
Constitution of Greater Wellington Rail Limited

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PART A: INTRODUCTION

1 INTERPRETATION

1.1 Defined terms

In this constitution:

The following expressions have the following meanings:

the Act means the Companies Act 1993;

the Board means Directors (or their alternates acting in accordance with *clause 23.2*) who number not less than the required quorum acting together as the board of directors of the Company;

the Company means Greater Wellington Rail Limited;

this constitution means this constitution as it may be altered from time to time in accordance with the Act;

the Controlling Shareholder means the Wellington Regional Council;

Director means a director of the Company at the time of adoption of this constitution and a person appointed as a director of the Company in accordance with this constitution;

Local Authority has the meaning as defined in the Local Government Act 2002;

Share means a share in the Company;

Shareholding Local Authority means any Local Authority that holds, directly or through a company controlled by any Local Authority, equity securities (as defined in the Securities Act 1978) that carry 50 percent or more of the voting rights at any annual or special meeting of the Company;

Shareholder Representative means a Director who is a member or employee of a Shareholding Local Authority;

significant transaction has the meaning set out in *clause 2.2* of this constitution;

special resolution has the meaning set out in *clause 2.1* of this constitution;

written or in writing in relation to words, figures and symbols includes all modes of presenting or reproducing those words, figures and symbols in a tangible and visible form.

Subject to *clause 1.1*, expressions which are defined in the Act (whether generally, or for the purposes of a particular subsection, section or sections) have the meanings given to them by the Act. Where an expression is defined in the Act more than once and in different contexts, its meaning is governed by the context in which it appears in this constitution.

1.2 **Construction**

In this constitution:

- (a) Headings appear as a matter of convenience and do not affect the interpretation of this constitution;
- (b) The singular includes the plural and vice versa, and words importing one gender include the other genders;
- (c) A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;
- (d) The Schedule forms part of this constitution.

2 **SHAREHOLDER CONTROL**

2.1 **Special resolution**

For the purposes of this constitution, *special resolution* means a shareholders resolution approved by those shareholders holding 100 percent of the Shares in the Company, that are entitled to vote and voting on the question.

2.2 **Significant transaction**

For the purposes of this constitution, a *significant transaction* in relation to the Company means:

- (a) the acquisition of, or an agreement to acquire, or a series of related acquisitions of, whether contingent or not, assets the value of which is more than 10 percent of the value of the Company's assets before the acquisition or a series of related acquisitions; or
- (b) the disposition of, or an agreement to dispose of, or a series of related dispositions of, whether contingent or not, assets of the Company the value of which is more than 10 percent of the value of the Company's assets before the disposition or a series of related dispositions; or
- (c) a transaction or a series of related transactions that has or is likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities the value of which is more than 10 percent of the

value of the Company's assets before the transaction or a series of related transactions.

3 **ALTERATION OR REVOCATION OF THIS CONSTITUTION**

3.1 **Shareholders may alter or revoke this constitution**

The shareholders may alter or revoke this constitution by special resolution.

PART B: SHARES AND SHAREHOLDERS

4 **SHARES**

4.1 **Rights attached to ordinary Shares**

Subject to *clause 4.3* and the terms on which a Share is issued, a Share confers on the holder:

- (a) the right to one vote on a poll at a meeting of shareholders on any resolution, including any resolution to:
 - (i) appoint or remove a Director or an auditor;
 - (ii) adopt a constitution;
 - (iii) alter this constitution;
 - (iv) approve a major transaction;
 - (v) approve a significant transaction;
 - (vi) approve an amalgamation under the Act; and
 - (vii) put the Company into liquidation;
- (b) the right to an equal share in dividends authorised by the Board; and
- (c) the right to an equal share in the distribution of the Company's surplus assets.

4.2 At the date of registration under the Act, the Company has 10,000 ordinary Shares. No amount is payable on those Shares.

4.3 **Redeemable Shares**

- (a) The Company may redeem a Share:
 - (i) at its option, if permitted by the terms of issue, or any contract for the issue, of that Share, by notice in writing;

- (ii) at the option of the holder of the Share, if permitted by the terms of issue, or any contract for the issue, of that Share; or
- (iii) on a date specified for redemption, by special resolution of shareholders which alters this constitution by adding that date, or (to the extent permitted by law) by the terms of issue, or any contract for the issue of, that Share,

for a consideration that is:

- (iv) specified;
 - (v) to be calculated by reference to a formula; or
 - (vi) required to be fixed by a suitably qualified person who is not associated with or interested in the Company.
- (b) On the date of registration of the Company under the Act, there are no redeemable preference Shares on issue.

5 CONSOLIDATION AND SUBDIVISION

5.1 Board may alter number of Shares

The Board may, with the prior approval of an ordinary resolution of shareholders:

- (a) consolidate and divide Shares or any class of Shares in proportion to those Shares or the Shares in that class respectively; or
- (b) subdivide Shares or any class of Shares in proportion to those Shares or the Shares in that class respectively.

6 ISSUE OF NEW SHARES

6.1 Issue of Shares

The Board may issue Shares or securities that are convertible into Shares or options to acquire Shares at any time, to any person, and in any number it thinks fit, provided:

- (a) that issue has first been approved by an ordinary resolution of shareholders; or
- (b) all entitled persons in the Company have first agreed to or concurred in the issue, in writing; or
- (c) in the case of Shares, those Shares are issued in accordance with:

- (i) the terms of conversion of securities convertible into Shares, or
- (ii) the terms of any option to acquire Shares,

which have been issued prior to the registration of the Company under the Act or have been issued in accordance with this *clause 6.1*.

Subject to this *clause 6.1*, the Board may issue Shares that rank as to voting or distribution rights, or both, equally with or prior to any existing Shares, and any such issue will not be treated as an action affecting the rights attached to existing Shares.

6.2 **Board need not comply with statutory pre-emptive rights**

If the Board issues Shares that rank as to voting or distribution rights, or both, equally with or prior to the Shares already issued by the Company, the Board need not first offer those Shares for acquisition to existing shareholders.

7 **TRANSFER OF SHARES**

7.1 **Signed transfer to be delivered to Company**

- (a) Where Shares are to be transferred, a form of transfer signed by the present holder of the Shares, or by that holder's attorney or personal representative, or by any other person who may lawfully sign on behalf of that holder, must be delivered to the Company or to an agent who maintains the Company's share register.
- (b) The form of transfer shall be in a usual or common form, or in a form approved by the Board.
- (c) The transferee must sign the transfer form if the registration imposes a liability to the Company on the transferee.

7.2 **Shares transferred by entry on share register**

Shares shall be transferred by entry on the Company's share register of the name of the transferee which appears on the transfer form delivered to the Company.

8 **CALLS**

8.1 **Board may make calls**

With the prior approval of an ordinary resolution of shareholders, the Board may make calls on any shareholder for any money that is unpaid on that shareholder's Shares and not otherwise payable at a specified time or times under this constitution or the terms of issue of those Shares or any contract for the issue of those Shares. A call may be made payable in instalments. The Board may revoke or postpone any call.

9 ACQUISITION OF OWN SHARES

9.1 Company may acquire and hold Shares

- (a) The Company may, with the prior approval of an ordinary resolution of shareholders or the prior written agreement or concurrence of all entitled persons, purchase or otherwise acquire Shares and may hold those Shares in accordance with the Act.
- (b) Subject to *clause 9.1(a)*, the Board may purchase or otherwise acquire shares issued by the Company from such shareholders and in such numbers or proportions as it thinks fit, in accordance with the Act.
- (c) The transfer by the Company of any Share which it has acquired and held shall be subject to the provisions of this constitution relating to the issue of Shares.

10 DISTRIBUTIONS

10.1 Board may authorise distributions

The Board may authorise a distribution by the Company, in accordance with the Act, only with the prior approval of an ordinary resolution of shareholders or the prior written agreement or concurrence of all entitled persons.

11 MEETINGS OF SHAREHOLDERS

11.1 Company must hold annual meeting of shareholders

- (a) The Board must call an annual meeting of shareholders to be held:
 - (i) once in each calendar year; and
 - (ii) not later than 15 months after the date of the previous annual meeting of shareholders; and
 - (iii) not later than 6 months after the balance date of the Company.

However no annual meeting need be called and held if everything required to be done at the meeting is done by resolution passed in accordance with *clause 13*.

- (b) The Company must hold the meeting on the date on which it is called by the Board to be held.

12 Company may hold special meetings of shareholders

A special meeting of shareholders entitled to vote on an issue may be called at any time by the Board, or by shareholders holding Shares which carry not less than 51 percent of the total votes attaching to Shares.

13 Written shareholders' resolution instead of holding a meeting

- (a) Subject to the requirements of *clause 2.1*, a written resolution signed by at least 75 percent of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders, and who together hold at least 75 percent 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. Any such resolution may consist of several copies of the resolution, each signed by one or more shareholders. A copy of a resolution, which has been signed and sent by facsimile or any similar means of communication, will satisfy the requirements of this clause.
- (b) The Company must send a copy of the resolution to every shareholder who did not sign the resolution or on whose behalf the resolution was not signed, within five working days of the resolution being passed.
- (c) Subject to the terms of issue of any Share and any other provision of this constitution, the holder of a Share shall not lose the right to vote at a meeting of shareholders if a sum due to the Company in respect of that Share has not been paid.

PART C: DIRECTORS

14 APPOINTMENT AND REMOVAL

14.1 Number of Directors is restricted

- (a) The minimum and maximum number of Directors (excluding, for the avoidance of doubt, alternate directors) shall be 4 and 7, respectively. The maximum number of Directors may be increased by a special resolution of shareholders;
- (b) At least two Directors of the Company shall be persons who are neither:
 - (i) members of a Shareholding Local Authority; or
 - (ii) persons employed by a Shareholding Local Authority.

14.2 Shareholders to appoint Directors

- (a) Subject to the requirements of the Local Government Act 2002, any person who is not disqualified under the Act may be appointed as a Director by a special resolution of shareholders;
- (b) The persons named in the application to the register as Directors of the Company on the date of its registration under the Act are deemed to have been appointed as Directors pursuant to this constitution.

14.3 Shareholders to remove Directors

Any Director may be removed from office by:

- (a) a special resolution of shareholders passed at a meeting called for the purpose of, or for purposes that include, removal of the Director; and
- (b) notice in writing to the Company signed by the shareholders, notifying the Company of such removal.

14.4 Notices of removal of Directors

Any notice of removal of a Director under *clause 14.3(b)* may be comprised in one or more notices in writing. The notice takes effect from the time it is served on the Company in accordance with the Act, or from such later time as the notice states that it is to take effect.

15 CHAIRPERSON

15.1 Shareholders to elect chairperson of the Board

The shareholders must, by special resolution, appoint one Director as chairperson of the Board.

15.2 Chairperson to hold office on certain terms

The chairperson of the Board holds that office until he or she vacates office or the shareholders appoint a chairperson in his or her place.

16 VACATION OF OFFICE

16.1 Office of Director vacated in certain cases

The office of Director is vacated if the person holding that office:

- (a) dies; or
- (b) becomes disqualified from being a director pursuant to the Act; or
- (c) resigns that office in accordance with this constitution; or
- (d) is removed from office in accordance with this constitution or the Act; or
- (e) as a Shareholder Representative, ceases to be a member or employee of a Shareholding Local Authority.

16.2 Directors' resignation procedure

A Director may resign office by delivering a signed notice of resignation in writing to the address for service of the Company. The notice is effective when it is received at that address or at a later time specified in the notice.

17 **MANAGEMENT OF THE COMPANY**

17.1 **Board to manage Company**

The Company's business and affairs must be managed by, and under the direction or supervision of, the Board, except to the extent that the Act or this constitution provides otherwise.

17.2 **Board has powers necessary to manage Company**

The Board has all the powers necessary for managing, and for directing and supervising the management of, the Company's business and affairs, except to the extent that the Act or this constitution provides otherwise.

17.3 **Special resolutions necessary for significant transactions**

The Company must not enter into a significant transaction unless the transaction is:

- (a) approved by a special resolution of shareholders; or
- (b) contingent on approval by a special resolution of shareholders.

17.4 **Restriction on sale of shares in subsidiary**

Subject to *clause 17.3*, the Board must not sell, transfer or otherwise dispose of, or enter into any agreement or arrangement to sell, transfer or otherwise dispose of, one or more shares in any subsidiary of the Company unless the sale, transfer or other disposition has been approved in writing by the Controlling Shareholder.

18 **PROCEEDINGS OF THE BOARD**

18.1 **Meetings of the Board**

The Schedule governs the proceedings at meetings of the Board, except where otherwise agreed by all Directors in relation to a particular meeting or meetings. The Third Schedule to the Act does not apply to proceedings of the Board.

18.2 **Written resolutions of Board permitted**

A resolution in writing signed or assented to by all of the Directors then entitled to receive notice of a meeting of the Board and vote on the resolution, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held, provided those Directors would constitute a quorum at such a meeting.

18.3 **Written resolutions may be in counterparts**

Any written resolution under *clause 18.2* may consist of several copies of the resolution, each signed or assented to by one or more of the Directors. A copy of a written resolution, which has been signed and is sent by facsimile or any similar means of communication, will satisfy the requirements of this clause.

19 **DIRECTORS' DUTIES**

19.1 **Directors may act in best interests of holding company**

If at any time the Company is a wholly-owned subsidiary of a body corporate then, when exercising powers or performing duties as a Director, any Director may act in a manner which he or she believes is in the best interests of the Company's holding company even though it may not be in the best interests of the Company.

19.2 **Directors may act in best interests of holding company only with the agreement of other shareholders**

If at any time the Company is a subsidiary (but not a wholly-owned subsidiary) of a body corporate then, when exercising powers or performing duties as a Director, any Director may act in a manner which he or she believes is in the best interests of the Company's holding company even though it may not be in the best interests of the Company. However, this clause will apply only if the shareholders other than the Company's holding company have agreed that it will apply.

20 **DELEGATION OF POWERS**

20.1 **Restriction on Board's right to delegate its powers**

Subject to the restrictions on delegation in the Act, the Board may delegate any one or more of its powers to a committee of Directors, a Director, an employee of the Company or any other person.

20.2 **Board delegates to comply with regulations**

In exercising the Board's delegated powers, any committee of Directors, Director, employee of the Company or other person must comply with any regulations that the Board may impose.

20.3 **Committee proceedings**

The provisions of this constitution relating to proceedings of the Board shall, insofar as they are not altered by regulations made by the Board, also apply to proceedings of any committee of Directors.

21 **INTERESTED DIRECTORS**

21.1 **Directors must disclose their interests**

As soon as a Director becomes aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, then, unless the Act provides otherwise or all entitled persons have agreed to or concur in the Company entering into the transaction, that Director must disclose that interest in accordance with the Act.

22 REMUNERATION

22.1 Shareholders' to authorise remuneration and other benefits of Directors

Subject to *clause 22.2* and any other enactment or rule of law, the shareholders may, by special resolution, authorise:

- (a) the payment of remuneration or the provision of other benefits by the Company to a Director for services as a director or in any other capacity;
- (b) the payment by the Company to a Director of compensation for loss of office;
- (c) the making of loans by the Company to a Director;
- (d) the giving of guarantees by the Company for debts incurred by a Director; and
- (e) the entering into of a contract to do any of the things set out in this *clause 22.1*.

Other than as provided for in *clause 22.2*, the Board shall not authorise the payment of any remuneration or other benefit to a Director.

22.2 Expenses

A Director may be reimbursed for reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising powers as a director of the Company, without requiring the prior authorisation of shareholders.

23 ALTERNATE DIRECTORS

23.1 Directors may appoint and remove alternate directors

- (a) Subject to *23.1(b)*, every Director may:
 - (i) appoint any person who is not disqualified by the Act from being a director to act as an alternate director in his or her place either for a specified period, or generally during the absence or inability to act from time to time of such Director; and
 - (ii) remove that person from that office,by giving written notice to that effect to the Company.
- (b) The appointment of an alternate director shall only be effective on the receipt by the Company of written consent:

- (i) signed by shareholders holding Shares which carry not less than 51 percent of the total votes attaching to the Shares; or
- (ii) in the form of an ordinary resolution of shareholders.

23.2 Alternate director has powers of appointor

While acting in the place of the Director who appointed him or her, an alternate director:

- (a) has, and may exercise and discharge, all the powers, rights, duties and privileges of that Director (including the right to receive notice of, be counted as part of the quorum of, and participate in, a meeting of the Board and to sign any document, including a written resolution, and to act as chairperson of the Board, but excluding the right to appoint an alternate Director);
- (b) is also subject to the same terms and conditions of appointment as that Director, except that he or she shall not be entitled to receive remuneration other than such proportion (if any) of the remuneration otherwise payable to his or her appointor as the appointor may by notice in writing to the Company from time to time direct.

23.3 Termination of appointment of alternate director

The appointment of an alternate director terminates automatically if the Director who appointed him or her ceases to be a Director.

PART D: GENERAL

24 CHANGE OF COMPANY NAME

24.1 A Director may apply to change Company name

A Director may apply to the Registrar of Companies to change the name of the Company if the Board has approved the Director doing so and the change of name has been approved by an ordinary resolution of shareholders.

25 INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES

25.1 Company may indemnify directors and employees for certain liabilities

The Company may indemnify a director or employee of the Company or a related company for any liability or costs for which a director or employee may be indemnified under the Act. The Board may determine the terms and conditions of any such indemnity.

25.2 Company may effect insurance for directors and employees

The Company may, with the prior approval of the Board, effect insurance for a director or 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 Act. The Board may determine the amounts and the terms and conditions of any such insurance.

26 EXECUTION ON BEHALF OF COMPANY

26.1 Manner of execution

A contract or other enforceable obligation may be entered into by the Company as follows:

- (a) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by –
 - (i) two or more Directors; or
 - (ii) a Director and any other person authorised by the Board, whose signatures must be witnessed; or
 - (iii) one or more attorneys appointed by the Company in accordance with *clause 26.2*;
- (b) an obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and
- (c) an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

26.2 Company may appoint attorneys

The Company may, by an instrument in writing executed in accordance with *clause 26.1(a)*, appoint one or more persons as its attorney or attorneys either generally or in relation to a specified matter or matters. An act of an attorney in accordance with any such instrument binds the Company.

27 LIQUIDATION

27.1 Distribution of assets in kind

If the Company is liquidated the liquidator may, with the approval by shareholders holding Shares which carry not less than 51 percent of the total votes attaching to Shares and any other sanction required by the Act:

- (a) divide among the shareholders in kind the whole or any part of the assets of the Company and for that purpose the liquidator may:

- (i) fix such values for assets as the liquidator considers to be appropriate; and
 - (ii) determine how the division will be carried out as between shareholders or different classes of shareholder; and
- (b) vest the whole or any part of any such assets in trustees upon such trusts for the benefit such of those shareholders as the liquidator thinks fit,
- but so that no shareholder is compelled to accept any shares or other securities on which there is any liability.

28 **REMOVAL OF COMPANY FROM REGISTER**

28.1 **Directors may remove Company from register**

If the Company:

- (a) has ceased to carry on business, discharged in full its liabilities to all known creditors, and distributed its surplus assets in accordance with the Act; or
- (b) has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court for an order putting the Company into liquidation,

the Board may, with the prior approval of an ordinary resolution of shareholders, request the Registrar to remove the Company from the New Zealand register.

SCHEDULE: PROCEEDINGS OF THE BOARD

1 NOTICE OF MEETING

1.1 Director's power to convene meetings

A Director, or any other person at the request of a Director, may convene a meeting of the Board by giving notice in accordance with this Schedule.

1.2 Notice to be sent to Director's address

The notice of meeting must be given to each Director personally (either in person or by telephone) or sent to the address or facsimile number which the Director provides to the Company for that purpose, or if an address or facsimile number is not provided, then to his or her last place of employment or residence or facsimile number known to the Company.

1.3 Period of notice required to be given to Directors

At least one day's notice of a meeting of the Board must be given unless the chairperson (or, in the chairperson's absence from New Zealand, any other Director) believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting of the Board may be given, so long as at least one hour's notice is given.

1.4 Absent Directors

Notice need not be given to any Director for the time being absent from New Zealand. However, if he or she has an alternate director who is in New Zealand, then notice must be given to that person.

1.5 Directors may waive irregularities in notice

Any irregularity in the notice of a 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.

2 MEETING AND QUORUM

2.1 Methods of holding meetings

A meeting of the Board may be held either:

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

2.2 **Quorum for Board meeting**

Unless otherwise determined by the shareholders, the quorum necessary for the transaction of business at a meeting of the Board is a majority of Directors.

3 **CHAIRPERSON**

Chairperson to chair meetings

The chairperson of the Board will chair all meetings of the Board. If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within 5 minutes from the time appointed for the meeting, then the Directors present may elect one Shareholder Representative to be chairperson of the meeting.

4 **VOTING**

4.1 **Voting on resolutions**

Each Director has one vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it. A Director present at a meeting of the Board may abstain from voting on a resolution, and any Director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Act.

4.2 **Chairperson has casting vote**

In the case of an equality of votes, the chairperson of Directors shall have a casting vote.

5 **MINUTES**

Board must keep minutes of proceedings

The Board must ensure that minutes are kept of proceedings at meetings of the Board. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

6 **OTHER PROCEEDINGS**

Board may regulate other proceedings:

- (a) Except as set out in this Schedule, the Board may regulate its own procedure;
- (b) For the avoidance of doubt, any member or employee of a Shareholding Local Authority may, with the approval of the Board, attend and speak at meetings of the Board. A right of attendance does not grant the attendee a right to vote on any resolution before the Board.