

Constitution of Seaview Marina Limited
2024

Company Number 519850

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1 Nature of Company

- 1.1 On the date of adoption of this constitution the Company was a Council Controlled Organisation.

2 Rights attaching to Shares

Initial share capital

- 2.1 On the date of adoption of this constitution the share capital consisted of 6,000,000 fully paid shares.

Ordinary shares

- 2.2 A Share confers on the holder:

- 2.2.1 The right to one vote on a poll at a meeting of the Company on any resolution including any resolution to:

- (a) Appoint or remove a director.
- (b) Appoint or remove an auditor.
- (c) Adopt a constitution.
- (d) Alter this constitution.
- (e) Approve a major transaction.
- (f) Approve a significant transaction.
- (g) Approve an amalgamation under the Companies Act.
- (h) Put the Company into liquidation.

- 2.2.2 The right to an equal share in dividends authorised by the Board.

- 2.2.3 The right to an equal share in the distribution of the surplus assets of the Company.

3 Other matters relating to Shares

Board may issue Shares

- 3.1 Subject to the provisions of the Companies Act and this constitution, the Board may issue, in such classes and on such terms as the Board thinks fit, any of the following:

- 3.1.1 Shares.

- 3.1.2 Securities that are convertible into or exchangeable for Shares.

- 3.1.3 Options to acquire Shares.

3.1.4 Redeemable Shares.

Consolidation and subdivision of Shares

3.2 The Board may do any of the following:

3.2.1 Consolidate and divide the Shares or the Shares of any Class in proportion to those Shares or the Shares in that Class.

3.2.2 Subdivide the Shares or the Shares of any Class in proportion to those Shares or the Shares in that Class.

Bonus issues

3.3 The Board may resolve to apply any amount that is available for Distribution either in paying up in full Shares or other securities of the Company to be issued credited as fully paid up to the Shareholder, or in paying up any amount that is unpaid on any Shares, or partly in one way and partly in the other.

Shares in lieu of dividends

3.4 The Board may exercise the right conferred under the Companies Act to issue Shares to the Shareholder who has agreed to accept the issue of Shares, wholly or partly, in lieu of proposed dividends or proposed future dividends.

Share re-purchases

3.5 The Company may purchase or otherwise acquire Shares issued by it from the Shareholder and hold its own Shares.

4 Pre-emptive rights

Issue of new Shares

4.1 Unless waived in writing by a Special Resolution, if Shares are issued or proposed to be issued that rank as to voting or distribution rights, or both, equally with or prior to Shares already issued by the Company, such Shares must first be offered for acquisition to the holders of the Shares already issued in a manner and on terms that would maintain the existing voting or distribution rights, or both, of those holders.

Transfer of Shares by the Company

4.2 Clause 4.1 applies to the transfer of Shares held by the Company in itself as if the transfer was an issue of new Shares by the Company.

5 Alteration of Shareholder's rights

Special Resolution required

- 5.1 Any action affecting the rights, privileges, limitations or conditions attached to any Shares by this constitution, the Companies Act, or the terms on which the Shares were issued, must be approved by a Special Resolution.

6 Transfer of shares

Right to transfer

- 6.1 Subject to any restrictions contained in this constitution the Shareholder may transfer any Share by an instrument of transfer that complies with this constitution.

Transferor to remain holder until registration

- 6.2 The transferor of a Share will remain the holder of the Share until the name of the transferee is entered in the Share register of the Company.

Form of transfer

- 6.3 Every instrument of transfer of Shares must comply with all of the following:
- 6.3.1 The form of the instrument of transfer must be any usual or common form or any other form approved by the Board.
 - 6.3.2 The instrument of transfer must be signed or executed by or on behalf of the transferor.
 - 6.3.3 Where the Shares being transferred are not fully paid up, the instrument of transfer must also be signed by, or on behalf of, the transferee.

Delivery to Company

- 6.4 An instrument transferring Shares must be delivered to the Company or to the agent of the Company who maintains the Share register of the Company, together with the Share certificate (if any) relating to the Shares to be transferred. If there is no Share certificate for those Shares, or if the Share certificate has been lost, destroyed or damaged, the transferee must provide such evidence as the Board or the agent reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares.

Registration of transfer

6.5 On receipt of a form of transfer in accordance with clause 6.4, the Company must as soon as practicable enter the name of the transferee on the Share register as holder of the Shares, unless:

6.5.1 The Board resolves within 30 working days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so.

6.5.2 Notice of the resolution, including those reasons, is sent to the transferor and to the transferee within five working days of the resolution being passed by the Board.

6.5.3 The refusal or delay in the registration is permitted by clause 6.6.

Power of Board to refuse or delay registration

6.6 The Board may refuse or delay the registration of a transfer of a Share for any of the reasons set out below:

6.6.1 The Company has a lien on the Share.

6.6.2 The Share is not fully paid up.

6.6.3 The form of transfer in respect of the Share relates to more than one Class.

6.6.4 The form of transfer is not accompanied by the certificate for the Share to which it relates (if a certificate has been issued) or such other evidence as the Directors may reasonably require demonstrating the right of the transferor to make the transfer.

6.6.5 The holder of the Share has failed to comply with the terms of any contract with the Company relating to the Share.

6.6.6 The Board considers that it would not be in the best interests of the Company to register the transfer of the Share.

7 Shareholder meetings

Annual meeting

- 7.1 It will not be necessary for the Company to hold an annual meeting of the Shareholders if everything required by this constitution or the Companies Act to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with clause 7.2.

Resolution in lieu of meeting

- 7.2 Subject to clause 7.3, a resolution in writing signed by not less than 75% of the Shareholders entitled to receive notice of a Shareholder's meeting is as valid as if it had been passed at a Shareholder meeting.
- 7.3 A resolution in writing to appoint an auditor in accordance with the Companies Act signed by all the Shareholders for the time being entitled to receive notice of a Shareholder's meeting is as valid as if it had been passed at a Shareholder's meeting.
- 7.4 A resolution pursuant to clause 7.2 or 7.3 may consist of several documents (including facsimile or e-mail or other similar means of communication) in like form each signed or assented to by one or more Shareholders.
- 7.5 The Company must, within five working days after any resolution is passed in accordance with clause 7.2 or 7.3, send a copy of the resolution to each Shareholder who has not signed or consented to the resolution.

8 Appointment and removal of directors

Minimum number

- 8.1 Unless otherwise determined by a resolution of the Shareholder, the minimum and maximum number of Directors is two and six respectively.

Appointment

- 8.2 Other than those Directors holding office pursuant to the provisions of the Companies Act or this constitution, all Directors of the Company must be appointed by a resolution of the Shareholder.
- 8.3 The Shareholder of the Company may vote on a resolution to appoint a Director of the Company only if the resolution is for the appointment of one Director and a separate resolution is moved in respect of each Director proposed to be appointed.

- 8.4 Nothing in clause 8.3 prevents the election of two or more Directors by ballot or poll.

Skills of Directors

- 8.5 A person may be appointed as a Director of the Company only if the person has, in the opinion of the Shareholder, the skills, knowledge and experience to:

8.5.1 guide the Company, given the nature and scope of its activities; and

8.5.2 contribute to the achievement of the objectives of the Company.

Collective skills of Board

- 8.6 The Board must collectively have relevant knowledge and experience of commercial business management, public bodies, the Wellington region and other appropriate skills to assist the Company to contribute to relevant plans and strategies of the Company and the Shareholder.

Removal

- 8.7 A Director of the Company may be removed from office by an ordinary resolution passed at a meeting called for the purpose of, or for purposes that include, the removal of the Director.

Vacation of office

- 8.8 A Director vacates office if any of the following occurs:

8.8.1 The Director resigns by notice in writing to the Company. The notice is to be effective when it is received by the Company or at a later time specified in the notice.

8.8.2 The Director is removed from office in accordance with clause 8.7.

8.8.3 The Director becomes disqualified from being a Director pursuant to the Companies Act.

8.8.4 The Director becomes a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

8.8.5 The Director dies.

8.8.6 In the case of a Director (who was a member or employee of any Local Authority Shareholder at the time of appointment) ceasing to be a member or employee of such Local Authority Shareholder.

- 8.8.7 In the case of a Director (not being a member or employee of any Local Authority Shareholder at the time of appointment) subsequently becoming a member or employee of such Local Authority Shareholder

Appointment of Directors by the Board

- 8.9 Where a Director vacates office, the continuing Directors may, with the consent of the Shareholder, appoint any other qualified person to hold office as a Director in that Director's place until a replacement Director is appointed by the Shareholder in accordance with the Shareholder's policies for the appointment of directors.

Alternate Directors

- 8.10 Each Director may with the prior written consent of the Shareholder appoint any person who is not already a Director to be the Director's Alternate Director. That person so appointed shall, during the absence or inability of a Director to act, act in his or her place.
- 8.11 No Director may appoint a deputy or agent otherwise than by way of appointment of an Alternate Director in accordance with clause 8.10.
- 8.12 Any appointment or removal of an Alternate Director must be by notice in writing to the Company signed by the relevant Director.
- 8.13 A nominating Director and his or her Alternate Director will be counted as one Director for the purposes of clauses 8.1 and 9.7.
- 8.14 Unless otherwise provided by the terms of the appointment, the Alternate Director will be entitled to all of the following:
- 8.14.1 Receive notices of all meetings of the Board if the Director for whom the person was appointed as an Alternate Director is known to be either outside of New Zealand or otherwise unavailable to attend meetings.
- 8.14.2 Attend and vote at any such meeting at which the Director for whom the person was appointed as an Alternate Director is not personally present.
- 8.14.3 In the absence of the Director for whom the person was appointed as an Alternate Director, perform all the functions, and exercise all the powers, of that Director.
- 8.15 An Alternate Director must discharge all the duties and obligations of the

Director in whose place he or she acts.

8.16 An Alternate Director will cease to be an Alternate Director in each of the following instances:

8.16.1 The Director who appointed the Alternate Director ceases to be a Director or revokes the appointment.

8.16.2 The occurrence of any event relating to the Alternate Director which, if the Alternate Director were a Director, would disqualify the Alternate Director from being a Director.

8.17 Each Alternate Director's:

8.17.1 Remuneration (if any) must be paid by the Director for whom the person was appointed as an Alternate Director.

8.17.2 Expenses incurred in attending meetings of the Directors and otherwise in relation to the discharge of duties will be paid by the Company.

Managing director

8.18 The Board may appoint one or more Directors to the office of managing director for such period and on such terms as it thinks fit.

8.19 The managing director will cease to be the managing director in each of the following instances:

8.19.1 His or her appointment as managing director is revoked by the Board.

8.19.2 He or she ceases to hold the office of Director.

8.20 The managing director's:

8.20.1 Remuneration (if any) shall be determined by the Board and approved in writing by the Shareholder.

8.20.2 Expenses incurred in attending meetings of the Directors and otherwise in relation to the discharge of duties will be paid by the Company.

9 Directors' meetings

Third Schedule to the Companies Act not to apply

9.1 The Third Schedule to the Companies Act relating to the proceedings of a board does not apply to the Company except to the extent included in this

constitution.

Notice of meeting

9.2 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 clause 9.3.

9.3 The following provisions apply in relation to meetings of the Board:

9.3.1 Not less than two working days' notice of a meeting of the Board is to be sent to each Director, unless the Director waives that right or is for the time being absent from New Zealand.

9.3.2 Notice to a Director of a meeting of the Board may be:

- (a) Delivered to the Director.
- (b) Posted to the address given by the Director to the Company for that purpose.
- (c) Sent by electronic means in accordance with any request made by the Director from time to time for that purpose.

9.3.3 A notice of meeting shall specify the date, time and place of the meeting and, in the case of a meeting by means of audio, or audio and visual communication, the manner in which each Director may participate in the proceedings of the meeting.

9.3.4 A notice given to a Director pursuant to this clause 9.3 is deemed to be given:

- (a) In the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director.
- (b) In the case of posting, three days after it is posted.
- (c) In the case of electronic means, at the time of transmission.

9.4 An irregularity in the notice of a meeting or a failure to give notice is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors agree to the waiver.

9.5 Notice of a meeting of the Board may be given to the public.

Methods of holding meetings

9.6 A meeting of the Board may be held by any of the following means:

9.6.1 By a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting.

9.6.2 By means of audio, or audio and visual, communications by which all Directors participating and constituting a quorum can simultaneously hear or communicate with each other during the meeting.

Quorum

9.7 Unless otherwise determined by the Directors, the quorum for a meeting of the Board, other than an adjourned meeting, is 50% of the Directors appointed at the relevant time.

9.8 No business may be transacted at a meeting of the Board if a quorum is not present.

Chairperson

9.9 The Shareholder may elect one of the Directors as chairperson of the Board to hold office until he or she dies or resigns or until the Shareholder removes that chairperson in its sole discretion and/or appoints a new chairperson in his or her place.

9.10 If no chairperson is appointed by the Shareholder, or if at a meeting of the Board the chairperson is not present within 10 minutes after the time appointed for the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

Voting

9.11 Every Director has one vote. An Alternate Director may not vote at a meeting if the person for whom he or she is an Alternate Director also attends.

9.12 The chairperson shall have a casting vote.

9.13 A resolution of the Board is passed if a majority of the votes cast on it are in favour of it.

9.14 A Director present at a meeting of the Board will be presumed to have voted in favour of a resolution of the Board unless he or she:

9.14.1 Expressly abstains from voting.

9.14.2 Dissents from or votes against the resolution.

Minutes

9.15 The Board must ensure that minutes are kept of all proceedings at meetings of the Board.

Written resolution

9.16 A resolution in writing, signed or assented to in written form by a majority of Directors (including Alternate Directors when the person for whom he or she is appointed is unable to act), is as valid as if it had been passed at a meeting of the Board duly convened and held.

9.17 A resolution pursuant to clause 9.16 may consist of several documents (including facsimile or e-mail or other similar means of communication) in like form each signed or assented to by one or more Directors.

9.18 A copy of any such resolution must be entered in the minute book of Board proceedings. The Company must, within five working days after any resolution is passed in accordance with clause 9.16, send a copy of the resolution to each Director (other than any Director whose Alternate Director signed instead) who has not signed or consented to the resolution, but failure to do so does not invalidate the resolution.

Committees

9.19 A committee of Directors must, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.

Validity of actions

9.20 The acts of a person as a Director are valid even though the person's appointment was defective, or the person is not qualified for appointment.

Other proceedings

9.21 Except as provided in this constitution, the Board may regulate its own procedure.

10 Powers of directors

Role of Directors

- 10.1 Each Director is expressly permitted to act in a manner which he or she believes is in the best interests of the Shareholder even though it may not be in the best interests of the Company.

Management of Company

- 10.2 The business and affairs of the Company must be managed by, or under the direction or supervision of, the Board.
- 10.3 All decisions relating to the operation of the Company must be made by, or under the authority of, the Board in accordance with:
- 10.3.1 the Statement of Intent, and
 - 10.3.2 this constitution.

Exercise of powers by Board

- 10.4 The Board may exercise all the powers of the Company which are not required, either by the Companies Act or this constitution, to be exercised by the Shareholder.

Delegation of powers

- 10.5 The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Companies Act.

Appointment of attorney

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

Ratification by Shareholder

- 10.7 Subject to the Companies Act, the Shareholder, or any other person in whom a power is vested by this constitution or the Companies Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is

ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

11 Interested transactions

Disclosure of interests

- 11.1 A Director must comply with the disclosure requirements of the Companies Act but failure to comply with such disclosure requirements does not affect the validity of any contract or arrangement entered into by the Company.

Interested Directors may vote

- 11.2 A Director who is interested in a transaction entered into, or to be entered into, by the Company may do any of the following as if the Director were not interested in the transaction:
- 11.2.1 Vote on any matter relating to the transaction.
 - 11.2.2 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.
 - 11.2.3 Sign a document relating to the transaction on behalf of the Company.
 - 11.2.4 Do any other thing in his or her capacity as a Director in relation to the transaction.

Shareholder's best interests

- 11.3 When exercising powers or performing duties as a Director, a Director may act in a manner that he or she believes is in the best interests of the Shareholder, even though it may not be in the best interests of the Company.

Use of Company information

- 11.4 A Director who has information in his or her capacity as a Director or employee of the Company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except:
- 11.4.1 for the purposes of the Company; or
 - 11.4.2 as required by law; or
 - 11.4.3 in accordance with clauses 11.5 to 11.6 of this constitution; or

11.4.4 in complying with clause 11.1 of this constitution.

Necessary information

11.5 A Director may, unless prohibited by the Board, disclose information to:

11.5.1 a person whose interests the Director represents; or

11.5.2 a person in accordance with whose directions or instructions the Director may be required or is accustomed to act in relation to the Director's powers and duties and, if the Director discloses the information, the name of the person to whom it is disclosed must be entered in the interests register.

Procedure for disclosure and use

11.6 A Director may disclose, make use of or act on the information if:

11.6.1 particulars of the disclosure, use or act in question are entered in the interests register; and

11.6.2 the Director is first authorised to do so by the Board;

11.6.3 the disclosure, use or act in question will not, or will not be likely to, prejudice the Company.

12 Directors' remuneration and other benefits

Authorisation of payment or other benefit

12.1 The Board may not exercise the power conferred by the Companies Act to authorise any payment or other benefit without the prior written approval of the Shareholder.

Expenses

12.2 Each Director is entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by the Director in connection with the Director's attendance at meetings or otherwise in connection with the Company's business.

13 Indemnity and insurance

Indemnity for Directors

13.1 The Company may indemnify a Director or an employee of the Company or a related company for any liability or costs for which a Director or employee may be indemnified under the Companies Act.

Indemnities and insurance

- 13.2 In addition to the indemnity set out in clause 13.1, the Company may with the prior written approval of the Board effect insurance for a Director or an employee of the Company or a related company for any liability or costs for which a company may effect insurance for a Director or employee under the Companies Act.

14 Dividends

Power to authorise

- 14.1 Subject to the Companies Act and this constitution, the Board may authorise the payment of dividends by the Company at times, and of amounts, and in such form as it thinks fit and may do everything that is necessary or expedient to give effect to the payment of such dividends. Prior to authorising the payment of a dividend, the Board must be satisfied on reasonable grounds that the Company will satisfy the solvency test immediately after payment of the dividend.

Deductions

- 14.2 The Board may deduct from dividends payable to the Shareholder in respect of any Shares any of the following:
- 14.2.1 Unpaid calls, instalments or other amounts, and any interest payable on such amounts, relating to the specific Shares.
 - 14.2.2 Amounts the Company may be called upon to pay under any legislation in respect of the specific Shares.

Entitlement date

- 14.3 Dividends and other distributions or payments to the Shareholder will be payable to the person who is registered as the Shareholder on an entitlement date fixed by the Board.

Unclaimed dividends

- 14.4 Dividends or other monetary distributions unclaimed for one year after having been authorised may be used for the benefit of the Company until claimed. All dividends or other monetary distributions unclaimed for five years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board must at any time after such forfeiture, and subject to satisfying the solvency test, annul any such forfeiture and pay the dividend or distribution to a claimant who produces evidence of entitlement.

15 Method of contracting

Deeds

15.1 A deed to be entered into by the Company may be signed on behalf of the Company by any of the following:

15.1.1 By two or more Directors of the Company.

15.1.2 A Director, or other person or persons authorised to do so by the Board, whose signature or signatures must be witnessed.

15.1.3 One or more attorneys appointed by the Company in accordance with the Companies Act.

Written contracts

15.2 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 Company's express or implied authority.

Other contracts

15.3 An obligation or contract may be entered into on behalf of the Company orally by a person acting under the Company's express or implied authority.

16 Notices

Method of service

16.1 Any notices, reports, accounts or documents required to be sent to a Shareholder must be sent in the manner set out in section 391 of the Companies Act. Notices to any other person must be sent in the same manner as if that person was a shareholder.

17 Definitions and Interpretation

Definitions

17.1 In this constitution the following definitions apply:

Alternate Director means a person appointed by a Director in accordance with clause 8.10 to act in the place of that Director.

Board in relation to the Company means those Directors who number not less than the required quorum acting together as a board of directors.

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

Companies Act means the Companies Act 1993.

Company means Seaview Marina Limited.

Council Controlled Organisation has the meaning given to that term by the Local Government Act 2002.

Director means a person appointed as a director of the Company in accordance with this constitution.

Distribution has the meaning set out in section 2(1) of the Companies Act.

Share means an ordinary share issued, or to be issued, by the Company.

Shareholder means a person whose name is entered in the share register of the Company as the holder for the time being of one or more Shares.

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

Statement of Intent means each statement of intent to be completed by the Board in accordance with the Local Government Act 2002.

Interpretation

17.2 In this constitution, unless the context otherwise requires:

17.2.1 Except as specified in clause 17.1, words or expressions used in this constitution that are defined in the Companies Act have the meaning given by the Companies Act.

17.2.2 A reference to writing includes facsimile and electronic communications resulting in visible reproduction.

17.2.3 An expression referring to a natural person includes a company, trust, partnership, association, body corporate or public authority.

17.2.4 A reference to any legislation or to any provision of any legislation

includes:

- (a) That legislation or provision as from time to time amended, re-enacted or substituted.
- (b) Any statutory instruments, regulations, rules and orders issued under that legislation or provision from time to time.

17.2.5 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this constitution.

17.2.6 A reference to the word 'include' or 'including' is to be construed without limitation.

Conflict between legislation and this constitution

17.3 The provision, word or expression in this constitution prevails if there is any conflict between:

17.3.1 a provision in this constitution and a provision in the Companies Act 1993 or the Local Government Act 2002 that is permitted to be altered by the constitution; or

17.3.2 a word or expression defined or explained in the Companies Act 1993 or the Local Government Act 2002 and a word or expression defined or explained in this constitution.