by the company as follows:
 - (i) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the company in writing signed under the name of the company by:
 - (A) two or more directors of the company (or where there is only one director, by that director whose signature must be witnessed); or
 - (B) a director or any other person or class of persons authorised by the Board for that purpose whose signature or signatures must be witnessed; or
 - (C) one or more attorneys appointed by the company in

accordance with clause 20.2;

(ii) an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the company in writing or orally by a person acting under the company's express or implied authority.

b) A copy of a resolution of the Board authorising a person to enter into a contract or other enforceable obligation on behalf of the company shall be proof of such authority notwithstanding that the authority may have been subsequently revoked.

20.2 Attorneys

a) The company may, by an instrument in writing executed in accordance with clause 20.1 appoint a person as its attorney either generally or in relation to a specified matter or matters.

b) An act of the attorney in accordance with the instrument binds the company.

21. Liquidation

21.1 Appointment of liquidator

A liquidator of the company may be appointed by a special resolution of those shareholders entitled to vote and voting on the question.

21.2 Distribution of surplus assets

a) Subject to the terms of issue of any shares, upon the liquidation of the company, any assets of the company remaining after payment of the debts and liabilities of the company and the costs of liquidation shall be distributed among the holders of the water shares in proportion to their shareholding, provided however that a holder of shares not fully paid up shall receive only a proportionate share of his or her 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.

b) Upon the liquidation of the company the liquidator may, with the sanction of an ordinary resolution and any other sanction required by law, divide amongst the holders of water shares in kind the whole or any part of the assets of the company (whether they consist of property of the same kind or not). The liquidator may for that

purpose set such value as the liquidator deems fair upon any assets to be divided as aforesaid. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the holders of water share as the liquidator thinks fit (but so that no holders of water shares shall be compelled to accept any shares or other securities whereon there is any liability).

21.3 Removal from New Zealand Register

- a) Subject to sections 318 and 320 of the Act, a director, who has been authorised by the Board to do so, may request the Registrar to remove the company from the New Zealand Register on the grounds that:
 - (i) the company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this constitution and the Act; or
 - (ii) the company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the court under section 241 of the Act for an order putting the company into liquidation.
- b) For the purpose of this clause the company shall have distributed its surplus assets in accordance with this constitution if the company does so in accordance with clause 21.2 except that no liquidator needs to be appointed and references to the liquidator in that clause shall be construed as references to the shareholders acting by an ordinary resolution.

22. Encumbrance

In the event of any conflict or inconsistency between the terms of this constitution and any encumbrance that the company has registered over the farmer's property, the terms of this constitution shall prevail.

This documents comprising pages numbered 1 – 50 is certified as the constitution of Kurow–Duntroon Irrigation Company Limited.

Dated this day of .
