

## Constitution of

## Port of Napier Limited

Certified as the constitution of Port of Napier Limited, adopted  
on [*insert*] 2019, with effect from and including [*insert*] 2019.

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Alasdair MacLeod  
Chairperson

Date: [*insert*] 2019

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## 1. Definitions and interpretation

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- 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;

**Annual Meeting** means a meeting of Shareholders held pursuant to clause 10.1;

**Board** means the Directors numbering not less than the required quorum acting as the board of directors of the Company;

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

**Chairperson** means the chairperson of the Board elected under clause 15.2(a) or appointed under clause 15.2(c);

**Company** means Port of Napier Limited;

**Constitution** means this constitution of the Company and all amendments made to it from time to time;

**Control**, in relation to Voting Equity Securities in Napier Port Holdings, has the meaning given in the constitution of Napier Port Holdings;

**Council Party** means:

- (a) the Regional Council;
- (b) HBRIC; or
- (c) any related company of the Regional Council or HBRIC;

**Director** means a person appointed as a director of the Company and continuing in office for the time being, in accordance with this Constitution;

**Distribution** has the meaning set out in section 2(1) of the Act;

**Dividend** means a distribution by the Company other than a distribution to which section 59 or section 76 of the Act applies;

**HBRIC** means Hawke's Bay Regional Investment Company Limited and includes any successor organisation;

**Interested** has the meaning set out in section 139 of the Act (and **Interest** shall be interpreted accordingly);

**Interest Group** has the meaning set out in section 116 of the Act;

**Interests Register** means a register kept by the Company at its registered office as required by section 189(1)(c) of the Act;

**Major Transaction** has the meaning set out in section 129 of the Act;

**Managing Director** means a Director who is appointed under clause 17 as an employee of the Company, with the responsibility for the management of the Company (together with any other employee);

**Material 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 30% of 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 30% of the value of the Company's assets before the disposition,

provided that nothing in paragraph (b) above 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 30% of the value of the Company's assets for the purpose of securing the repayment of money or the performance of an obligation.

For the purposes of the above definition, "assets" includes property of any kind, whether tangible or intangible;

**Napier Port Holdings** means Napier Port Holdings Limited;

**Napier Port Holdings Group** means Napier Port Holdings and its wholly-owned subsidiaries;

**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;

**Ordinary Share** means a Share which confers on the holder:

- (a) the right to vote at meetings of Shareholders and on a poll to cast one vote for each Share held;
- (b) subject to the rights of any other Class of Shares, the right to an equal share in Dividends and other distributions made by the Company; and
- (c) the right to an equal share in the Distribution of the surplus assets of the Company on its liquidation;

**Regional Council** means the Hawke's Bay Regional Council and includes any successor organisation;

**Register** means the register of Shares required by section 87 of the Act to be kept;

**Registrar** means the Registrar of Companies appointed under section 357(1) of the Act;

**Share** means a share in the Company;

**Shareholder** means a person:

- (a) registered in the Register as the holder of one or more Shares; or
- (b) 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 in respect of which the Company is the amalgamated company.

**Special Meeting** means any meeting (other than an Annual Meeting) of Shareholders entitled to vote on an issue, called at any time by the Board or by any other person who is authorised by the Board to call meetings of Shareholders;

**Special Resolution** means a resolution of Shareholders approved by a majority of 75% of the votes of those Shareholders entitled to vote and voting on the question;

**Specified Transaction** means any of the following transactions which is to be entered into or performed while a Council Party holds or Controls more than 50% of the Voting Equity Securities in Napier Port Holdings:

- (a) a Material Transaction;
- (b) an alteration to or revocation of this Constitution or the adoption of a new constitution by the Company;
- (c) the issue of any Shares to any person who is not a member of the Napier Port Holdings Group; or
- (d) the registration of a transfer of Shares to any person who is not a member of the Napier Port Holdings Group;

**Voting Equity Security**, in relation to Napier Port Holdings, has the meaning given in the constitution of Napier Port Holdings; and

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

## 1.2 In this Constitution unless the context otherwise requires

- (a) words and expressions defined or explained in the Act have the same meaning in this Constitution;
- (b) headings are inserted for convenience only and shall be ignored in construing this Constitution;
- (c) the singular includes the plural and vice versa;
- (d) one gender includes the other genders;
- (e) 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;
- (f) "written" and "in writing" includes any means of reproducing words, figures or symbols:
  - (i) in a tangible and visible form in any medium; or
  - (ii) in a visible form in any medium by electronic means that enables them to be stored in permanent form and be retrieved and read;
- (g) "signature" includes, in relation to a document in electronic form, an electronic signature created by a method which identifies the signatory and indicates the signatory's approval of the information contained in the document; and
- (h) a reference to a clause is to that clause in this Constitution unless stated otherwise.

## 2. Capacity and powers

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### 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.

## 3. Issue of Shares

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### 3.1 Initial Shares

As at the date this Constitution is adopted there are 21,000,000 Ordinary Shares in the Company.

### 3.2 Board may issue Shares

- (a) The Board may issue additional Shares (and rights or options to acquire Shares) of any Class (including redeemable Shares) to such persons and in such manner and at such times as the Board thinks fit, provided that before any Shares are issued to any person who is not an existing Shareholder:
  - (i) the Board has obtained the approval of the Shareholders by way of Ordinary Resolution; and
  - (ii) if the issue of Shares is a Specified Transaction, the approval of the shareholders of Napier Port Holdings has been obtained in accordance with clause 14.4.
- (b) Section 45 of the Act shall not apply to an issue of Shares approved by Ordinary Resolution so that the Company may issue Shares so as to alter the voting and distribution rights as between Shareholders without first offering those Shares to existing Shareholders.

### 3.3 Bonus Shares and Shares in lieu of Dividends

The Board may authorise the allotment of Shares, to all Shareholders of the same Class, issued as fully paid up from the assets of the Company in proportion to the number of Shares held by each such Shareholder. The Board may issue Shares in lieu of proposed or future Dividends to Shareholders who have agreed to accept such Shares in accordance with section 54 of the Act.

### 3.4 Consolidation and subdivision of Shares

The Board may with the approval of Shareholders by way of an Ordinary Resolution 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.

## **4. Other matters relating to Shares**

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### **4.1 Company may purchase Shares**

The Company may purchase or otherwise acquire Shares issued by it from one or more Shareholders in accordance with, and subject to, the Act, and may hold the acquired Shares. Any transfer of Shares held by the Company shall be deemed to be an issue of new Shares to which clause 3.2 of this Constitution applies.

### **4.2 Call on Shares**

The Board may make calls as it thinks fit in respect of all moneys unpaid on Shares that are not, by the terms of issue of the Shares, payable at a specified time or times.

### **4.3 Shareholders must pay calls**

Subject to the terms of issue of any Shares, every Shareholder on receiving at least 10 Working Days written notice specifying the time or times and the place of payment must pay, in accordance with that notice, the amount called to be paid in respect of any Shares that are not fully paid Shares and that that Shareholder holds. The Board may revoke or postpone a call, or require a call to be paid by instalments.

### **4.4 Calls made when Board resolution passed**

A call is deemed to have been made at the time when the Board resolution authorising the call was passed.

### **4.5 Joint holders are jointly and severally liable**

The joint holders of a Share that is not a fully paid Share are jointly and severally liable to pay all calls for that Share.

### **4.6 Unpaid calls will accrue interest**

If an amount called is not paid in full at the time specified for payment, the person from whom the amount is due must pay the Company interest on the amount that remains unpaid at a rate determined by the Board and calculated from the time specified for payment until the day of actual payment. The Board may waive some or all of the payment of that interest.

### **4.7 Amounts payable under terms of issue treated as calls**

Any amount that becomes payable on issue or at any specified date under this Constitution or under the terms of issue of a Share, will be regarded as being a call duly made and payable on the specified date. If the payment is not made, the relevant provisions of this Constitution will apply as if the amount had become payable by virtue of a call made in accordance with this Constitution.

### **4.8 Board may differentiate between holders as to calls**

The Board may, on the issue of Shares, differentiate between the holders of Shares as to the amount of calls to be paid and the times of payments.

#### **4.9 Board may accept payment in advance for calls**

Where a Shareholder is willing to advance some or all of the money unpaid and uncalled on any Share or Shares of that Shareholder, the Board may accept the amount advanced on the Company's behalf. The Board may pay interest on that amount at a rate agreed between the Board and the Shareholder for the period between the date that the amount is accepted and the date that the amount becomes payable under a call or the date specified for its payment.

#### **4.10 Directors may by notice require forfeiture of Shares if calls unpaid**

The Directors may during the time that a call, instalment, or other amount remains unpaid on a Share, serve a notice on the Shareholder requiring payment of the unpaid call, instalment, or other amount, together with any accrued interest.

#### **4.11 Contents of Notice**

The notice served on a Shareholder under clause 4.10 must specify a date not earlier than 10 Working Days after the date the notice is served by which payment is to be made. The notice must also state that, in the event of non-payment by the appointed time, the Shares to which the call, instalment, or other amount relates, will be liable to be forfeited by the Shareholder.

#### **4.12 Failure to comply with notice may lead to forfeiture**

Where a valid notice under clause 4.10 is served on a Shareholder and the Shareholder fails to comply with the notice, then the Board:

- (a) may resolve that any Share for which that notice was given and all distributions authorised and not paid before the notice was served be forfeited; and
- (b) may cancel any share certificate relating to any Share which has been forfeited under any such resolution.

#### **4.13 Board may deal with forfeited Share**

The Board must first offer forfeited Shares to existing Shareholders, other than the Shareholder holding the forfeited Shares at the time of forfeiture, as if they were new Shares about to be issued by the Company. Subject to this new requirement, a forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit. However, the Board may cancel the forfeiture at any time before the sale or other disposition on such terms as the Board thinks fit.

#### **4.14 Shareholder whose Shares are forfeited loses rights**

A person whose Shares have been forfeited immediately ceases to be a Shareholder in respect of those Shares notwithstanding any other provision of this Constitution. A person whose Shares have been forfeited remains liable to pay the unpaid amount he or she owes the Company.

#### **4.15 Company's lien**

The Company has a lien, ranking in priority over all other equities, on:

- (a) all Shares that are not fully paid Shares;
- (b) any Dividends or other Distributions in respect of such Shares; and



(c) the proceeds of sale of such Shares,

for:

(d) unpaid calls and instalments payable in respect of any such Shares;

(e) interest on any such calls or instalments;

(f) sale expenses owing to the Company in respect of any such Shares; and

(g) any amounts that the Company may be called on to pay under any statute, regulation, ordinance or other law in respect of such Shares of a Shareholder, whether the period for payment has arrived or not.

#### **4.16 Waiver of lien**

Registration of a transfer of Shares on which the Company has any lien will operate as a waiver of the lien, unless the Company first gives notice to the contrary to the transferee.

#### **4.17 Company may sell Shares**

The Company may sell any forfeited Share, or any Share on which the Company has a lien, in such manner as the Board thinks fit, but:

(a) the Company shall not sell any Shares:

(i) unless the amount in respect of which a lien exists is due and payable;

(ii) until the expiry of 10 Working Days after written notice demanding payment of the amount owing has been given to the person entitled to receive notice of meetings of Shareholders in respect of the Shares; and

(b) before the power of sale is exercised the Shares shall be offered for sale to the holders of the remaining Shares as though they are new Shares to which the provisions of clause 3.2 apply.

#### **4.18 Proceeds of sale**

The net proceeds (after deduction of any expenses) of the sale of a forfeited Share or of any Share sold for the purpose of enforcing a lien shall be applied in or towards satisfaction of any unpaid calls, interest or other amount in respect of which any lien exists (as the case may require). The residue, if any, shall be paid to the holder of the Share at the time of its forfeiture or, in the case of a Share sold for the purpose of enforcing a lien, the holder immediately prior to the sale.

#### **4.19 Evidence**

A certificate by a Director that any power of sale has arisen and is exercisable by the Company under this Constitution, or that a Share has been forfeited on the date stated in the certificate, shall be conclusive evidence of those facts.

#### **4.20 Sale procedure**

For giving effect to any sale after forfeiture of any Share or for enforcing a lien over any Share, the Board may authorise any person to transfer any Share to the purchaser. The purchaser shall be registered as the holder of the Share and shall not be bound to see to the

application of the purchase money, and the title of the purchaser shall not be affected by any irregularity or invalidity in relation to the sale. The remedy of any person having a cause of action in relation to the sale is in damages only and solely against the Company.

## 5. Transfer of Shares

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### 5.1 Entry in register

Subject to clause 5.2, Shares may be transferred by entry of the name of the transferee(s) on the Register.

### 5.2 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 together with such evidence (if any) as the Board reasonably requires to prove the title of transferor to, or right of the transferor to transfer, the Shares.

### 5.3 Form of transfer

- (a) The form of transfer may be 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(s) if registration as holder of the Shares would impose on the transferee(s) a liability to the Company.

### 5.4 Board's right to refuse registration of transfer

- (a) The Board may, within 30 Working Days of the receipt of a transfer of Shares, refuse or delay the registration of any Share if:
  - (i) the Company has a lien on the Share;
  - (ii) the Share is not fully paid up;
  - (iii) the Board, in its absolute discretion, considers that to effect the transfer would not be in the best interests of the Company, but this provision shall not apply in respect of a transfer to an existing Shareholder; or
  - (iv) clause 6.3 has not been complied with or the form of transfer has not been properly executed or does not comply with clause 5.3.
- (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(s) within 5 Working Days of the date of the resolution being passed.

### 5.5 Registration of transfer

The Board must not register a transfer of Shares:

- (a) to any person who is not a member of the Napier Port Holdings Group unless the Board has obtained the approval of the Shareholders by way of Ordinary Resolution; and

- (b) if the transfer is a Specified Transaction, unless the approval of the shareholders of Napier Port Holdings has been obtained in accordance with clause 14.4.

## 5.6 Register

Subject to clauses 5.2, 5.3 and 5.5, on receipt of a duly completed form of transfer, the Company must enter the name of the transferee(s) on the Register as holder of the Shares, unless the Board has resolved in accordance with clause 5.4 to refuse or delay the registration of the transfer of the Shares.

## 6. Share certificates

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### 6.1 Application for Share certificate

A Shareholder may apply to the Company for a certificate relating to some or all of the Shareholder's Shares.

### 6.2 Issue of Share certificate

The Company must, within 20 Working Days after receiving an application for a Share certificate under clause 6.1, send to the Shareholder a Share certificate in accordance with section 95 of the Act.

### 6.3 Transfer to be accompanied by Share certificate

Notwithstanding clause 5 and section 84 of the Act, 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. Distributions

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### 7.1 Solvency test

- (a) Subject to clause 7.2, 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.
- (b) 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.

### 7.2 Dividends payable pari passu

- (a) Subject to clause 7.2(b), the Board may not authorise a Dividend:
  - (i) in respect of some but not all 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 7.2(a).

## **8. Shareholder's rights**

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### **8.1 Alteration of Shareholder's rights**

- (a) The Company must not take action that affects the rights attached to Shares unless that action has been approved by a Special Resolution of each Interest Group.
- (b) For the purposes of clause 8.1(a) the rights attached to a Share include:
  - (i) the rights, privileges, limitations, and conditions attached to the Share by the Act or this Constitution, including voting rights and rights to Distributions;
  - (ii) the right to have the procedure set out in this clause, and any further procedure required by this Constitution for the amendment or alteration of rights, observed by the Company; and
  - (iii) the right that a procedure required by this Constitution for the amendment or alteration of rights not be amended or altered.

### **8.2 Shareholders entitled to exercise certain rights**

- (a) The Shareholders who are:
  - (i) entitled to receive Distributions; or
  - (ii) entitled to exercise any other right or receive any other benefit under the Act, this Constitution or pursuant to the terms of issue of Shares,
 are those Shareholders of the relevant Class:
  - (iii) if the Board has fixed a date for the purpose, whose names are registered in the Register on that date; or
  - (iv) if the Board does not fix a date for the purpose, whose names are registered in the Register on the day on which the Board or the Shareholders, as the case may be, pass the resolution concerned.
- (b) A date must not be fixed under clause 8.2(a) that precedes by more than 20 Working Days the date on which the proposed action will be taken.

## 9. Exercise of powers reserved to shareholders

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### 9.1 Powers reserved to Shareholders

- (a) Powers reserved to Shareholders by the Act or by this Constitution may be exercised:
  - (i) at an Annual Meeting or a Special Meeting; or
  - (ii) by a resolution in lieu of a meeting pursuant to clause 10.3.
- (b) Unless otherwise specified in the Act or this Constitution, a power reserved to Shareholders may be exercised by an Ordinary Resolution.

### 9.2 Special Resolutions

Notwithstanding the Constitution, the exercise of the following powers requires the approval of Shareholders by way of Special Resolution (provided, where applicable, that any prior approvals required under the constitution(s) of the Shareholders have been obtained):

- (a) an alteration to or revocation of this Constitution or the adoption of a new constitution;
- (b) a Major Transaction;
- (c) an amalgamation; and
- (d) the liquidation of the Company.

Any decision made by Special Resolution pursuant to this clause may be rescinded only by a Special Resolution, provided that a resolution to put the Company into liquidation cannot be rescinded.

### 9.3 Management review by Shareholders

- (a) A Shareholder may question, discuss, and comment on the management of the Company at a meeting of Shareholders.
- (b) A meeting of Shareholders may pass a resolution relating to the management of the Company.
- (c) The proceedings of any meeting of Shareholders at which a resolution under this clause 9.3 is passed shall be in accordance with clauses 10 and 11.
- (d) Notwithstanding section 128 of the Act or any other clause of this Constitution, a resolution relating to the management of the Company passed at a meeting of shareholders (in accordance with clause 9.3(b)) is not binding on the Board.

## 10. Meetings of shareholders

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### 10.1 Annual meeting

- (a) Subject to clauses 10.1(c) and 10.1(d), the Board must each year, in accordance with section 120 of the Act, call an Annual Meeting of Shareholders.

- (b) The Company must hold the Annual Meeting on the date on which it is called to be held.
- (c) It shall not be necessary for the Company to hold an Annual Meeting if everything required to be done at that meeting (by resolution or otherwise) is done by a resolution in writing in accordance with sections 122(2) and 122(3) of the Act.
- (d) In accordance with section 120(5) of the Act, the Board shall not be required to call, and the Company is not required to hold, an annual meeting of shareholders if:
  - (i) there is nothing required to be done at the meeting; and
  - (ii) the Board has resolved (in accordance with section 120(5)(b) of the Act) that it is in the interests of the Company not to hold an annual meeting (having regard to whether there is any particular issue that the shareholders should be given an opportunity to discuss, comment on or ask questions about).

## 10.2 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.

## 10.3 Resolution in lieu of meeting

- (a) Subject to clause 10.3(b), a resolution in writing signed by not less than 75 per cent of the Shareholders who would be entitled to vote on that resolution at a meeting of Shareholders, who together hold not less than 75 per cent of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those Shareholders.
- (b) A resolution in writing under clause 10.3(a) may consist of one or more documents in similar form (including letter, facsimiles, electronic mail, or other similar means of communication) each signed or assented to by or on behalf of each of the Shareholders.
- (c) Within 5 Working Days of a resolution being passed under clause 10.3(a), the Company must send to every Shareholder who did not sign the resolution or on whose behalf the resolution was not signed:
  - (i) a copy of the resolution; and
  - (ii) if the resolution was a Special Resolution required under section 106(1)(a) or (b) of the Act, a statement setting out the rights of Shareholders under section 110 of the Act.

## 10.4 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.

## 10.5 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, 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 10.5(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.

## 10.6 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 the auditor of the Company, not less than 10 Working Days before the meeting.

## 10.7 Contents of notice

The notice referred to in clause 10.6 must state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
- (b) the text of any resolution to be submitted to the meeting; and
- (c) in the case of special resolutions required by section 106(1)(a) or (b) of the Act, the right of a Shareholder under section 110 of the Act.

## 10.8 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 meeting by, a Shareholder does not invalidate the proceedings at that meeting.

## 10.9 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.

## 10.10 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 correct by the chairperson of the meeting are prima facie evidence of the proceedings.

## 11. Voting at meetings

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### 11.1 Quorum

- (a) A quorum for a meeting of Shareholders is those Shareholders who are present or their proxies are present provided they hold between them not less than 51% of the total number of Shares issued in the Company.
- (b) Subject to clause 11.1(c), 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 the meeting:
  - (i) in the case of a meeting called pursuant to a requisition of Shareholders under clause 10.1(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 and if at the adjourned meeting a quorum is not present within 15 minutes after the time appointed for the meeting the Shareholders present or their proxies are a quorum.

### 11.2 Voting

- (a) In the case of a meeting of Shareholders held under clause 10.9(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 10.9(b) unless a poll is demanded, voting at the meeting shall be by any method permitted by the chairperson at the meeting.
- (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 11.2(d).
- (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; or



- (ii) a Shareholder or Shareholders representing not less than 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or
  - (iii) a Shareholder or Shareholders holding Shares in the Company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% 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, votes 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.

### 11.3 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 or, in the case of an electronic notice, sent by the Shareholder, and the notice must state whether the appointment is for a particular meeting or a specified term.
- (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.

### 11.4 Unpaid sums

If a sum due to the Company in respect of a Share has not been paid, that Share may not be voted at a Shareholders' meeting or at a meeting of an Interest Group.

### 11.5 Meetings of Interest Groups

The provisions of clauses 10 and 11 shall, with such consequential amendment as may be necessary, govern the proceedings of any meeting of an Interest Group.

### 11.6 Other proceedings

Except as provided in this Constitution the Shareholders may regulate their own procedure.

## 12. Appointment and removal of Directors

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### 12.1 Number of Directors

Subject to clause 12.2, the number of Directors must be the same as the number of directors of Napier Port Holdings.

### 12.2 Port Companies Act

For so long as the Port Companies Act 1988 applies to the Company:

- (a) there shall be no fewer than six Directors; and
- (b) not more than two members or employees of the Harbour Board (as such term is defined in the Port Companies Act 1988) or any Harbour Board, territorial authority, regional council or united council that holds any equity securities in the Company of any class that confer rights to vote at any meeting of the Company may be Directors.

### 12.3 Appointment and removal of Directors

- (a) Subject to the provisions of this Constitution, a Director may be appointed or removed from office by an Ordinary Resolution.
- (b) A notice of a meeting at which the removal of a Director will be considered must state that the purpose of the meeting is the removal of the Director.
- (c) Two or more persons may be appointed as Directors by a single resolution.

### 12.4 Disqualification and removal

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

- (a) becomes a member or employee of the Harbour Board (as such term is defined in the Port Companies Act 1988) or any Harbour Board, territorial authority, regional council or united council that holds any equity securities in the Company of any class that confer rights to vote at any meeting of the Company, where such act would have the effect of putting the Company in breach of clause 12.2(b); or
- (b) dies, or becomes of unsound mind or becomes subject to a property order under the Protection of Personal and Property Rights Act 1988; or
- (c) becomes bankrupt or makes an arrangement or compromise with the Director's creditors generally; or
- (d) becomes disqualified from being a Director pursuant to section 151 of the Act; or
- (e) resigns from office by notice in writing to the Company; or
- (f) ceases to be a director of Napier Port Holdings; or
- (g) is removed from office pursuant to this Constitution or the Act; or
- (h) has for more than six months been absent without permission of the Board from meetings of the Board held during that period.

## 12.5 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 or electronic copy) and any later time specified in the notice.

## 12.6 Shareholding qualification

A Director is not required to hold Shares.

## 12.7 Composition of Board

The composition of the Board must at all times mirror the composition of the board of directors of Napier Port Holdings. If a person is validly appointed or removed as a director of Napier Port Holdings and, within five Business Days of his or her appointment or removal as a director of Napier Port Holdings, has not also been appointed or removed as a Director, that person will:

- (a) in the case of appointment, automatically become, and will be deemed to have been validly appointed as, a Director on and with effect from their appointment as a director of Napier Port Holdings provided the Company has received from that person a signed consent to act as a Director and certificate that the person is not disqualified from being appointed or holding office as a Director; and
- (b) in the case of removal, automatically cease to be a Director on the date that the Company receives notice that the Director has ceased to be a director of Napier Port Holdings,

provided that if the appointment of that person under this clause 12.7 would have the effect of putting the Company in breach of clause 12.2(b), that appointment shall have no effect.

# 13. Indemnity and insurance

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## 13.1 Indemnity of Directors and employees

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

not being:

- (iii) criminal liability; or
- (iv) liability for a breach of section 131 of the Act; or
- (v) liability for breach of any fiduciary duty owed to the Company or related company.

### 13.2 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 for employees of the Company or a related company in respect of:
  - (i) liability, not being criminal liability, for any act or omission in his or her 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 or her capacity as a Director or employee and in which he or she is acquitted.
- (b) The Directors who vote in favour of authorising the effecting of insurance under clause 13.2(a) 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.

### 13.3 Definitions

For the purpose of this clause 13 "Director" includes a former director and "employee" includes a former employee.

## 14. Powers and duties of the Board

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### 14.1 Powers of the Board

- (a) Subject to clause 14.1(b) and any restriction 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, and for 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.

### 14.2 Delegation by the Board

- (a) The Board may delegate to a committee of Directors, a Director, or an employee of the Company or any other person any one or more of its powers other than the powers which the Act prohibits being delegated.

- (b) The Board is responsible for the exercise of a power by any delegate (where that power is delegated under this clause 14.2) 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 14.2(a) shall be in accordance with the provisions of clause 15, with such consequential amendments as may be necessary and any other rules that may be imposed on it by the Board.

### 14.3 Interests of holding company

If the Company is, at any time:

- (a) a wholly owned subsidiary of another company; or
- (b) a subsidiary (but not a wholly owned subsidiary) of another company and providing the prior agreement of the Shareholders other than the holding company has been obtained,

any Director may, when exercising powers or performing duties as a Director, act in a manner which he or she believes is in the best interests of any company which is the Company's holding company, even though it may not be in the best interests of the Company, provided that such act or omission is not in breach of the Port Companies Act 1988 and is consistent with the Company's statement of corporate intent.

### 14.4 Specified Transactions

Neither the Company nor the Board may enter into or perform any Specified Transaction unless that Specified Transaction is:

- (a) approved by an ordinary resolution of the shareholders of Napier Port Holdings; or
- (b) contingent on approval by an ordinary resolution of the shareholders of Napier Port Holdings.

## 15. Proceedings of the Board

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### 15.1 Third Schedule

The provisions of the Third Schedule to the Act are deleted and replaced by this clause 15.

### 15.2 Chairperson

- (a) The Directors shall elect one of their number as chairperson of the Board. Such Director who is elected as the Chairperson must be the person who is the elected chairperson of Napier Port Holdings from time to time.

- (b) The Director elected as Chairperson holds that office until he or she ceases to be a Director or the Directors elect a Chairperson in his or her place in accordance with clause 15.2(a).
- (c) If at a meeting of the Board the 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.

### 15.3 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 15.3.
- (b) Not less than 2 Working Days' notice of a meeting of the Board must be given to every Director. 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 meeting or an irregularity in the notice of the meeting 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. To avoid doubt, the notice may be sent via an electronic communication if the Director has provided the Company with an address for the receipt of electronic communications.

### 15.4 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 15.4(a)(ii), at the commencement of the meeting each Director participating must acknowledge his or her presence to all the Directors participating. A Director may not leave the meeting by disconnecting his or her means of communication unless he or she has previously obtained the express consent of the Chairperson.

### 15.5 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.

### 15.6 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 on it by the Directors 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 or she expressly dissents from (or votes against) the resolution at the meeting.
- (e) 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.

## 15.7 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.

## 15.8 Unanimous resolution

- (a) A resolution in writing, signed or assented to by all Directors 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, electronic or other similar means of communication) in like form each signed or assented to by one or more Directors.
- (c) A copy of any such resolution must be entered in the minute book of Board proceedings.

## 15.9 Other proceedings

Except as provided in this clause 15, the Board may regulate its own procedure.

## 16. Interested Directors

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### 16.1 Personal involvement of Directors

Notwithstanding any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a director is Interested) and section 36 of the Financial Reporting Act 2013 (prohibiting a director of a company from acting as auditor of that company), a Director may:

- (a) contract with the Company in any capacity;
- (b) be a party to any transaction with the Company;
- (c) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;
- (d) become a director or other officer of, or otherwise interested in, any company promoted by the Company or in which the Company may be directly or indirectly interested as a Shareholder or otherwise; and

- (e) retain any remuneration, profit or benefits in relation to any of the foregoing,

and no contract or arrangement of any kind referred to in this clause may be avoided by reason of a Director's Interest. Nothing in this clause 16.1 authorises a Director or the Director's firm to act as auditor to the Company.

## 16.2 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 in 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 16.2(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) Subject to clause 16.2(a), a general notice entered in the Interests Register and, if the Company has more than one Director, 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.

## 16.3 Interested Directors may vote

- (a) Subject to clause 16.3(b), a Director who is Interested in a transaction entered into, or to be entered into, by the Company may:
  - (i) vote on any matter relating to the transaction;
  - (ii) attend a meeting of the Board at which any matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum;
  - (iii) sign a document relating to the transaction on behalf of the Company; and
  - (iv) do any other thing in his or her capacity as a Director in relation to the transaction,

as if the Director were not Interested in the transaction.
- (b) A Director who is Interested in a transaction entered into, or to be entered into, by the Company may:
  - (i) not vote on any matter relating to the transaction; or



- (ii) be included among the Directors present at the meeting for the purposes of a quorum,

if the matter is also to be voted on by Napier Port Holdings and such Director (in his or capacity as a director of Napier Port Holdings) is prohibited by the NZX Listing Rules from voting on the matter or being counted in a quorum for consideration of the matter.

## 17. Managing Directors

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### 17.1 Appointment and dismissal

- (a) Subject to clause 12.7, the Board may from time to time appoint one or more of their number to the office of Managing Director or Managing Directors of the Company, either for a fixed term, or an indefinite term.
- (b) 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.

### 17.2 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.

## 18. Reporting

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### 18.1 Annual Report

Subject to the Companies Act:

- (a) within 5 months after the end of each financial year, the Board must deliver to the Shareholders a report on the Company's operations during that year; and
- (b) that report must include the information required to be included by section 211 of the Act.

### 18.2 Statement of Corporate Intent

The Company will prepare and make available in accordance with the provisions of the Port Companies Act 1988 a Statement of Corporate Intent that complies with the provisions of that Act and any regulations relevant to its preparation, content and time of filing.

## 19. Method of contracting

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### 19.1 Deeds

A deed which is to be entered into by the Company may be signed on behalf of the Company, by:

- (a) two or more Directors; or
- (b) any one Director together with either the chief executive or the chief financial officer, whose signatures must be witnessed.

## 19.2 Other written contracts

An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.

## 19.3 Other obligations

Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

# 20. Liquidation

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## 20.1 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.

## 20.2 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 (**Surplus Assets**) shall be distributed among the holders of the Ordinary 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 approval by way of an Ordinary Resolution and any other approval required by law, divide amongst the Shareholders in kind the whole or any part of the Surplus 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 Surplus Assets to be divided as aforesaid and may determine how the division shall be carried out as between the Shareholders holding different classes of Shares.
- (c) The liquidator may, with approval by way of an Ordinary Resolution, vest the whole or any part of any such Surplus Assets in trustees upon such trusts for the benefit of the Shareholders as the liquidator thinks fit (but so that no Shareholders shall be compelled to accept any Shares or other securities whereon there is any liability).

## 20.3 Removal from New Zealand register

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 Companies register on the grounds that:

- (a) 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

- (b) 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.

For the purposes of clause 20.3(a) the Company shall have distributed its surplus assets in accordance with this Constitution if the Company does so in accordance with clause 20.2(b) 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.