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**CONSTITUTION OF  
LOWER WAITAKI IRRIGATION  
COMPANY LIMITED**

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## CONSTITUTION OF

### LOWER WAITAKI IRRIGATION COMPANY LIMITED

#### 1. STATEMENT OF PURPOSE

- 1.1 The Companies Act 1993 ("the Act") provides that certain provisions of the Act may be negated, altered or added to by the constitution of a company.
- 1.2 Section 27 of the Act provides that where a company has a constitution then the company, the board, each director and each shareholder of a company has the rights, powers, duties and obligations set out in the Act except to the extent that they are negated, altered or added to in accordance with the Act, by that constitution.
- 1.3. Section 30 of the Act provides that a constitution may contain:
  - a. Matters contemplated by the Act for inclusion therein.
  - b. Such other matters as a company may wish to include.
- 1.4. The Company:
  - a. Has various resource consents from the Otago Regional Council and Environment Canterbury enabling the Company to take 18780 litres of water per second from the Waitaki River for the purposes of irrigation of the land in the Lower Waitaki Valley and surrounding catchment.
  - b. Has determined to adopt a constitution which restricts the business and activities of the Company to the establishment, management and operation of an irrigation scheme for the Lower Waitaki Valley and surrounding catchment and the provision of water for stock, domestic, commercial and community use.
  - c. Has a total share capital comprising of 27865 Shares (25,000 A Shares and 2,865 B Shares) with 1 Share in the Company entitling a Shareholder to irrigate 1 hectare of land in the Lower Waitaki Valley and surrounding catchment or entitling the holder of those shares to water for stock, domestic, commercial or community and not irrigation purposes based on one share for every 3000m<sup>3</sup> allocated.
  - d. Has determined that the Board of the Company may issue further and different classes of Shares for the purposes of entitling the holder of those Shares to water for stock, domestic, commercial or community and irrigation purposes at any time to any person, and in any number it thinks fits
  - e. Has determined that the Board of the Company may prescribe Rules of Operation for the supply of water to its Shareholders and to holders of Water Supply Agreements.

- f. To include provisions relating to the rights and obligations of Shareholders in the Company.

## 2. DEFINITIONS AND INTERPRETATION

### Definitions

- 2.1 In this Constitution, the following words and expressions have the meanings set out next to them:

<b>"Act"</b>	means the Companies Act 1993
<b>"A Shares"</b>	means the 25,000 A Shares in the Company referred to in clause 4.1 (a).
<b>"B Shares"</b>	means the 2,865 B Shares in the Company referred to in clause 4.1 (b)
<b>"Board"</b>	means the directors numbering not less than the required quorum acting as the board of directors of the Company, and includes the Managing Director.
<b>"Business"</b>	means the business of the Company as set out in clause 3 of this Constitution.
<b>"Class"</b>	A Shares shall form one class and the B Shares shall form another class of Shares in the Company.
<b>"Company"</b>	means Lower Waitaki Irrigation Company Limited
<b>"Constitution"</b>	means this Constitution as it may be altered from time to time in accordance with the Act.
<b>"Director"</b>	means a person appointed and continuing in office for the time being, in accordance with this Constitution, as a director of the Company, and includes the Managing Director
<b>"Dividend"</b>	means a distribution by the Company other than a distribution to which section 59 (acquisition of company's own shares) or section 76 (financial assistance in acquisition of company's shares) of the Act applies.
<b>"Managing Director"</b>	means any Director appointed as Managing Director in accordance with Clause 12.9 of this Constitution.

- "Ordinary Resolution"** means a resolution of Shareholders approved by a majority of the votes of all Shareholders entitled to vote and voting on the resolution and which is not required pursuant to this Constitution or the Act to be a Special Resolution.
- "Share and Shares"** means an A Share or Shares or B Share or Shares and/or any Share issued by the Company in accordance with the Act or this Constitution as the case may require.
- "Shareholder or Shareholders"** means the holder of an A Share or Shares, a B Share or Shares or any other Share issued by the Company in accordance with the Act or this Constitution as the case may require.
- "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 by this Constitution is entitled to call meetings of Shareholders.
- "Special Resolution"** means any resolution of Shareholders which is required either by this Constitution or the Act to be a special resolution and which is to be approved by 75% or more of the votes of all Shareholders entitled to vote and voting on the resolution.
- "Water Supply Agreement"** means all agreements covering the supply by the company of irrigation water and/or water for domestic and/or stock use and/or commercial or communal use and the payment by irrigators and water users for such water and includes any encumbrance registered against the irrigators land.
- "Rules of Operation"** means the Rules of Operation governing the terms and conditions of supply of water by the Company to its Shareholders and the holders of Water Supply Agreements, as prescribed from time to time by the Board.

### **Interpretation**

- a. Words importing the singular number include the plural number and vice versa.
- b. A reference to a person includes any firm, company or other body corporate.

- c. Subject to the above, expressions contained in this Constitution bear the same meaning as in the Act, at the date on which this Constitution becomes binding on the Company.
- d. A reference to a clause means a clause of this Constitution.
- e. The clause headings are included for the purposes of convenience and do not affect the construction of this Constitution.

### **3. RESTRICTION ON BUSINESS OF THE COMPANY**

- 3.1 Except if varied by Special Resolution the Company shall only carry on activities which are related to the establishment, management and operation of an irrigation scheme for the Lower Waitaki area, and the provision of water for stock, domestic, commercial or community purposes as the Company may determine.

## **4 SHARES**

### **Rights and powers**

- 4.1 The Shares in the Company shall comprise:
  - a. 25,000 A ordinary Shares ("A Shares") numbered 1 to 25,000 in the register; and
  - b. 2,865 B ordinary Shares ("B Shares") numbered 25,001 to 27,865 in the register.

Except as expressly provided in this Constitution, the A Shares and the B Shares have the same rights and privileges and are subject to the same restrictions PROVIDED HOWEVER that Class B shares are subject to the special conditions contained in Resource Consent No. CRC950649 granted by the Canterbury Regional Council which effects reliability of water supply.

- 4.2 That the Company may issue A and B Shares in accordance with and pursuant to prospectuses to be issued by the Company from time to time or the Board may issue shares for extensions to the Company's irrigation scheme at any time, to any person, who can be supplied by scheme in accordance with the Company's Terms and Conditions of Supply, including the Rules of Operation, in any number, as the Board thinks fit subject to the provisions of the Act and this Constitution and until and unless Shares have been so issued they shall be deemed to be issued but unallocated.
- 4.3 This Constitution does not set out types of Shares other than those set out in clause 4.1 that the Board may, or may not, issue without Shareholder approval.
- 4.4 Any requirement of the Act that Shares issued or proposed to be issued:
  - a. be offered first to the holders of existing Shares issued; or

- b. be made subject to approval of a Special Resolution of an interest group  
is, to the extent permitted by the Act, negated or modified in accordance with the terms on which those Shares are issued.

### **Issue of Shares**

- 4.5 The Board may only issue Shares in accordance with this Constitution.

## **5. CALLS ON SHARES**

### **Board may make calls**

- 5.1 The Board may make such calls as the Board thinks fit on Shareholders in respect of their Shares and made payable at a fixed time or times and in such circumstances Shareholders must comply with the terms of payment set out in the Board resolution.
- 5.2 A call may be revoked or postponed by the Board.

### **Notice of call**

- 5.3 Notice and particulars of call must be given to Shareholders at the time the call is made and the Company is not required to give further notice of particulars of such a call to a subsequent Shareholder of any Shares.

### **Liability**

- 5.4 Joint Shareholders are jointly and severally liable to pay all calls in respect of their Shares.
- 5.5 The liability for a call which has become due and payable attaches to a Shareholder at the time any such payment is due and owing and not to a prior Shareholder.

### **Interest and Expenses**

- 5.6 If a call is not paid, the Shareholder of the Share from whom the sum is due must pay:
- a. all interest on that sum from the day payment was due to the day of actual payment at such rate as the Board may determine;
  - b. all expenses which the Company has or may incur by reason of non-payment of the call.

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

### **Instalments**

- 5.7 Any sum which by the terms of issue of a Share becomes payable on issue or at any fixed time will, for all purposes, be deemed to be a call duly made and payable at the time at which by the terms of issue it becomes payable. In case of non-payment all the relevant provisions of this Constitution relating to payment of interest and expenses, forfeiture, or otherwise will apply as if the sum had become payable by a call duly made and notified.

#### **Different amounts**

- 5.8 The Board may, on the issue and allotment of Shares, differentiate between Shareholders as to the amount of calls to be paid and the times of payment.

### **6. SUSPENSION OF RIGHT TO DISTRIBUTIONS, LIEN AND FORFEITURE**

#### **Notice of Suspension of Rights to Distributions**

- 6.1 If a Shareholder fails to pay any call or instalment of a call on the day payment is due, 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 distributions payable to the Shareholder until so much of the call or instalment as is unpaid together with any interest and expenses pursuant to clause 5.6 (Interest and Expenses) have been paid to the Company in full and/or terminate the supply of water.

#### **Application of Suspended Distributions**

- 6.2 All distributions which would have been payable in respect of Shares which are subject to a suspension of the right to dividends or distributions must be withheld and applied by the Company to reduce the amount owing under the call, including amounts owing under clause 5.6 (Interest and Expenses).

#### **Liability not Discharged by Suspension of Right to Distributions on Transfer of Shares**

- 6.3 A Shareholder whose Shares have the right to distributions suspended remains liable to the Company for all money owing under the call. That liability is not extinguished by a transfer of the Shares subject to the suspension to a third party.

#### **Lifting of Suspension of Right to Distributions**

- 6.4 When the total distributions withheld and applied under clause 6 (Application of Suspended Dividends) equal the total amount owing under the call, including amounts owing under clause 5.6, (Interest and Expenses) the suspension of the right to distributions will be lifted and all rights to be paid dividends on the Shares will resume.

#### **Liens**

6.5 The Company has a first and paramount lien on every Share registered in the name of a Shareholder (whether solely or jointly with others) and on the proceeds of sale of those Shares, for:

- a. all money (whether presently payable or not) payable in respect of Shares held by the Shareholder; and
- b. all other money presently payable by the Shareholder to the Company; and
- c. such amounts (if any) as the Company may be required to pay under any statute or regulation in respect of Shares of a deceased or other Shareholder,

whether the period for the payment, fulfilment or discharge respectively has actually arrived or not.

6.6 The lien extends to all distributions from time to time declared in respect of the Shares.

#### **Sale on Exercise of Lien**

6.7 The Company may sell, in such manner as the Board thinks fit, any Shares on which the Company has a lien. No sale may be made unless:

- a. a sum in respect of which the lien exists is due and payable; and
- b. until the expiration of 14 days after a notice which requires payment of the amount owing in respect of which the lien exists, has been given to the Shareholder at the time or the person entitled to that Share by reason of the Shareholder's death or bankruptcy.

#### **Application of Proceeds of Sale**

6.8 The net proceeds of the sale of any Shares sold for the purpose of enforcing a lien must be applied in or towards satisfaction of any unpaid calls, instalments or any other money payable by the Shareholder in respect of which the lien existed. The residue, if any, must be paid to the former Shareholder.

#### **Certificate that Power of Sale has Arisen**

6.9 A certificate signed by a Director stating that the power of sale provided in clause 4 of this Constitution has arisen and is exercisable by the Company under this Constitution will be conclusive evidence of the facts stated in the certificate.

#### **Giving Effect to Sale**

6.10 In order to give effect to any sale enforcing the lien in the exercise of the powers given to it under clause 6.7 (Sale on Exercise of Lien) the Board may authorise any person to execute a transfer of the Shares to the purchaser. The purchaser will be



registered as the Shareholder of the Shares which are transferred, and will not be bound to see to the application of the purchase money. The purchaser's title to the Shares will not be effected by any 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 certificate for the Shares is not delivered to the Company the Board may issue a new certificate distinguishing it as the Board thinks fit from the certificate not delivered.

## **7. DISTRIBUTIONS TO SHAREHOLDERS**

### **The Board may authorise distributions**

- 7.1 The Board may authorise a distribution by the Company to Shareholders in accordance with the Act.

### **Dividends on Shares not fully paid up to be paid pro rata**

- 7.2 All dividends on Shares not fully paid up must be authorised and paid 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. This provision does not apply where Shares have been issued with special rights as to dividends.
- 7.3 No amount paid or credited as paid on a Share in advance of calls is to be treated for these purposes as paid on the Share. All dividends are to be apportioned and paid proportionately to the amounts paid or credited as paid on the Shares during any portion or portions of the period in respect of which the dividend is paid, but if any Share is issued on terms providing that it ranks for dividend as from a particular date that Share ranks for dividend accordingly.

### **Payment by cheque or warrant**

- 7.4 Any dividend, interest, or other money payable in cash in respect of Shares may be paid by cheque sent through the post to the registered address of the holder, or in the case of joint holders, to the registered address of that one of the joint holders who is first named in the Share register or to such person and to such address as the Shareholder or joint Shareholders may in writing direct.
- 7.5 Every such cheque must be made payable to the order of the Shareholder to whom it is sent. Any one of 2 or more joint Shareholders may give effectual receipts for any dividends, bonuses, or other money payable in respect of Shares held by them as joint Shareholders.

### **No interest**

- 7.6 No dividend bears interest against the Company.

### **Unclaimed dividends**

- 7.7 All dividends unclaimed for 1 year after having been authorised may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. All

dividends unclaimed for 5 years after having been declared may be forfeited by the Board for the benefit of the Company.

- 7.8 The Board may, however, annul any such forfeiture and agree to pay a claimant who produces, to the Board's satisfaction, evidence of entitlement to the amount due to such claimant, unless in the opinion of the Board such payment would embarrass the Company.

## **8. COMPANY PURCHASING OWN SHARES**

### **Acquisition of Company's own Shares**

- 8.1 The Company may make an offer for and purchase any Shares issued by it in accordance with the Act.

### **Company may hold its own Shares Uncancelled**

- 8.2 The Company may hold its own Shares uncancelled as provided by section 67A of the Act as Treasury stock for re issue as provided by sections 42 and 47 of the Act

### **Redemption of Shares**

- 8.3 If the Company issues redeemable Shares, the Company may redeem those Shares in accordance with their terms of issue.

## **9. TRANSFERABILITY OF SHARES**

### **Transfer of Shares allowed**

- 9.1 Any Share may be transferred by a Shareholder to any person subject to the powers of the Directors pursuant to Clause 10 of this Constitution.

## **10. REGISTRATION OF SHARE TRANSFERS**

### **Directors' right to refuse registration**

- 10.1 Subject to compliance with the provisions of section 84 of the Act, the Board may refuse or delay the registration of any transfer of any Share to any person whether an existing Shareholder or not if:
- a. so required by law;
  - b. registration would impose on the transferee a liability to the Company and the transferee has not signed the transfer;
  - c. a Shareholder of any such Share has failed to pay on due date any amount payable on such Share either in terms of its issue or in accordance with this Constitution (including any call made in relation to such Share);

- d. the holder of the Share has failed to comply with the terms of any contract with the Company (including a Water Supply Agreement and the Rules of Operation) with the Company.
- e. the transferee is not taking over a property serviced by the Company's irrigation scheme and an existing Water Supply Agreement relating to that property.
- f. the transferee is an infant or a person of unsound mind;
- g. the transfer is not accompanied by such proof as the Directors reasonably require of the right of the transferor to make the transfer;
- h. if the Directors acting in good faith decide in their sole discretion that registration of the transfer would not be in the best interests of the Company or any of its Shareholders.

### **Directors must refuse registration**

10.2 The Board must refuse registration of any transfer of any Share:

- a. if the provisions of any agreement between Shareholders relating to the transfer of Shares in respect of which the Board has notice have not been complied with in respect of the transfer of those Shares; and
- b. Any proposed transferee of any Share is not bound by or refuses to be bound by the terms and conditions of any required or relevant Water Supply Agreement with the Company whether registered against the certificate of title for any land which the proposed transferee proposes to irrigate or which is included in some other form of security provided by the Board, or refuses to be bound by the Rules of Operation of the Company, provided that this clause shall not apply in relation to Shares which are taken up by way of underwriting subscription pursuant to any prospectus under arrangements specifically approved by the Board.

## **11. SHAREHOLDERS RIGHTS AND OBLIGATIONS**

11.1 Rights and Powers attaching to Shares

Unless otherwise provided by the terms of issue a Share confers on the holder:

- (a) The right to one vote on a poll at a meeting of the Company or on any resolution, up to a maximum of 500 votes for any one Shareholder
- (b) The right to an equal share in dividends authorised by the Board.
- (c) The right to an equal Share in the distribution of the surplus assets of the Company.

### **Meetings of Shareholders**

11.2 The provisions of the First Schedule to this Constitution shall govern proceedings at meetings of Shareholders.

## **12. DIRECTORS**

### **Limits on Board's Power to Manage the Company**

- 12.1 This Constitution contains no provision limiting the power of the Board to manage the business or affairs of the Company.

### **Number of Directors**

- 12.2 The minimum number of Directors shall be 4 and the maximum number of Directors or shall be six (6).

### **Appointment of Directors**

- 12.3 (a) At the annual general meeting each year one third of the Directors for the time being (or the nearest number to one third) shall retire from office, such retirements to be determined by such procedure as the Directors may agree and the Company may at that general meeting fill the vacated offices by election of a like number of persons to be Directors. Retiring Directors shall be eligible for re-election.
- (b) The Shareholders shall by Ordinary Resolution be entitled by notice in writing to the Company to appoint the Directors of the Company, and from time to time and at any time to remove from office any Director so appointed and to appoint another person in their place.

### **Appointment by Board**

- 12.4 The Board shall have power to appoint any person to be a Director either to fill a casual vacancy or as an additional Director (provided that the Board shall not exceed the maximum number of Directors set out in clause 12.2) and such Director can be removed from office by ordinary resolution of Shareholders or by a majority resolution of the Board.

### **Alternate Directors**

- 12.5 Each Director has the power from time to time to nominate any person not already a Director to act as an alternate Director in their place. An alternate Director can be appointed either for a specified period or generally during the absence from time to time of such Director. A Director can remove an alternate Director that Director has nominated.
- 12.6 Unless otherwise provided for by the terms of their appointment, an alternate Director has the same rights, powers and privileges (including the right to receive notice of meetings of Directors but excluding the power to appoint an alternative Director) and will discharge all the duties of and must be subject to the same provisions as the Director in whose place he or she acts.

- 12.7 An alternate Director cannot be remunerated otherwise than out of the remuneration of the Director in whose place he or she acts and automatically vacates office if and when the Director in whose place he or she acts vacates office.
- 12.8 Any notice appointing or removing an alternate Director may be given by delivering it or by sending it through the post or by facsimile to the Company and is effective as from the time of its receipt.

### **Managing Director**

- 12.9 The Board may from time to time appoint one of the Directors to be Managing Director of the Company, either for a fixed term or otherwise, and may fix their remuneration by way of salary.
- 12.10 The Board may from time to time remove or dismiss any Managing Director and appoint another or others in his or her place. Any Managing Director if dismissed or removed by resolution of the Board has no right or claim to continue in office, and their only remedy against the Company (if any) is in damages.

### **Resignation, Removal or Disqualification of Managing director**

- 12.11 Subject to the provisions of any contract between them and the Company, a Managing Director is subject to the same provisions as regards resignation, removal and disqualification as the other Directors of the Company. If they cease to hold the office of Director from any cause, by that fact they immediately cease to be Managing Director.

### **Powers**

- 12.12 The Managing Director may enter into any contract or other enforceable obligation under the name of the Company and on behalf of the Company provided the Board of Directors has ratified, contracted or other enforceable obligation by prior resolution. The Managing Directors entry into such contract or other enforceable obligation must be in writing and his signature must be witnessed.

### **Proceedings of the Board**

- 12.13 The provisions of the Third Schedule to the Act are deleted and replaced as set out in the Second Schedule of this Constitution.

### **Directors' indemnity**

- 12.14 The Company is expressly authorised to indemnify and insure Directors and employees to the extent permitted by the Act.

## **13. NOTICES**

### **Service**

- 13.1 A notice may be served by the Company upon any Director or Shareholder either personally or by posting it by fast post in a prepaid envelope or package addressed to such Director or Shareholder at such person's last known address or by delivery to a document exchange or by facsimile to the facsimile telephone number of such Director or Shareholder.

### **Time of service by facsimile**

- 13.2 A notice served by facsimile is deemed to have been served on the day following completion of its transmission.

### **Time of service by post**

- 13.3 A notice sent by post or delivered to a document exchange is deemed to have been served:
- a. In the case of a person whose last known address is in New Zealand, at the end of 48 hours after the envelope or package containing the same was duly posted or delivered in New Zealand; and
  - b. In the case of a person whose last known address is outside New Zealand, at the expiration of 7 days after the envelope or package containing the same was duly posted by fast post in New Zealand.

### **Proof of service**

- 13.4 In proving service by post or delivery to a document exchange it is sufficient to prove that the envelope or package containing the notice was properly addressed and posted or delivered with all attached postal or delivery charges paid. In proving service by facsimile, it is sufficient to prove that the document was properly addressed and sent by facsimile.

### **Service on joint Shareholders**

- 13.5 A notice may be given by the Company to joint Shareholders by giving the notice to the joint Shareholder first named in the Share register of the Company in respect of any such Share.

### **Service on representatives**

- 13.6 A notice may be given by the Company to the person or persons entitled to a Share in consequence of the death or bankruptcy of a Shareholder by addressing it to such person or persons by name or by title or by any appropriate description, at the address, if any, within New Zealand supplied for the purpose by the person or persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

## **14. LIQUIDATION**

### **Distribution of surplus assets**

- 14.1 Subject to the terms of issue of any Shares in the Company and to clause 14.3 (Distribution in Specie), upon the liquidation of the Company the assets, if any, remaining after payment of the debts and liabilities of the Company and the costs of liquidation ("**the surplus assets**") will be distributed among the Shareholders in proportion to their Shareholding.
- 14.2 Shareholders of Shares not fully paid up must receive only a proportionate Share of their entitlement being an amount which is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder to the Company in respect of the Shares either under the Constitution of the Company or pursuant to the terms of issue of their Shares.

### **Distribution in specie**

- 14.3 Upon a liquidation of the Company, the liquidator, with the sanction of an ordinary resolution of Shareholders and any other sanction required by law, may divide amongst the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose set such value as the liquidator deems fair upon any property to be so divided and may determine how the division is to be carried out as between the Shareholders or different classes of Shareholders.
- 14.4 The liquidator may, with the same sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the Shareholders as the liquidator thinks fit, but so that no Shareholder will be compelled to accept any Shares or other securities in relation to which there is any liability.

## **15. REMOVAL FROM THE NEW ZEALAND REGISTER**

### **Directors may apply for removal**

15.1 In the event 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;

the Board may in the prescribed form request the Registrar to remove the Company from the New Zealand register.



## **SCHEDULE 1**

### **PROCEEDINGS AT MEETINGS OF SHAREHOLDERS**

#### **1. CHAIRPERSON**

##### **Chairperson to be Chairperson of the Board**

- 1.1 If the Directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of Shareholders, he or she must chair the meeting.

##### **Election of Chairperson**

- 1.2 If no chairperson of the Board has been elected, or if at any meeting of Shareholders the chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting, the Directors present may elect one of their number to be chairperson of the meeting. If at any meeting no Director is willing to act as chairperson, or if no Director is present within 15 minutes of the time appointed for holding the meeting, the Shareholders present must choose one of their number to be chairperson of the meeting.

#### **2. NOTICE OF MEETINGS**

##### **Notice in writing**

- 2.1 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 an auditor of the Company not less than 10 working days before the meeting.

##### **Contents of notice**

- 2.2 The notice must state:
- a. The nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
  - b. The text of any Special Resolution to be submitted to the meeting.

##### **Irregularities in notice**

- 2.3 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.

### **Adjournment**

- 2.4 The chairperson may, and if so directed by the meeting must, adjourn the meeting from time to time and from place to place, but no business can be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting. Except as so provided, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

### **Accidental omission to give notice**

- 2.5 The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person entitled to receive notice does not invalidate the proceedings at that meeting.

## **3. METHODS OF HOLDING MEETINGS**

- 3.1 An annual general meeting of Shareholders shall be held once in each calendar year at such time and place as the Board may appoint.
- 3.2 A special meeting of Shareholders entitled to vote on an issue:
- (a) May be called at any time by the Board.
  - (b) Must be called by the Board on the written request of Shareholders holding Shares carrying together not less than 5% of the voting rights entitled to be exercised on the issue to be raised at that meeting.

## **4. QUORUM**

### **Necessity for quorum**

- 4.1 Subject to subclause 4.3 of this clause, no business may be transacted at a meeting of Shareholders if a quorum is not present.

### **Numbers for quorum**

- 4.2 A quorum for a meeting of Shareholders is present if Shareholders or their proxies are present who are between them able to exercise 20% of the votes to be cast on the business to be transacted by the meeting by Shareholders.

### **No quorum**

- 4.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- a. In the case of a meeting called under section 121(b) of the Act, the meeting is dissolved;

- b. In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the Directors may appoint, and, subject to the Constitution of the Company, if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their proxies present are a quorum.

## 5. VOTING

### Voting method

- 5.1 In the case of a meeting of Shareholders held under clause 3.1 of this Schedule, voting shall be by whichever of the following methods is adopted by the Chairperson of the meeting:-
- (a) Voting by voice
  - (b) Voting by show of hands
- 5.2
- (a) 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.
  - (b) At a meeting of Shareholders a poll may be demanded by:
    - \* Not less than 5 Shareholders having the right to vote at the meeting
    - \* A Shareholder or Shareholders representing not less than 10 percent of the total voting rights of all Shareholder having the right to vote at the meeting; or
    - \* By a Shareholder or Shareholders holding Shares in the Company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 percent of the total amount paid up on all Shares that confer that right.
  - (c) A poll may be demanded either before or after the vote is taken on a resolution.
  - (d) 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
  - (e) The Chairperson of a Shareholders' meeting is not entitled to a casting vote.
  - (f) For the purposes of this clause, the instrument appointing a proxy to vote at a meeting of the Company 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

## 6. PROXIES

### Right to vote by proxy

- 6.1 A Shareholder may exercise the right to vote either by being present in person or by proxy.

### Right of proxy to attend

- 6.2 A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.

**Appointment of proxy**

6.3 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.

**Proxy form to be sent with Notice of Meeting**

6.4 A proxy form must be sent with each notice calling a meeting of Shareholders.

**Proxy form**

6.5 An instrument appointing a proxy must be in the following form or a form as near thereto as circumstances admit:

**INSTRUMENT APPOINTING A PROXY**

I/We \_\_\_\_\_  
of \_\_\_\_\_  
being a Shareholder of **LOWER WAITAKI IRRIGATION COMPANY LIMITED**  
hereby appoint \_\_\_\_\_ [print name of proxy]  
of \_\_\_\_\_  
or failing him/her \_\_\_\_\_ of \_\_\_\_\_  
as my/our proxy to vote for me/us on my/our behalf at the \_\_\_\_\_ the Annual/Special Meeting of the  
Company to be held at \_\_\_\_\_  
on \_\_\_\_\_ commencing at \_\_\_\_\_ **am/pm**  
[or all meetings of the Company held within 12 months of the date of this proxy] and at any adjournment of any such  
meeting.  
Dated on: \_\_\_\_\_ Signature: \_\_\_\_\_

6.6 Where it is wished to give Shareholders an opportunity of voting for or against an Ordinary Resolution or Special Resolution the instrument appointing a proxy must be in the following form or a form as near to it as circumstances admit:

**LOWER WAITAKI IRRIGATION COMPANY LIMITED  
INSTRUMENT APPOINTING A PROXY**

I/We \_\_\_\_\_  
of \_\_\_\_\_  
being a Shareholder of **LOWER WAITAKI IRRIGATION COMPANY LIMITED**  
hereby appoint \_\_\_\_\_ [print name of proxy]  
of \_\_\_\_\_  
or failing him/her \_\_\_\_\_ of \_\_\_\_\_  
as my/our proxy to vote for me/us on my/our behalf at the \_\_\_\_\_ the Annual/Special Meeting of the  
Company to be held at \_\_\_\_\_  
on \_\_\_\_\_ commencing at \_\_\_\_\_ **am/pm**  
and at any adjournment of any such meeting.

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

**Vote with a tick**

<b>Resolutions</b>	<b>For</b>	<b>Against</b>
1. _____		
2. _____		

Dated on: \_\_\_\_\_ Signature: \_\_\_\_\_

### **Validity of Vote**

- 6.7 A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or insanity of the appointor or revocation of the proxy or revocation of the authority under which the proxy was executed, or the transfer of any Share in respect of which the proxy is given, if no notice in writing of such death, insanity, revocation or transfer has been received by the Company before the start of the meeting or adjourned meeting at which the proxy is used.

### **Deposit of Proxy**

- 6.8 The instrument appointing a proxy and a power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority must be deposited at the registered office of the Company or at such other place within New Zealand as is specified for that purpose in the notice convening the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll. If it is not, the instrument of proxy is invalid.

## **7. POSTAL/ELECTRONIC VOTES**

- 7.1 A Shareholder may not exercise the right to vote at a meeting by casting a postal/electronic vote unless the Board determines prior to the meeting that the postal/electronic voting procedure will be available for such meeting and gives notice thereof in the notice of meeting.
- 7.2 If the Board determines that the postal/electronic voting procedure will be available for a meeting (but not otherwise) such postal/electronic votes shall be cast and counted in accordance with the following provisions:
- 7.2.1 The notice of a meeting at which Shareholders are entitled to cast a postal/electronic vote must state the name of the person authorised by the Board to receive and count postal/electronic votes at that meeting.
- 7.2.2 If no person has been authorised to receive and count postal/electronic votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every Director is deemed to be so authorised.
- 7.2.3 A Shareholder may cast a postal/electronic vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which the Shareholder's shares are to be voted to a person authorised to receive and count

postal/electronic votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.

7.2.4 It is the duty of a person authorised to receive and count postal/electronic votes at a meeting:

7.2.4.1 To collect together all postal/electronic votes received by him or her, or by the company; and

7.2.4.2 In relation to each resolution to be voted on at the meeting, to count:

7.2.4.2.1 The number of Shareholders voting in favour of the resolution and the number of votes cast by each Shareholder in favour of the resolution; and

7.2.4.2.2 The number of shareholders voting against the resolution, and the number of votes cast by each Shareholder against the resolution; and

7.2.4.3 To sign a certificate that he or she has carried out the duties set out in Clause 7.2.4.1 and 7.2.4.2 and which sets out the results of the counts required by clause 7.2.4.2; and

7.2.4.4 To ensure that the certificate required by clause 7.2.4.3 is presented to the Chairperson of the meeting.

7.2.5 If a vote is taken at a meeting on a resolution on which postal/electronic votes have been cast, the Chairperson of the meeting must:

7.2.5.1 On a vote by show of hands, count each Shareholder who has submitted a postal/electronic vote for or against the resolution; or

7.2.5.2 On a poll, count the votes cast by each Shareholder who has submitted a postal/electronic vote for or against the resolution.

7.2.6 The Chairperson of a meeting must call for a poll on a resolution on which he or she holds sufficient postal/electronic votes that he or she believes that if a poll is taken the result may differ from that obtained on a show of hands.

7.2.7 The Chairperson of a meeting must ensure that a certificate of postal/electronic votes held by him or her is annexed to the minutes of the meeting.

## **8. MINUTES**

### **Minutes must be kept**

8.1 The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.

## **Evidence**

- 8.2 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

## **9. SHAREHOLDERS PROPOSALS**

### **Notice of matter for discussion or resolution**

- 9.1 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 Shareholders at which the Shareholder is entitled to vote.

### **Notice of Shareholder proposal at Company's expense**

- 9.2 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 proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

### **Notice of Shareholder proposal at Shareholder's expense**

- 9.3 If the notice is received by the Board not less than 5 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 proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

### **Notice of late Shareholder proposal to be given if practicable**

- 9.4 If the notice is received by the Board less than 5 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 proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

### **Proposing Shareholder's written statement**

- 9.5 If the Board intend that Shareholders may vote on the proposal by proxy or by postal vote, 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.

### **Limits on obligation to include statement**

- 9.6 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.

**Payment by Shareholder of costs**

- 9.7 Where the costs of giving notice of the Shareholder 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.

**10. CORPORATIONS MAY ACT BY REPRESENTATIVES**

- 10.1 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. VOTES OF JOINT SHAREHOLDERS**

- 11.1 Where 2 or more persons are registered as the holder of a Share, the vote of the person named first in the Share register and voting on a matter must be accepted to the exclusion of the votes of the other joint Shareholders.

**12. LOSS OF VOTING RIGHTS IF CALLS UNPAID**

- 12.1 If a sum due to the Company in respect of a Share has not been paid, that Share may not be voted at a Shareholder's meeting.

**13. RESOLUTIONS IN LIEU OF MEETING**

- 13.1 A Shareholders' resolution in lieu of meeting authorised by section 122 of the Act may consist of several documents in like form, each signed by one or more Shareholders. A facsimile of any such signed resolution is as valid and effectual as the original signed document with effect from completion of its transmission.

**14. OTHER PROCEEDINGS**

Except as provided in this Schedule, and subject to this Constitution a meeting of Shareholders may regulate its own procedure.



## **SCHEDULE 2**

### **PROCEEDINGS OF THE BOARD**

#### **1. CHAIRPERSON**

##### **Election of chairperson**

- 1.1 The Directors may elect one of their number as chairperson of the Board.

##### **Terms of office**

- 1.2 The Director elected as chairperson holds that office until he or she dies or resigns or the Directors elect a chairperson in his or her place.

##### **Election of chairperson for particular meetings**

- 1.3 If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within 5 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.

#### **2. NOTICE OF MEETING**

##### **Convening meetings**

- 2.1 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.

##### **Period of notice**

- 2.2 Not less than 2 days' notice of a meeting of the Board must be given to every Director and the notice must include the date, time and place of the meeting and the matters to be discussed.

##### **Irregularity in notice**

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

##### **Means of giving notice**

- 2.4 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.

### **3. METHOD OF HOLDING MEETINGS**

3.1 A meeting of the Board may be held either:

- a. by a number of Directors sufficient to form 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 the Directors participating in the meeting and constituting a quorum can simultaneously hear each other throughout the meeting.

### **4. QUORUM**

#### **Number constituting quorum**

4.1 A quorum for a meeting of the Board is 4 Directors.

#### **No business without quorum**

4.2 No business may be transacted at a meeting of Directors if a quorum is not present.

#### **Alternate director may be included**

4.3 In accordance with clause 12.6 of this Constitution an alternate Director present at a meeting may be included for the purpose of establishing a quorum.

### **5. VOTING**

#### **Number of votes**

5.1 Every Director has one vote.

#### **Chairperson has casting vote**

5.2 The chairperson shall have a casting vote.

#### **Majority required**

5.3 A resolution of the Board is passed if it is agreed to by a majority of Directors present.

#### **Presumption as to voting**

5.4 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.

**Interested Director may vote**

- 5.5 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.

**Alternate Director may vote**

- 5.6 An alternate Director may attend and vote at meetings of the Board in accordance with and subject to clause 10.5a of this Constitution if the Director that has appointed the alternate Director is absent from the meeting.

**6. MINUTES**

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

**7. RESOLUTIONS****Written resolution**

- 7.1 A resolution in writing, signed or assented to by a majority of 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.

**Forms of resolution**

- 7.2 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.

**Resolution to be kept in minute book**

- 7.3 A copy of any such resolution must be entered in the minute book of Board proceedings.

**8. CONTINUING DIRECTORS**

- 8.1 The continuing Directors will continue to comprise the Board notwithstanding any vacancy in the number of Directors but 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 increasing the number of Directors to the minimum number or for summoning a special meeting of the Company.

**9. OTHER PROCEEDINGS**

9.1 Except as provided in this schedule the Board may regulate its own procedure.

Certified as the Constitution of the Company

Director