

# CONSTITUTION OF COMMUNITY PREPAREDNESS TRUST LIMITED UNDER THE COMPANIES ACT 1993

## 1 Definitions and Interpretation

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

**Act** means the Companies Act 1993;

**alternate director** means a director appointed pursuant to clause 6.6(a);

**amalgamation** means the completed act of the Company and one or more other companies amalgamating pursuant to Part XIII of the Act and continuing as one Company, which may be one of the amalgamating companies or may be a new Company;

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

**chairperson** means the chairperson of the Board elected under clause 11.2(a) or appointed under clause 11.2(c);

**Company** means Community Preparedness Trust Limited, company number 8961992;

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

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

**distribution**, in relation to Shares held by a shareholder, means:

(a) the direct or indirect transfer of money or property, other than Shares, by the Company to or for the benefit of the shareholder; and

(b) the incurring of a debt by the Company to or for the benefit of the shareholder,

whether by means of a purchase of property, the redemption or other acquisition of Shares, a distribution of indebtedness, or by some other means;

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

**independent director** means a director that is not also a shareholder of the Company;

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

**major transaction**, in relation to the Company, means:

(a) the acquisition of, or an agreement to acquire (whether contingent or not), assets the value of which is more than half the value of the Company's assets before the acquisition; or

(b) the disposition of, or an agreement to dispose of (whether contingent or not), assets of the Company the value of which is more than half the value of the Company's assets before the disposition; or

- (c) a transaction which has or is likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities, the value of which is more than half the value of the Company's assets before the transaction;

but does not include:

- (d) any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the property of the Company.

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

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

**Share** means an ordinary share in the Company;

**solvency test** means an examination to be applied to the financial state of the Company, which will be satisfied if:

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

For the purposes of this definition "debts" and "liabilities" have the meanings given to those terms in sections 52(4) or 108(5) of the Act, as applicable;

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

1.2 In this constitution unless the context otherwise requires:

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

1.3 Subject to clause 1.1, expressions contained in this constitution bear the same meaning as specified in the Act as amended from time to time.

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

## 2 Special Provisions – Paramount Clauses

**The provisions in this clause 2 are paramount. If this clause is inconsistent with clauses in the remainder of the constitution, this clause prevails.**

### **Purpose of the Company**

- 2.1 The Company has been established to undertake the charitable purposes and objects set out at subclause (a) below. To do this, the activities of the Company must be to further, and the income and property of the Company shall be applied towards the following charitable purpose:

- (a) to be beneficial to the community by providing shelter, emergency equipment and supplies and support to isolated or vulnerable communities within New Zealand that have been or may be affected by climate change events or natural disasters.

In order to achieve the charitable purpose, set out at subclause (a) the Company shall:

- (b) provide, or arrange to provide, infrastructure, capabilities, equipment and/or resources to communities that are vulnerable or prone to the effects of natural disasters and emergencies and/or climate change events;
- (c) manage and/or maintain such infrastructure, capabilities, equipment and resources provided to communities;
- (d) assist communities and related organisations, stakeholders and/or other agencies to obtain funding and/or sponsorship for the provision of such infrastructure, capabilities, equipment and resources;
- (e) engage with communities and related organisations, stakeholders and/or other agencies to implement systems to improve resilience, readiness, response and recovery outcomes;
- (f) create an ecosystem of key partners and stakeholders that represent communities to better understand and manage each community's unique circumstances and risk profile;
- (g) support and provide education, training and learning to improve resilience, readiness, response and recovery outcomes; and
- (h) any other activities or objectives that support or further the above charitable purpose set out at subclause (a),

provided that such purposes and objectives of the Company shall be in all cases limited to the application within New Zealand.

### **Restrictions on the Capacity and Powers of the Company**

2.2 The Company must not undertake any activities other than:

- (a) those activities set out in clause 2.1 of this constitution; or
- (b) that may otherwise negatively affect the charitable status of the Company,

provided that where the Company undertakes any activity set out at clause 2.1(b) to (h), the Company must be undertaking that activity to further the charitable purpose set out at clause 2.1(a) of this constitution.

2.3 All profits, income, benefits and assets arising from the operations of the Company after making provision for all just and lawful debts or liabilities and for such reserves as the directors deem necessary or prudent for the needs and development of the Company's operations must be used to advance the charitable purpose of the Company shall be applied towards the Company's charitable purpose as set out at clause 2.1(a) of this constitution.

2.4 The Company may not:

- (a) sell, lease or otherwise deal with any Company property at below market rates;
- (b) purchase, lease or otherwise deal with any property at above market rates; or
- (c) enter into any contracts with third parties for the provision of services to undertake the Company's charitable purposes at above market rates,

where such market rates shall be determined as follows:

- (d) subclauses (a) and (b) shall be determined by a registered valuer; and
- (e) such market rates referred to under subclause (c) shall be determined by:
  - (i) unanimous approval of the directors of the Company after taking into account all relevant factors; or
  - (ii) if any of the directors of the Company are "interested" in accordance with clause 12 of this constitution then the market rates shall be determined by an independent expert appointed by the directors of the Company.

### **No pecuniary profit**

2.5 No benefit or advantage by way of private pecuniary profit shall be able to be paid or afforded by the Company to any person where that person is able to determine or materially influence the nature or amount of such benefit or advantage.

2.6 The Company shall not do or suffer to be done in relation to its affairs any act which has effect outside New Zealand.

### **Conflicts of interest**

2.7 No person may participate in any decision to distribute any benefit or income from the Company where that person may benefit from such distribution either directly or indirectly.

### **Payments to be Fair and Reasonable**

2.8 Any and all payments made by or to the Company, including any remuneration or management fee payable to any director or officer of the Company in return for any services rendered to the Company or for goods supplied must be fair and reasonable and on usual commercial terms.

### **No distributions or dividends to shareholders**

- 2.9 No shareholders of the Company shall be entitled to receive any benefit from the Company by way of distribution, dividend or other payment from the Company by virtue of a Shareholder holding Shares whether ordinary or any other class of Shares in the Company.

### **Amendment of Constitution**

- 2.10 No amendment shall be made to the constitution that will affect the charitable status of the Company.

### **Winding Up and Distribution of Surplus Assets**

- 2.11 If a decision is made to wind up or dissolve the Company and any property remains after the settlement of the Company's debts and liabilities, that property must be distributed to any similar charitable organisation (registered under the Charities Act 2005) whose objects are substantially the same purpose set out in clause 2.1(a) that operates exclusively in New Zealand.

## **3 Capacity and Powers**

The Company, the Board, each director and each shareholder have the rights, powers and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act or by this constitution (in particular the restrictions in clause 2).

## **4 Exercise of powers reserved to shareholders**

- 4.1 Powers of the shareholders of the Company, by the Act or by this constitution may be exercised:

- (a) at a shareholder meeting; or
- (b) by a resolution in lieu of a meeting pursuant to clause 5.3.

- 4.2 The shareholders must approve the following transactions by special resolution:

- (a) an alteration to or revocation of this constitution or the adoption of a new constitution;
- (b) a major transaction;
- (c) an amalgamation;
- (d) the payment of any remuneration or other benefit to a director; and
- (e) the liquidation of the Company.

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

## **5 Meetings of shareholders**

### **5.1 Annual meeting**

- (a) The Board must, in accordance with section 120 of the Act, call an annual meeting of shareholders to be held:
  - (i) not later than six months after the balance date of the Company; and
  - (ii) not later than 15 months after the previous annual meeting, or in respect of its first annual meeting not later than 18 months after its date of incorporation.

- (b) The Company must hold the annual meeting on the date on which it is called to be held.
- (c) It shall not be necessary for the Company to hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with sections 122(2) and 122(3) of the Act.

5.2 A special meeting:

- (a) may be called at any time by the Board or a person who is authorised by the Board to call the meeting; and
- (b) must be called by the Board on special resolution of the Shareholders.

5.3 Resolution in lieu of meeting

A resolution in writing signed by not less than 75% (or where it is greater, the percentage required for the passing of the special resolution) of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders, who together hold not less than 75% (or where it is greater, the percentage required for the passing of a special resolution) 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.

5.4 **Meeting procedures**

The provisions in the First Schedule to the Act govern the proceedings of shareholder meetings.

**6 Appointment and removal of directors**

6.1 The number of directors shall be not less than two and not more than six provided that the Board must include at least one independent director at all times.

6.2 At the date of adoption of this constitution the directors are:

- (a) Guy Alexander McPhail;
- (b) Elizabeth Jane McPhail; and
- (c) Harrison William McPhail (in capacity as an independent director).

6.3 The shareholders may, by ordinary resolution, appoint directors to the Board of the Company and remove any director appointed under this clause. Any such person will be appointed by the Shareholders having had regard to the necessary skills, qualifications, and experience to manage the assets of the Company (subject to clause 6.1).

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

6.5 Any notice of appointment or removal of a director takes effect from the time it is served on the Company, or from such later time as the notice states it is to take effect.

6.6 Alternate directors

Provided the requirements in clause 6.1 are met:

- (a) Every director may, by notice given in writing to the Company, appoint any person (including any other director) to act as an alternate director in the director's place either

generally or in respect of a specified meeting or meetings during the director's absence from a meeting.

- (b) At the director's discretion, by notice in writing to the Company, the appointing director may remove the director's alternate director.
- (c) An alternate director may, while acting in the place of the appointing director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of acting as chairperson and signing Board resolutions) of the appointing director. The alternate director is subject in all respects to the same terms and provisions as the appointing director, except as regards remuneration and except as regards the power to appoint an alternate director under this constitution.
- (d) For the purpose of establishing a quorum of the Board, an alternate director is deemed to be the director appointing him or her, and if the alternate director is a director he or she can count separately in both capacities.
- (e) An alternate director does not have a right to attend, speak or vote at a meeting of the board while his or her appointing director is present.
- (f) An alternate director's appointment lapses upon his or her appointing director ceasing to be a director.
- (g) The notice of appointment of an alternate director must include an address for service of notice of meetings of the Board. Failure to give an address will not invalidate the appointment, but notice of meetings of the Board need not be given to the alternate director until an address is provided to the Company.
- (h) An alternate director shall not be the agent of his or her appointor, and shall exercise his or her duties as a director independently of his or her appointer.

## **7 Remuneration of Directors**

The level and frequency of remuneration or director fees (if any) payable to any director shall be determined by an independent person, appointed by the Board. In any event, such remuneration shall be no more than fair market remuneration as certified by the Company's auditor or the Institute of Directors in New Zealand.

## **8 Indemnity and insurance**

- 8.1 Every director will be indemnified by the Company against liability for any acts or omissions by a director, to the fullest extent permitted by the Act. For the avoidance of doubt, this includes any costs referred to in section 162(3) of the Act and any liability or costs referred to in section 162(4) of the Act.
- 8.2 In addition to the indemnity set out in clause 8.1, the Company may, with the prior approval of the Board, do any of the following:
  - (a) indemnify an employee of the Company for any costs referred to in section 162(3) of the Act;
  - (b) indemnify an employee of the Company in respect of any liability or costs referred to in section 162(4) of the Act; or
  - (c) effect insurance for a director or employee of the Company in respect of any liability or costs referred to in section 162(5) of the Act.

- 8.3 The directors who vote in favour of authorising insurance under clause 9.2(c) shall sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.
- 8.4 The directors shall ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the Company or related company, are promptly entered in the Company's interest register.
- 8.5 Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause 9.

## **9 Powers and duties of the Board**

### **9.1 Powers of the Board**

- (a) Subject to clause 10.2(b) and any restriction in the Act or this constitution, the business and affairs of the Company must be managed by or under the direction or supervision of the Board.
- (b) The Board has, and may exercise, all the powers necessary for managing, and for directing and supervising the management of the business and affairs of the Company except to the extent that this constitution or the Act expressly requires those powers to be exercised by the Shareholders or any other person.

### **10.2 Delegation by the Board**

- (a) Subject to any restrictions in the Act and this constitution, the Board may delegate to a committee of directors, a director, or an employee of the Company or any other person any one or more of its powers.
- (b) The Board is responsible for the exercise of a power by any delegate (where that power is delegated under this clause 10.2) as if the power had been exercised by the Board, unless the Board:
  - (i) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the directors by the Act and this constitution; and
  - (ii) has monitored by means of reasonable methods properly used, the exercise of the power by the delegate.
- (c) the proceedings of meetings of any committee formed pursuant to clause 10.2(a) shall be in accordance with the provisions of clause 11, with such consequential amendments as may be necessary and any other rules that may be imposed on it by the Board.

10.3 A director, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the Company and the Company's charitable purposes as set out under clause 2.1 of this constitution.

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

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



## 11 Proceedings of the Board

11.1 The provisions of the third schedule to the Act are deleted and replaced by this clause 11.

### 11.2 Chairperson

- (a) The directors may elect one of their number as chairperson of the Board.
- (b) The director appointed as chairperson holds that office until he or she ceases to be a director or a new chairperson is appointed.
- (c) If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the directors present may choose one of their number to be chairperson of the meeting.

### 11.3 Notice of meeting

- (a) A director or, if requested by a director to do so, an employee of the Company may convene a meeting of the Board by giving notice in accordance with this clause 11.3.
- (b) Not less than two working days' notice of a meeting of the Board must be given to every director who is in New Zealand. The notice must include the date, time and place of the meeting and the matters to be discussed.
- (c) The giving of a notice of meeting or an irregularity in the notice of the meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.
- (d) Notice of a meeting may be given by any means, including by telephone. Notice given by a letter addressed to a director at his or her last known residential address will be deemed to have been given on the day following the day the letter is posted.
- (e) It is not necessary to give notice of a meeting of the Board to any director for the time being absent from New Zealand but if a director is resident outside New Zealand, or to the knowledge of the Company is temporarily absent from New Zealand, and the director has appointed an alternate director under the provisions of this constitution, notice must (subject to clause 7.7(g)) be given to the alternate director.

### 11.4 Method of holding meetings

- (a) A meeting of the Board may be held either:
  - (i) by a number of directors sufficient to form a quorum being assembled together at the place, date and time appointed for the meeting; or
  - (ii) by means of audio, or audio and visual communication by which all the directors participating in the meeting and constituting a quorum can simultaneously hear each other throughout the meeting.
- (b) Where a meeting of the Board is held pursuant to clause 11.4(a)(ii) at the commencement of the meeting each director participating must acknowledge his or her presence to all the directors participating. A Director may not leave the meeting by disconnecting his or her means of communication unless he or she has previously obtained the express consent of the chairperson.

### 11.5 Quorum

- (a) A quorum for a meeting of the Board is a majority of the directors (and where there are two directors one of them and the other's alternate is sufficient).
- (b) No business may be transacted at a meeting of directors if a quorum is not present.
- (c) In accordance with clause 7.7 an alternate director present at a meeting may be included for the purpose of establishing a quorum.
- (d) If a quorum is not present at the time when any business is considered, any director may require the meeting to be reconvened. At least five working days notice of the reconvened meeting will be given unless all the directors agree. At the reconvened meeting, a quorum should exist with respect to those matters on the agenda which were not disposed of at the original meeting if any two or more directors are present or represented by an alternate.

### 11.6 Voting

- (a) Each director has one vote.
- (b) The chairperson does not have a casting vote.
- (c) A resolution of the Board is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast on it by the directors are in favour of it.
- (d) A director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of a resolution of the Board unless he or she expressly dissents from (or votes against) the resolution at the meeting.
- (e) An alternate director may attend and vote at meetings of the Board in accordance with and subject to clause 7.5 if the director that has appointed the alternate director is absent from the meeting.

### 11.7 Minutes

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

### 11.8 Unanimous resolution

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

11.9 Except as provided in this clause 11, the Board may regulate its own procedure.

## 12 Interested directors

### 12.1 Definition of Interested Director

A director will be interested in a matter if the Director:

- (a) Is a party to, or will derive a material financial benefit from that matter;
- (b) Has a material financial interest in another party to the matter;
- (c) Is a director, trustee, board member, or officer of another party to, or person who will or may derive a material financial benefit from, the matter, not being a party that is wholly owned, or controlled, by the Company;
- (d) Is the parent, child or spouse of another party to, or person who will derive a material financial benefit from, the matter; or
- (e) Is otherwise directly or indirectly interested in the matter.

12.2 Notice of interest to be given

- (a) A director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, cause to be entered in the interests register, and, if the Company has more than one director, disclose to the Board of the Company:
  - (i) if the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
  - (ii) if the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.

12.3 Where a director is aware of an actual or potential conflict of interest of another director then that person has a duty to draw the attention of the Board to the conflict of interest.

12.4 The Board shall establish and maintain an interests register for the purposes of recording the details of interested representatives. Immediately following his or her appointment, a director must enter any interests he or she may have into the interests register.

12.5 An interested director shall not take part in any deliberation or vote in respect of any matter in which that director is interested, nor shall the director be counted for the purposes of forming a quorum in any meeting to consider such a matter.

12.6 The directors must not authorise:

- (a) The payment by the Company to a director of compensation for loss of office;
- (b) The making of loans by the Company to a director;
- (c) The giving of guarantees by the Company for debts incurred by a director; and
- (d) The entering into of a contract to do any of the things set out in this clause 12.

12.7 Other offices held by director:

Subject to clause 2.7,

- (a) **Professional Directors:** Any director may act by himself or herself or by the director's firm in a professional capacity for the Company; and the director or the director's firm will be entitled to remuneration for professional services as if the director were not a director.

Nothing in this clause authorises a director or the director's firm to act as auditor to the Company.

- (b) **Cross Directorships:** A director may be or become a director or other officer of, or otherwise interested in, any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such director shall be accountable to the Company for any remuneration or other benefits received by him or her as a director or officer of, or from his or her interests in, any such other company unless the Company otherwise directs or the law requires.

### 13 Authority to bind

#### 13.1 Method of Contracting

- (a) A contract or other enforceable obligation may be entered into by the Company as follows:
  - (i) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
    - (A) two or more directors of the Company; or
    - (B) one or more attorneys appointed by the Company in accordance with clause 13.2;
  - (ii) an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and
  - (iii) 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.
- (b) A copy of a resolution of the Board authorising a person to enter into a contract or other enforceable obligation on behalf of the Company shall be proof of such authority notwithstanding that the authority may have been subsequently revoked.

#### 13.2 Attorneys

- (a) The Company may, by an instrument in writing executed in accordance with clause 13.1(a)(i) appoint a person as its attorney either generally or in relation to a specified matter or matters.
- (b) An act of the attorney in accordance with the instrument binds the Company.

### 14 Liquidation

14.1 A liquidator of the Company may be appointed by special resolution of the Company.

#### 14.2 Removal from New Zealand register

- (a) Subject to sections 318 and 320 of the Act, a director, who has been authorised by the Board to do so, may request the Registrar to remove the Company from the New Zealand register on the grounds that:

- (i) the Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this constitution and the Act; or
- (ii) the Company has no surplus assets after paying its debts in full or in part, and no creditors has applied to the court under section 241 of the Act for an order putting the Company into liquidation.